



# Legislative Report on Local Design-Build Contracting Pilot Program

January 2011



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Minnesota Session Laws 2009, Regular Session

Chapter 36, Article 3

**Sec. 28. DESIGN-BUILD PROJECT SELECTION COUNCIL**

Subd. 4. **Report to legislature.** Annually, by January 15, the council shall submit a report to the chairs and ranking minority members of the legislative committees with jurisdiction over transportation budget and policy, and to the legislature as provided under Minnesota Statutes, section 15.059. The report must summarize the design-build pilot program selection process, including the number of applications considered; the proposal process for each project that was selected; the contracting process for each project that was completed; and project costs. The report must evaluate the process and results applying the performance-based measures with which the commissioner evaluates trunk highway design-build projects. The report must include any recommendations for future legislation.



## I. LEGISLATIVE REPORTING REQUIREMENTS

The authority for a design-build contracting pilot program is found in Minnesota Session Laws 2009, Regular Session, Chapter 36, Article 3, Section 29. It provides that the commissioner of transportation shall conduct a design-build contracting pilot program to select local transportation projects for participation in the program, conduct information sessions for engineers and contractors, support and evaluate the use of the design-build method of contracting by counties and statutory and home rule charter cities in constructing, improving, and maintaining streets and highways on the state-aid system, and report to the legislature.

It is further provided in Minnesota Session Laws 2009, Regular Session, Chapter 36, Article 3, Section 28 that a Design-Build Project Selection Council is established to select, evaluate, and support county and municipal transportation projects on the state-aid system that are conducive to use of the design-build method of contracting and to report to the legislature.

In order to accomplish these purposes, the Design-Build Project Selection Council shall:

- (1) Review applications for participation received by the commissioner from counties and cities;
- (2) Select for participation in the pilot program projects on the state-aid system;
- (3) Determine that the use of design-build in the selected projects would serve the public interest, after considering, at a minimum:
  - (i) The extent to which the municipality can adequately define the project requirements in a proposed scope of the design and construction desired;
  - (ii) The time constraints for delivery of the project;
  - (iii) The capability of potential contractors with the design-build method of project delivery;
  - (iv) The suitability of the project for use of the design-build method of project delivery with respect to time, schedule, costs, and quality factors;
  - (v) The capability of the municipality to manage the project, including the employment of experienced personnel or outside consultants; and
  - (vi) The original character of the product or the services;
- (4) Periodically review and evaluate the use of design-build in the selected projects;  
and
- (5) Assist the commissioner in preparing a report to the legislature at the conclusion of the pilot program.



The required membership of the Design-Build Project Selection Council is:

- (1) Two contractors, at least one of whom represents a small contracting firm, selected by the Associated General Contractors, Minnesota chapter;
- (2) Two project designers selected by the American Council of Engineering Companies, Minnesota chapter;
- (3) One representative of a metropolitan area county selected by the Association of Minnesota Counties;
- (4) One representative of a greater Minnesota county selected by the Association of Minnesota Counties;
- (5) One representative of a metropolitan area city selected by the League of Minnesota Cities;
- (6) One representative of a greater Minnesota city selected by the League of Minnesota Cities; and
- (7) The commissioner of transportation or a designee from the Minnesota Department of Transportation, Division of State Aid for Local Transportation.

The following individuals are members of the Design-Build Project Selection Council:

Al Forsberg, Blue Earth County Engineer  
Gary Brown, former City Engineer  
Dennis Berg, Anoka County Commissioner  
Butch Trebesch, Ames Construction  
Jeff Carlson, Ulland Brothers  
Edward Terhaar, Wenck Associates, Inc.  
Arun Shirole, S&A Shirole, Inc.  
Carol Duff, Red Wing City Council  
Rick Kjonaas, Mn/DOT Deputy State Aid Engineer

The following individuals are alternate members of the Design-Build Project Selection Council:

Myra Peterson, Washington County Commissioner  
Greg Isakson, Goodhue County Engineer  
Scott Schulte, Coon Rapids City Council  
Richard Freese, Rochester City Engineer

The following individuals are ex officio members of the Design-Build Project Selection Council:

David Oxley, American Council of Engineering Companies  
Tim Worke, Associated General Contractors  
Ryan O'Connor, Association of Minnesota Counties  
Anne Finn, League of Minnesota Cities



**1. 2010 Summary of the design-build pilot program selection process**

2010 was a year for developing the local design-build delivery process for the “best-value” and the low-bid selection methods as well as a year of educating, marketing and soliciting local agencies on design-build. Significant progress was made in all areas and the benefits of these efforts are beginning to emerge with a growing interest and list of projects.

**A. Number of applications considered**

On May 14, 2010, the Design-Build Project Selection Council met and voted to approve a scope change to the previously approved Anoka County State-Aid Highway 14 Project. In addition, the council approved a cooperative agreement project in Olmsted County, which is being designed and constructed in conjunction with Mn/DOT’s Elk Run Design-Build Project.

Since the May 14, 2010 selection council meeting, it has been determined that cooperative agreement/design-build projects that are led by Mn/DOT do not meet the criteria for the pilot program, but that it is necessary to monitor and compare these projects for State-Aid rule changes for local participation.

At the December 1, 2010 Design-Build Selection Council meeting, the council voted to remove the Olmsted County project from the pilot program. At the same meeting cooperative agreement/design-build projects in Eden Prairie, Bloomington and Edina were reviewed. These projects will be designed and constructed as part of the Mn/DOT Highway 169/I-494 Interchange Reconstruction Design-Build Project.

The selection council, at the December 1, 2010 meeting, also voted to approve a design-build project in Rochester on 2<sup>nd</sup> Street SE from South Broadway to Civic Center Drive SE. The project is on Municipal State Aid Route 159–106, a major arterial in the middle of downtown Rochester near the Mayo Clinic.

**B. Proposal process for each project selected**

Anoka County and the city of Rochester are using the “best value” proposal process developed under the pilot program.

**C. Contracting process for each project completed**

Anoka County and the city of Rochester will be using the pilot program design-build contracting process.

**D. Project cost**

Project costs are undetermined at this time and final costs will not be available until the projects are completed. Future reports will include the engineer’s cost estimates and the contractor’s bid prices.



**2. Process and results evaluation based on performance-based measures with which the commissioner of transportation evaluates highway design-build projects**

Mn/DOT utilizes two performance-based measures to evaluate their project performance:

- Project Construction Cost  
Target — “Projects completed within 7 percent of original letting costs”
- Construction Timeliness  
Target — “Intermediate and final completion dates met on 95 percent of projects”

The evaluations based on performance measures will not be available until the projects are under construction and/or completed.

**3. Recommendations for future legislation**

Possible recommendations for future legislation:

- Amend the statute to allow cities and counties authority beyond State-Aid work.
- For clarity and training purposes, revise the pilot program design-build process to be more consistent with Mn/DOT’s design-build process.
- Revise the State-Aid Rules to reflect the design-build process.

**4. Cost of preparing this report**

Less than \$1,000.

**II. PROGRESS ON ANOKA COUNTY’S COUNTY STATE-AID HIGHWAY 14 PROJECT**

As documented in last year’s report, the Design-Build Selection Council met on November 2, 2009 and approved a project in Anoka County on State-Aid Highway 14. Since that meeting, during 2010, Anoka County hired a consultant to assist in the development of the contract (Book 1), incorporating State-Aid rules, policies, standards, guidelines and practices into the contract language.

In late September of 2010, Anoka County issued a Request for Letters of Interest to prospective design-build firms and other interested parties.

Anoka County is using the pilot program two-part best value procurement process and anticipates issuing the Request for Proposal in January 2011.

Mn/DOT’s State-Aid for Local Transportation Central Office and Office of Construction and Innovative Contracting conducted the informational session for Anoka County required under the statute for the pilot program. Anoka County staff, along with their General Engineering Consultant, the same GEC used by Mn/DOT, conducted the informational session for the contractors interested in making a proposal on the project. Both the State-Aid Office and the Metro District State-Aid Office are working with Anoka County and providing oversight of the development of the pilot program design-build process.



This project appears to be well under way with a construction start early in the 2011 construction season. The Anoka project is the first of its kind and will serve as a template for future local design-build projects.

### III. DESIGN-BUILD PROJECT SELECTION COUNCIL ACTIONS

The Design-Build Project Selection Council met on May 14, 2010 and took action on the following items:

- Approved a scope change to the Anoka County project
- Approved the hiring of a consultant by State-Aid to assist in managing the pilot program and facilitate the project selection solicitation
- Approved a request by Olmsted County to do a design-build project in cooperation with a Mn/DOT project. The County's project is three miles in length and is on County State-Aid Highway 12 and County State-Aid Highway 18 beginning at a frontage road on Mn/DOT's Elk Run Interchange project in Pine Island.

The Design-Build Project Selection Council met again on December 1, 2010 and took action on the following items:

- Removed the Olmsted County Elk Run project from the pilot program. This project was previously approved at the May 14, 2010 selection council meeting, but since it has been determined that the project is a cooperative agreement/design-build project that is being led by Mn/DOT, it does not fit under the pilot program.
- Approved a Rochester city project on State-Aid Route 159–106. The project is the reconstruction of 2<sup>nd</sup> Street SE from South Broadway to Civic Center Drive SE. The project is located on a major arterial in the middle of downtown Rochester near the Mayo Clinic.

The next meeting of the Design-Build Project Selection Council is tentatively scheduled for the fall of 2011. As projects present themselves, it may be necessary to convene the selection council on a conference call in order to approve projects.

### IV. MARKETING EFFORTS

At the May 14, 2010 meeting of the Design-Build Project Selection Council there was a lot of discussion on how to solicit projects and it was agreed that it would be necessary to target candidate projects within the cities and counties through an aggressive marketing campaign.

There were numerous presentations made to various local government groups during 2010.

### V. OTHER PROJECTS

#### 1. Projects under consideration

A project under consideration is the section of Highway 14 through the city of Waseca, which may become a turnback once the new Highway 14 is completed and open to traffic. The project is confined with lakes, a marsh and established residential and business properties which will be impacted during construction.



## 2. **Lost opportunities**

The statute is explicit in that the pilot program is for cities and counties having transportation projects on the State-Aid system. Lost opportunities were found with cities and counties that had projects off the State-Aid system or that were non-transportation-related. Township projects were proposed but are not eligible for this pilot program which is limited to the state aid system.

## VI. **CONCLUSIONS**

- During 2010 the design-build delivery process for both the best value and the low bid selection methods for State-Aid transportation projects were developed.
- A concentrated effort was and continues to be made to educate, market and solicit local agencies on design-build.
- The Design-Build Project Selection Council met on May 14 and December 1, 2010 to review and discuss potential projects; to be updated on the progress of the pilot program; and to gain further understanding of the statute and how it relates to the various design-build processes.
- The Design-Build Project Selection Council, during the December meeting, approved a project in the city of Rochester.

