

# GCA

The General Contractors  
Association of New York, Inc.  
We Build New York

# Getting it Done Right —By Design

Recommendations for  
successfully using  
“Design-Build” to replace  
the BQE Triple Cantilever



## **Preface**

The Brooklyn Queens Expressway running from Atlantic Avenue to Sands Street in Brooklyn comprises a segment of roadway that includes some of the lowest rated bridge structures in New York City. Constructed in the 1940s and 1950s, this segment of highway incorporates a unique triple cantilever design that carries over 150,000 vehicles a day. More critically, it is the only interstate artery in Brooklyn and provides a critical transportation link between the Brooklyn and Verrazano Bridges.

Initial planning efforts for the segment's reconstruction were managed by the New York State Department of Transportation ("NYSDOT"). After years of preliminary work, in 2011, NYSDOT assigned the City the responsibility for managing the reconstruction of the triple cantilever segment. Since that time, the New York City Department of Transportation ("DOT") has initiated the project's environmental review, conducted numerous community meetings, and has engaged design consultants to begin the project's design. As the project's reconstruction is a priority within DOT's capital program, the City sought and obtained state legislative authority to advance the project as a design-build procurement. That authority, however, requires NYSDOT to sign off on the project at several key stages.

The combination of the age and condition of the structure, its unique design, the volume of traffic, and significant concerns about the impact on the community, make the triple cantilever replacement a challenging project. Its successful execution and completion will depend on a clear scope of work, allocation of risk to the party best able to manage it, a partnering approach between the City and the design-build entity, clear decision-making, fair contract terms, and a skilled and knowledgeable team at the City that understands design-build and has the authority and commitment to get the job done.

The member firms of the General Contractors Association of New York ("GCA") have built every major design-build project in the New York Metropolitan area as well as a number of major design-build projects across the country. Based on their significant experience in the design-build arena, the GCA has compiled this white paper setting forth a series of recommendations on how to ensure that the BQE triple cantilever reconstruction uses design-build wisely and that the end result is a safe, efficient, and successful project for all parties.

# Getting it Done Right.....*By Design*

## *Recommendations for successfully using “Design-Build” to replace the BQE Triple Cantilever*

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The BQE between the Atlantic Avenue Interchange and Sands Street in Brooklyn, a segment known as the “triple cantilever,” is at the end of its useful life and must be replaced. In March 2018, the State Legislature passed and the Governor signed legislation authorizing New York City to use the “design-build” project delivery mechanism for this critical project.

Estimated to cost in excess of \$1 billion, it will be both the largest single project ever undertaken by the New York City Department of Transportation (“DOT”), as well as the first design-build project overseen by the department’s current staff. It is essential that DOT properly implement design-build to ensure the project’s success.

This white paper sets forth the elements that must be carefully considered to achieve a successful project outcome. Issues including risk allocation, project management and oversight responsibilities, stakeholders’ scope approval, procurement, contract structure, and labor provisions are all elements that must be thoughtfully considered and managed.

### **Project Background**

The BQE, a part of I-278, is the only interstate arterial link in Brooklyn and one that runs along the borough’s western waterfront. Built in the 1940s and 1950s, the unique triple cantilever design of this 1.5-mile-long segment between Atlantic Avenue and Sands Street carries 153,000 cars and trucks daily and supports the Brooklyn Heights promenade, a historic pedestrian walkway which provides unparalleled views of Lower Manhattan's skyline and New York Harbor. The reconstruction will have a significant impact on alternative traffic routes.

### **Design-Build Project Delivery**

Design-build procurement differs in many respects from the more traditional design-bid-build procurement. With design-build, a project owner retains one entity to design and construct the structure, ensuring a seamless project that, if handled properly, fosters creativity and innovation in the design and construction process. Design-build also enables early construction tasks to proceed while later elements are still being designed, generally leading to schedule savings.

Typically, however, design-build is most effective for new, “greenfield” projects. Design-build has not been widely used for rehabilitation projects that present significant uncertainty as to the state of existing conditions. A successful design-build project depends on a defined scope with a specified project budget and schedule. The BQE project includes a number of issues that, if not properly managed, will adversely impact the project’s scope, schedule, and budget.

Given the nature of the triple cantilever project, and the City’s decision to use design-build, it is essential that the City integrate the best attributes of design-bid-build with those of design-build to mitigate risks, develop the project scope, engage all stakeholders, and partner with the industry to effectively and cost-efficiently deliver the project.

## **Risk Review**

A design build project is successful when there is true partnership among all parties. Design-build projects can result in schedule and cost savings if they are properly managed. Simply assuming that a design build project will result in schedule and cost savings over a 'traditional' design-bid-build project, without changing the way the project is managed and organized will be a recipe for failure. While a risk review should be a standard element of planning for any project, regardless of the delivery method eventually selected, the review is particularly important when the project will be delivered using design-build. The risk review will identify gaps in the scope development, design criteria, and operational requirements, as well as assure the owner that the project can be built within the allocated budget and desired schedule.

The risk review is best performed by a dedicated, experienced risk management professional that has no additional role in the project and is completely impartial. Beyond identifying gaps in the project scope, the risk review will also identify potential issues related to factors outside the control of the agency. Required environmental reviews and approvals, necessary third party permits and approvals, identification and mitigation of utility or railroad interference, presence of contaminated or hazardous materials, geotechnical conditions, third party design review and approvals, community concerns, and traffic and noise mitigation are some examples of project risks that could impact project cost and schedule. A thorough risk review will identify, quantify, and make recommendations to address and mitigate these risks before they impact the project.

By identifying all of the potential risks up front, proper allocation and responsibility for mitigating the risk can be assigned at the outset of the project, eliminating many of the causes of later disputes, claims, and change orders. Failure to properly consider the issues that could impact project cost and schedule and work in partnership to address those risks is a recipe for a problematic project that will defeat the benefits of the design-build project delivery method.

## **Risk Allocation**

Allocating the risk to the entity in the best position to manage and control that particular risk is essential to any project, and even more critical for a design-build procurement. Proper risk allocation ensures competitive prices as the design-build entity minimizes the need to price unknown items and avoid risks it cannot control. It also ensures that the party best able to manage that risk takes the actions necessary to defuse or resolve those issues in a timely manner, thereby keeping the project on track.

Prior to contract solicitation, outreach and dialogue with the design and construction industry must take place to proactively and cooperatively identify project-specific risks and their appropriate allocation. Risks that are easily identified, quantified in both magnitude and cost, mitigated, and fall within tasks normally delegated to a project's design and construction professionals belong with design-build team. Other unknown risk items that would impact project deliverables, cost, and schedule, such as differing site conditions, managing community opposition, obtaining oversight body approvals, inter-agency permitting and coordination, and ensuring stakeholder involvement, are best left to the project owner, in this case, the City.

An important element of allocating risk is a recognition by the project owner that the design-build entity has a limited amount of time to assess issues and investigate existing conditions prior to submitting its proposal. As such, any risk that would take a significant amount of time, such

as investigating site conditions beyond the information provided in the request for proposals, or obtaining community and stakeholder approval for the project scope and means of mitigating impact, should remain with the owner.

For the BQE, the community impact issues are significant. Noise, traffic, dust, access to Brooklyn Bridge Park, and views from the Brooklyn Bridge Promenade will be issues that must be resolved by the City prior to project solicitation, and the required mitigation measures must be included in the project scope documents. Likewise, once the project is awarded, ongoing management of the community's concerns must remain the City's responsibility, with the project team being compensated for changes in mitigation measures that may be required as the project progresses and new issues are identified.

Failure by the City to take responsibility for these issues and to clearly specify mitigation requirements in the solicitation documents and resulting contract will result in a higher project cost and schedule delays during construction. For every risk that the City does not mitigate upfront by providing sufficient scope guidance to the design-build team, the resulting proposals will be higher in both cost and schedule duration.

Similarly, the project scope documents must detail allowable work hours, critical maintenance and protection of traffic requirements, and options for equipment staging areas, all of which should be finalized by the City with the community prior to the solicitation. While the City may request the proposers provide alternate concepts for managing community concerns, the City should be clear in how it will evaluate these proposals and the extent to which the cost of mitigation measures will be factored into the overall evaluation decision. To the extent that one of these concerns is more important than the other, the City must be clear in how proposals will be evaluated as some construction schemes might significantly save money but impact the community more, or vice versa.

Other risk items include unforeseen utility and/or railroad interference or subsurface/behind the wall conditions that may potentially differ from what is shown on test documents. Funded contract allowance items that can be exercised to cover these costs is the fairest and least complicated way to manage and mitigate these risks.

Third party reviews, permits, and oversight are also risk factors that can impact project cost and budget. The City is in the best position to identify all third-party reviews and oversight and assume responsibility for delays caused by these external items. A project of this size and magnitude could also be subject to community litigation, funding approval delays, or delayed property acquisition.

All of these items impact cost and schedule and are items for which the City is in the best position to manage these external risks. The alternative is for the design-build team to estimate the financial and scheduling scope of such potential risks and include them in the proposal – an option likely to be more expensive than the real cost the City would incur by fairly addressing the actual conditions.

### **Scope Development and Approval**

Essential to completing a construction project on time and on budget are: (1) a realistic schedule that reflects the complexity of the project being delivered; (2) an accurate project budget, and;

(3) a project scope that incorporates all of the functional needs and specialty items required by the project's owners and users. When using design-build, a well-defined project scope is the most important step in ensuring that the final product meets the owner's expectations for aesthetics, functionality, and maintenance. Input, approval, and final sign-off of the project scope by all of the owner's relevant stakeholders is especially important when the owner's organization has separate departments for construction and maintenance.

The project scope is the basis for the design-build team's proposal, schedule, cost, final design, and project approach. Changes to the scope dictated by sub-units of the owner once the design-build contract is awarded will result in change orders, additional project cost, and schedule changes. While design-build as a project delivery mechanism has the potential to reduce change orders, this can only happen when the scope remains consistent throughout the project and is not changed.

In the case of the BQE triple cantilever, community concerns are an integral component of the construction process. The scope presented to the design-build team must include DOT's requirements for community mitigation measures; critical maintenance and protection of traffic issues, including temporary traffic diversion requirements; and all final maintenance requirements. The design-build team must also be indemnified against any lawsuits that may be brought by the community concerning project impacts. Any changes to the scope once the project has been awarded will result in change orders to the project that must be processed and approved before any work is begun.

Much of the detail on the triple cantilever's subsurface conditions will remain unknown until the design-build team begins demolition and replacement of the existing structure. As it will be impossible for the project scope to precisely forecast the existing conditions, incorporating allowance items into the design-build contract to be used to pay for differing site conditions will mitigate these risks and provide a means of expeditiously addressing them.

### **Project Management and Oversight**

Successful delivery of the BQE replacement using design-build requires a partnering approach at every level of the agency, and experienced personnel – incorporating a “project first” approach” – dedicated to resolving issues and working in closely with the design-build team. Trust and a partnering approach among all participants are the core components of good project management and a successful project outcome. An adversarial relationship between the agency personnel and project team will hamper the ability to deliver the project and is a recipe for disaster. A highly skilled team with the experience and knowledge of design-build project delivery, the authority to make decisions at the project level, and a “project first” partnering approach to the project will, in turn, result in successful project for all.

There can be no after-the-fact second guessing of decisions made by the City's project team. Thus, any participant such as facility operations staff, legal reviewers, auditors, etc. must be an integrated part of the project team to ensure a cooperative working relationship that is focused on solving problems and addressing issues as they arise.

One approach would be a formal partnering process that requires all applicable parties (DOT design and operations staff, Law Department, Engineering Audit OMB, Comptroller, DOT legal) to meet weekly to review progress, resolve issues and make any oversight decisions that are

required. A second, and better, approach to ensure that the project remains on schedule, is to integrate into the project team any participants outside of DOT that retain oversight responsibility. In this way, claims can be avoided, and issues and approvals can be expedited and resolved as they occur so as to avoid project delays. Frequently, skilled and experienced construction professionals sitting as a Dispute Resolution Board (“DRB”) (under the guidelines established by the Dispute Resolution Board Foundation) can act in concert with the partnering group to review and provide impartial guidance on technical issues as they emerge to reduce negative schedule and cost impacts. For the BQE project, a DRB authorized to make binding decisions will be critical to ensuring that issues are contemporaneously reviewed and decided.

A design-build project requires the owner to have a dedicated team of skilled professionals that know how to manage such project methods. Training for the City’s assigned project team, preferably through the Design-Build Institute of America, is essential. The City should also consider engaging contract professionals knowledgeable about heavy civil design-build transportation/bridge projects to work on its project team for the BQE.

Once the scope is determined and the performance requirements established, a successful project also requires the City to cede control of executing the design details to the design-build team. The City’s involvement in design review on a design-build project should be limited to an audit/scope conformance role only, and not day-to-day control over design elements. Any specific requirements or preferences should be noted from the start within the design-build documents and not introduced during the design review process.

The design-build team Engineer of Record is responsible for design review. **If the City cannot cede design review to the design-build team because of third party review requirements, or approval requirements necessitated by funding, regulatory oversight or community involvement, then design-build is not the appropriate project delivery mechanism.**

## **Procurement**

A successful procurement plan for design-build enhances collaboration and partnership right up front. The authorizing legislation enabling the City to use design-build for the BQE sets out a two-step procurement process with final sign-off required by the New York State Department of Transportation, which makes collaboration even more essential.

Prior to beginning the solicitation process, the City must make it clear how many firms will be prequalified, whether a stipend will be paid and how the stipend will be paid – all factors that impact a team’s decision on whether to submit a proposal.

### ***Stipends***

Stipends are an essential element of fostering competition and defraying a portion of the costs of the procurement. The cost to respond to a design-build solicitation is significantly higher than the cost to prepare a straight bid for a design-bid-build project. Prequalified design teams must spend considerable time and money developing their design concepts as well as establishing a construction budget and schedule in the preparation of the proposal response. The design team is paid by the contractor for its team preparing the proposal; the designer’s work is not done entirely at risk. For these reasons, payment of a stipend to defray the proposal preparation cost is a necessity.

The expense of preparing a proposal response for a solicitation like the BQE project will easily be in excess of \$10 million. The stipend value should therefore be at least \$2 million to help offset the cost of preparing a proposal on what is anticipated to be a \$1 billion+ project. The stipend must also be paid to all pre-qualified proposers that submit a qualified proposal and must be paid regardless of whether the City awards or cancels/delays the contract award. No additional documentation beyond the proposal submission should be required for payment of the stipend, and it must not be subject to audit or other additional documentation requirements.

Payment also needs to be made within thirty days of submitting an invoice. For the proposer awarded the procurement, the amount of the paid stipend can be considered a portion of the team's first payment, and not an additional payment above the contract award amount.

The amount of the stipend should be adjusted to reflect what is being asked for as part of the proposal. To the extent that a 3-D or 4-D model is required to be submitted, a higher stipend is warranted as such an effort is very expensive in its own rights.

The amount of the stipend must be listed in the request for qualifications so that firms can make an educated decision up front about whether to submit a bid. Payment of the stipend needs to be made by the City, in a lump sum, in its full amount, upon receipt of the proposal submission. As the stipend will not cover a proposer's full cost of preparing the proposal, the City should not request timesheets, contracts or other documentation. The value of the stipend paid may be deducted from the overall value of payments made to the proposer that is ultimately awarded the project contract.

### *Two Step Procurement Process*

**Step 1: Request for Qualifications** - The first step is to issue a request for qualifications ("RFQ") to determine the most qualified proposers for the project who will be invited to submit a formal proposal and design for the project. Given the size of the BQE project and the significant cost to bid, it is recommended that the list of pre-qualified teams be limited to three teams. Limiting the number of prequalified teams will ensure the most thorough responses, as many firms will not spend millions of dollars on a bid when there is a less than 33 percent chance of winning the bid.

In the event the City wishes to preclude firms that have previously worked on aspects of the triple cantilever EIS, preliminary design or other aspects, the decision needs to be made and promulgated before the RFQ is issued. On design-build projects, teams are formed and project approaches are discussed months before a solicitation is issued. It is unfair to a proposing team to have a member disqualified once the solicitation has begun.

The RFQ documents should describe the project and requirements in sufficient detail to enable bidders to tailor their team members accordingly. Transparency is key to the process. The RFQ solicitation documents need to state the evaluation criteria, in rank order, for how the RFQ submissions will be evaluated. The submission requirements should be sufficiently detailed for the agency evaluation committee to evaluate team qualifications but not so detailed that they lock teams into designated subcontractors or subconsultants.

The RFQ document must also clearly state whether any changes to the team will be permitted and the reasons and process for allowing such changes.

**Step 2: Request for Proposals issued to prequalified teams** - The request for proposals (“RFP”) process is the stage at which design-build teams expend significant resources to figure out how to best design and build the project. The RFP and the team’s proposal ultimately becomes part of the final contract document and the requirements and specifications in the RFP have cost and schedule implications. Best practices include providing the pre-qualified teams a copy of the draft RFP and an opportunity to comment on and suggest changes to the final RFP.

This interactive and cooperative process helps teams identify risk issues for early action mitigation by the owner and serve to help lower overall project cost by addressing proposer concerns upfront.

Given the size and complexity of the BQE triple cantilever project a **minimum of six months** from the issuance of the RFP until proposals are due is required to provide the City with the best design and the lowest cost. Sufficient time to bid is especially important when an owner is asking proposers to submit alternative technical concepts (“ATC”) in addition to their “base” proposal. It is much more productive for the industry to work within a reasonable proposal submission period that reflects the level of effort required rather than be in the position of asking for due date extensions.

To ensure a transparent bidding process, the RFP must lay out the evaluation criteria, with weights given to each criterion. The evaluation criteria must spell out how the design-build team’s price proposal and schedule will be considered and evaluated against the other criteria. The criteria that will be used to evaluate ATCs must be spelled out in the RFP as well.

During the RFP stage, the proposing teams should be afforded full individual site access during the proposal preparation stage in order to assess the conditions of the structure. Differing sight conditions are a significant risk and cost element of the BQE project, and the design-build teams must be afforded full unexpurgated information up front about known conditions. Given the great amount of uncertainty that exists about the structure’s condition, the City must accept full risk for differing site conditions and be willing to compensate the team for unforeseen conditions. This can best be accomplished by including an allowance item for this within the contract’s payable items.

The RFP must set out any proscriptive design elements required. Although proscriptive elements should be kept to a minimum to allow for the greatest degree of innovation in the proposal process, if there are elements the City believes must be included in the final product, those elements must be listed in the RFP. These elements should be clustered into “performance” and “design-specific” categories.

One-on-one meetings at various points during the preparation period with each design-build team provide a forum for answering questions and providing input on the agency’s priorities for the overall project. Sufficient time – several hours at a minimum – should be allocated for the one-on-one meetings to enable the proposers and the agency to present the project and address technical issues and questions. The agency must also have all related project decision-making personnel present at the meeting. These meetings ensure that the final proposals submitted meet the agency’s criteria. Given the nature of the BQE project and the significant impact that any

approach will have on the surrounding community, it is essential that DOT engage in regular, one-on-one meetings with the teams during the proposal preparation project to ensure that a team is not proceeding with a solution that may later be rejected by the community.

During the one-one meetings ATCs may be presented for review and approval. Proposers' approaches to either the "base" solution or any ATCs, must not be shared with other proposers during the proposal submission, review or cost proposal negotiation process. The agency cannot take one proposing team's idea and share it with other proposers for the purpose of obtaining alternate (i.e., lower) pricing. If possible, formal non-disclosure agreements should be provided.

The proposal evaluation team needs to include all representatives that will have a role in determining the award of the contract. For the City, this may include representatives of the Law Department, OMB, MOCS, and the Comptroller as well as agency personnel. It is critical that the award decision be agreed to by all parties with no second-guessing later.

In the event that the procurement will include Best and Final Offer ("BAFO") submissions beyond the initial price proposal, the BAFO process needs to include the opportunity for proposers to offer alternative legal terms and conditions. **BAFOs should be limited to one round of submissions.** Design-build procurements are not reverse auctions in which the agency seeks continually lower pricing. **If price is going to be the governing factor in the award decision, the agency needs to fully design the project and award the project via lowest competitive bidding.**

Finally, the proposal evaluation process needs to be transparent. Timely feedback needs to be provided to the proposers on their scores in the prequalification phase and in the project evaluation phase. All proposers must be offered timely debriefings on their submissions.

### **Design-Build Contract**

Design-build procurements require different contract terms from the City's existing design-bid-build contracts that recognize the different roles and responsibilities of the parties to the contract.

The City's existing standard construction contract used for design-bid-build projects is not appropriate for design build procurements.

Key principals set out by the Design Build Institute of America should be included in New York City's design build contracts. Among these are:

- Contracts should contain an equitable, fair process that facilitates and expedites the review and resolution of potential contract changes and adjustments in contract price and time.
- Contracts should contain a dispute resolution process that promotes the prompt identification and resolution of disputes at the lowest possible level of hierarchy within the parties' organizations.

A tailored dispute resolution clause, preferably in the form of an appointed Dispute Resolution Board ("DRB"), as configured under the guidelines of the Dispute Review Board Foundation that will include a knowledgeable individual selected by the agency, one selected by the design-build team and a third selected by the two appointees who will mediate, adjudicate, and rule on

all disputes in conjunction with the partnering process. The DRB decisions will be binding on both the City and the design-build team, and will take the place of “Commissioner’s Determinations,” the existing Contract Dispute Resolution Board (“CDRB”), and the Comptroller’s claim settlement authority.

As disputes are raised they must be adjudicated, and to the extent that the adjudication includes compensation to the design build team, the payment will be made contemporaneously with the decision and not held until the end of the contract. The contract must also contain clear direction for how the design-build team may escalate issues toward resolution.

Disputes about delays would be handled by the dispute resolution board as well. “No damages for delay” contract provisions have no role in design-build projects, and the existing City contract provisions regarding delay claims must be modified to enable the design-build team to present, and be compensated for, the full cost of delays found to be the City’s responsibility. Steel, fuel and asphalt escalation clauses must be included in the contract to ensure fair pricing. This will protect the design-build team in the event of rapid price escalations and the protect the City in the event of price decreases in materials.

The BQE project will have significant community impacts. An indemnification clause protecting the design-build team in the event of litigation challenging the City’s process, the validity of the EIS or any other issues not within the responsibility of the design-build team, should be included in the contract. Delays caused by litigation must be compensated. “Last minute” litigation delaying the project must not result in a delay to the payment of stipends for submitting proposals in good faith.

The City’s current Notice provisions must be modified to reflect the partnering relationship and need for timely decision making. The existing contractual requirement to continuously reserve the right to claim the delay or else the right to claim is forfeited must be eliminated.

Other contract terms that must be addressed include:

- No waiver of claims in order to submit payment requests.
- Compensation for differing site conditions should be periodic as well as lump sum.
- Interactive payment review process that includes all reviewers participating at the same time so issues are resolved and the payment is approved.
- Payment terms including payment schedule and any milestones must be design-build compatible.
- The design-build team will reserve the right to stop work in the event of progress payment delays by the City.
- Any liquidated damages provisions need to be accompanied by early completion incentive payments.
- Contract milestones need to be tied to payments, and if the milestone includes liquidated damages, it must also include incentives for early completion.
- Unless a milestone is being accepted for the purposes of beneficial use of the completed work, with an accompanying acceptance of the work, the start of the applicable warranty period and a commensurate reduction in the design build team’s retainage, no liquidated damages should be assessed for a delayed milestone if the project reaches substantial completion by the agreed-upon completion date.

- Beneficial use of a design-feature or defined construction component should trigger the start of associated warranties and not the formal paperwork documentation for substantial completion or a milestone achievement, which is often not contemporaneous.
- Change orders need to include insurance costs as a direct labor item and need to include the designer's time as direct labor and not overhead. Change orders need to be expedited for review by a dedicated team before they are issued to the design-build team for work. **There can be no instances where change orders are rescinded or the team is advised they are not entitled to payment because they worked at risk. Such instances need to be grounds for the design-build team to pursue a breach of contract claim against the City.**
- Payments need to be made promptly, every 30 days. The City's project team needs to include all reviewers that weigh in on payment decisions, there should be no audits outside the project team that could delay payments.
- Goals for disadvantaged, minority, or women-owned businesses must be set based on the BQE triple cantilever project's unique scope of work and not on the basis of a citywide policy determination. In setting the goals, DOT must consider the availability and capacity of the certified firms in the appropriate directory and the firms' abilities to meet the project's difficult schedule, staging, and logistical demands. Specialty material, such as custom-steel elements that cannot be readily supplied by certified disadvantaged, minority or women-owned enterprises, must be excluded from the base upon which the subcontracting goals are determined. The design-build team needs to be able to determine its own allocation of participation on either the design or the construction aspects of the project; the contract must not include separate goals for each phase. This is an essential element for the design-build team's ability to manage the project to achieve the designated cost and schedule.

### **Project Labor Agreement**

A project specific project labor agreement ("PLA") sets forth the wage rates, work rules, holidays and labor dispute procedures. A PLA is used to ensure labor peace and to negotiate more favorable work rules and wage rates to deliver the project at a lower price.

Generally, in order to use a PLA, a study must be conducted to determine if it will result in cost savings. For the BQE, the state authorizing legislation mandates the use of a PLA in order to use design-build. Nonetheless, the City needs to ascertain how a PLA can be used on the BQE project to achieve actual project cost savings.

Traditional PLAs in New York City have been modeled after building agreements for which there are different work rules, wage rates, and jurisdictional precedents than for heavy civil projects. The BQE is a heavy civil construction project, not a building project, and the associated PLA must therefore not be based on a building model. To negotiate a PLA for the BQE using the building model PLA risks driving up construction costs not only on this project, but on all heavy civil public works projects in New York City.

Given the size and scope of the BQE triple cantilever project, only contractors that are signatory to union agreements in New York City have the financial and technical capacity to build this project. The collective bargaining agreements for these entities are negotiated by the General Contractors Association of New York and the Allied Building Metal Industries. To negotiate a PLA that results in efficiencies and cost savings the City must bring in both associations to

advise and work in partnership with the city on developing the PLA. This model was used successfully for the Tappan Zee Bridge.

To ensure labor harmony and clear work rules, wages, and holidays, the City must make sure that all impacted unions sign the PLA. If only certain unions sign the PLA and others do not any PLA benefits will not be achieved.

Negotiating a final PLA is a time sensitive issue and must be resolved prior to soliciting the project. Design-build teams cannot accurately price the project without labor rate certainty.

### **Conclusion**

Design-build works when all parties are aligned and committed to make it work. It does not work when the sole goal is to shift risk and conduct business as usual. A successful design-build project requires all participants to step out of their comfort zones and focus on achieving a common goal: providing a quality public asset that will improve quality of life for the surrounding community.

The bottom line is that for design-build to work for the triple cantilever project, New York City must change its current managerial approach to the way it builds its capital projects. The BQE triple cantilever project is a unique project for DOT, and its delivery via design-build is a unique application of this project delivery technique. To be successful, DOT and the City must be willing to develop project management, risk allocation and contract terms that meet the needs of this critical infrastructure project. Business as usual disguised behind a “design-build” label is a recipe for failure. A successful use of the design-build delivery alternative will support its use for other major projects, while a project fraught with disputes and delays will limit design-build’s future utility for expediting the City’s capital construction program.