

General Contractors Association of Pennsylvania

Testimony on House Bill 163

Modernization of the Separations Act

Presented by Jon O'Brien, GCAP Executive Director

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Thank you, Chairmen Garth Everett and Kevin Boyle and all the members of the House State Government Committee for inviting the General Contractors Association of Pennsylvania (GCAP) to testify today in support of House Bill 163. I would especially like to thank Representatives Garth Everett for introducing HB 163 and for championing this initiative that will modernize the Separations Act and allow public construction owners options in project delivery methods.

Established in 1953, GCAP is a statewide, united group of union construction employers that establish positions and recommendations from the union contractor's point of view. GCAP is an organization that represents the memberships of the General Building Contractors Association (based in Philadelphia); the Keystone Contractors Association (based in Harrisburg); and, the Master Builders' Association

of Western Pennsylvania (based in Pittsburgh). Additionally, GCAP is days away from adding its newest association member – the Scranton-based Northeast Pennsylvania Contractors Association. Collectively, GCAP is the voice for over 700 union construction companies based throughout the Commonwealth of Pennsylvania.

The association members of GCAP were founded to serve as management's collective bargaining agents in labor relations. GCAP association members negotiate with such trades as: Carpenters, Laborers, Operating Engineers, Cement Masons, Drywall Finishers, Plasterers, Millwrights, to name a few. Along with labor relations, GCAP association members have evolved over the years to provide additional services to union contractors, like; safety, education & training, career development, community service, government relations, etc.

Concerning HB 163 and the modernization of the Separations Act, GCAP joins the following organizations in a coalition to bring the archaic, 1913 Act into the modern day: Coalition for Procurement Reform; Construction Legislative Council of Western PA; County Commissioners Association of PA; Design Build Institute of America; General Building Contractors Association; Green Building Alliance; Green Building

United; Keystone Contractors Association; Master Builders' Association of Western PA; National Federation of Independent Business PA Chapter; National Utility Contractors Association PA Chapter; PA Association of Rural & Small Schools; PA Association of School Business Officials; PA Chamber of Business & Industry; PA Coalition of Public Charter Schools; PA School Boards Association; and U.S. Green Building Council of Central PA.

Additionally, the following labor unions have gone public in their support of HB 163 and the efforts to modernize the Separations Act: Keystone Mountain Lakes Regional Council of Carpenters and Laborers International Union of North America. There seems to be a common misconception about the Separations Act that all unions oppose a change to it; which is clearly not the case at all. The two largest construction trades unions support a modernization of the Separations Act.

Enacted in 1913, the Separations Act requires public entities to solicit bids and award separate contracts to at least four (4) prime contractors per a construction project. This is referred to as the multiple prime delivery method and it requires the public owner to hold and manage the multiple contracts, essentially making the public entity to act as a

general contractor as they are responsible for coordination and contracts. Consequently, the public owner increases its contractual liability exposure and is forced to be involved in contractual disputes among the primes. The cumbersome multiple prime requirement sets the stage for adversarial relationships among the primes, resulting in a drastic rise in change orders and claims.

The supporters of the status quo of the Separations Act will tell you that there is a cost savings through mandating multiple primes. On bid day the multiple prime bids tend to come in lower, but the supporters of the status quo stop right there and they do not look at final project costs. However, this belief doesn't take into account that the so-called 'savings' are lost during the project with the absence of a general contractor, which weakens the ability to control work resulting in less efficient jobsite that's more costly for work. Management and coordination are vital for project success and this is evident in that the entire private sector, Federal Government and 49 states that build using some form of single prime delivery. Outside of Pennsylvania's public construction market, the way it is done is by having a general contractor holding the contracts and controlling payment. Having control over payments has proven to be one of the most effective means for enforcing discipline. In Pennsylvania the public owner fills

the management void sometimes by hiring a consultant (construction management firm) which adds to the cost and in the multiple prime scenario the party that fills the management void is powerless because it does not control the payments.

Another topic that surfaces when discussing the Separations Act is Bid Shopping and Bid Peddling. On the Federal level, the Associated General Contractors of America and the American Subcontractors Association of America closely studied the issue and released this joint statement:

Bid Shopping and Bid Peddling are abhorrent business practices that threaten the integrity of the competitive bidding system that serves the construction industry and the economy so well. Bid Shopping and Bid Peddling cannot sustain long-term working relationships between construction companies.

Well documented scope reviews between a prime and subcontractors is a great option to consider to address bidding concerns. Additionally, many GCAP members support an open book approach to bidding and contract administration. Open book contracting is a process in which the general contractor works closely with the owner (public and private) to review all submitted bids, invoicing, and other important

documents related to a project. In 1913, when this Act became law there were payment concerns and the legislature wanted to address unscrupulous contractors so multiple prime was mandated. Since 1913, the legislature has continued its efforts to combat poor payment practices. In 1994, Pennsylvania enacted the Contractor & Subcontractor Prompt Payment Act (CASPA). It provides remedies against persons or companies who do not meet their financial obligations for construction services. Over the years CASPA has been strengthened and just last session the legislature enacted measures that prohibited CASPA from being waived and work stop provisions were included. Due to the payment laws increasing over the years, having the Separations Act in the books no longer makes sense.

Public owners often seek new ways to make construction projects adhere to both deadlines and budgets. Department of General Services Secretary Curt Topper acknowledged as much in a Senate Appropriations hearing last session when he said: “the Separations Act requires that we do business less efficiently than we could otherwise do business...it effectively sets up a situation where it is much more difficult to design a project, to bid a project, and to manage a project.”

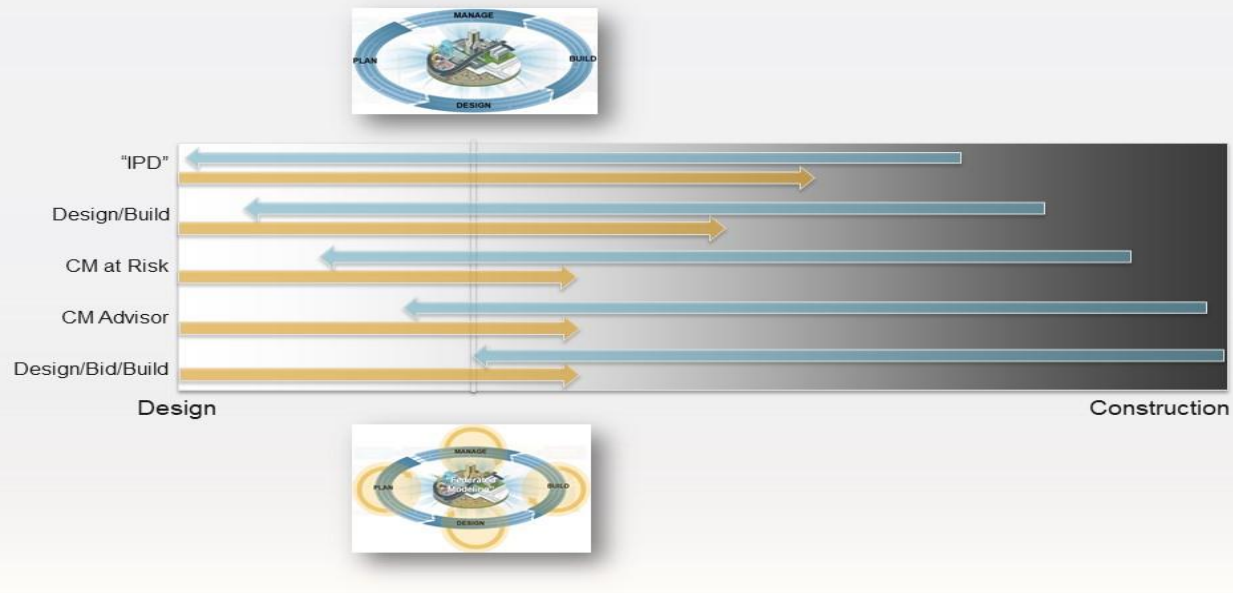
Many experts believe that the key to construction success is the process which it is organized and managed, known as the project delivery method. Under HB 163 the public construction owner will have these options in project delivery:

- Design-Bid-Build with Multiple Primes (current mandated system)
- Design-Bid-Build with Single Prime
- Construction Management At Risk
- Design Build

Each of the listed delivery systems have varying benefits and risks associated with them, and each delivery system has been proven to work in the public and private sectors across America. Each construction project is different and there's no perfect delivery method so options should be afforded to owners. After realizing the advantages and disadvantages of each delivery system, the public owner is afforded the opportunity to select the most appropriate delivery method for a particular project on a case-by-case basis. The listed delivery systems also vary on entry point of the constructor, as illustrated here:

Collaborative Project Delivery

Project Delivery Systems



The area of green, sustainable construction is another area that takes a hit due to our state mandating a multiple prime system. Under the recent PlanCon report released by the Sen Browne-led task force, there were four major recommendations. One of them was to recommend that all new and major renovations build to a LEED or Green Globes standard. The successful LEED projects treat each one as one functioning entity with everyone working together. In fact knowing that total collaboration is extremely important in building green, the newest version of LEED, V-4, provides a credit for team input during pre-design and continuing through the design phases to identify synergies from all disciplines from site conditions, water management, building

envelopes, lighting levels, mechanical and electrical load needs and comfort ranges, etc. This team collaborative culture has proven to a challenging task in the multiple prime system. This collaborative culture uses helpful techniques like Design Assist, which is a process in which sub and specialty contractors work with the general contractor and design team to add value to the project. Design Assist is not used properly on Separations Act projects.

Supporters of the status quo for the Separations Act preach that this mandate saves money; however, if that was true, why does the private sector, the federal government, and 49 states predominately use some form of single prime contracting. The commonsense factor needs to kick in eventually. Or will Pennsylvania continue to allow a small minute group of entities to benefit from this archaic law – as stated by an attorney: “arguing for the abolition of the multi-prime delivery system is contrary to my best interests as a construction litigator. There is no better source of construction litigation than Pennsylvania’s requirement that all government contracts over four thousand dollars have to be hard bid and the public owner must enter into separate contracts for the plumbing, heating, ventilating and electrical work. There are problems with project management, scheduling, communication, and collaboration among trade contractors and

between the trade contractors and the public owner. It speaks volumes that virtually no owners undertaking privately funded construction projects select a hard bid, multiple prime delivery system to build their project.”

On behalf of the entire coalition to modernize the Separations Act, we would like to conclude today’s testimony by stating that it is time that Pennsylvania takes advantage of the advancements in the construction industry and allow Pennsylvania’s public construction projects to be more collaborative, efficient, and effective. GCAP stands ready and willing to work with the General Assembly to move legislation that is beneficial to our construction industry, and most importantly that is beneficial to the taxpayers of Pennsylvania.