AASHTO-AGC-ARTBA Joint Committee Position Statement
September 9, 2025
"Understanding the Effective Implementation of Progressive Design-Build Projects"

In the early 1990s, the Federal Highway Administration (FHWA) began encouraging the state departments of transportation (state DOTs) to consider utilizing innovative methods to contract projects. This began with the approval of initiatives such as the Special Experimental Project Number 14 (SEP-14) for Alternative Contracting. The use of Alternative Contracting Methods (ACM) subsequently grew through implementation of varying methods of delivery, including Design-Build (DB) and Construction Manager/General Contractor (CM/GC). The development of these methods allowed state DOTs to deliver projects based on best value and not just the traditional requirement of low-bid selection. ACM can also help to better manage the growing complexity of transportation projects while state DOTs face challenges in retaining technical expertise.

As the use of ACM increased, so has the collective understanding of risk allocation to owners and contractors associated with quality, schedule, scope, and cost—leading to further variations in innovative contracting methods as part of a continuous improvement process for the industry. This evolution of ACM has led to the introduction of Progressive Design-Build (PDB) contracting in recent years.

PDB combines the delivery methods of CM/GC and DB to form a hybrid model that includes best practices of early contractor involvement with increased predictability of scope, schedule, and budget. The early engagement of contractors in the process allows all parties increased opportunities to communicate and understand the cost drivers and associated risks to improve efficiencies and reduce downstream conflicts.

To support the continued evolution and improvements of this form of alternative contracting, the Joint Committee recommends the following actions:

- Through peer exchanges, identify recommendations for interested state DOTs to develop internal workforce capacity and expertise on alternative contracting methods including PDB.
- Identify the ingredients of successful "early engagement" between the owner and contractor that leads to optimal risk allocation and improved management of cost.
- Promote knowledge transfer of best practices on open-book pricing and transparency for PDB between state DOT's and industry partners.
- Work with FHWA to identify the types of projects that are well-suited to reap the benefits of PDB, and conversely, find types of projects that are not well-suited to PDB.

2025 AASHTO-AGC-ARTBA Joint Committee Position Paper:

Managing PFAS Impacts on the Construction Industry

Per- and polyfluoroalkyl substances (PFAS) are widespread in the built environment and present growing risks for highway and transportation projects. The recent designation of legacy PFAS under CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act) has created legal uncertainty, as Superfund liability applies retroactively and without fault, potentially exposing contractors to cleanup costs for contamination. With no continuity of process or guidance, testing and disposal requirements vary widely from state to state. As a result, project owners increasingly shift liability onto contractors through contract terms. This practice drives up bid prices, reduces competition, and causes delays, particularly on airport, military, and large-scale earthmoving projects. Because risk and liability with PFAS at this time cannot be reasonably quantified, many contractors are discouraged from bidding altogether.

According to the 2024 National Academies report, *Practices to Identify and Mitigate PFAS Impacts on Highway Construction Projects and Maintenance Operations*, most state Departments of Transportation (DOTs) are unprepared to manage PFAS risks in highway projects. 77% of state DOTs (34 states) lack internal PFAS-specific policies, and only 39% (17 states) have any formal or informal procedures for identifying or mitigating contamination. Routine PFAS testing is rare, with just four DOTs conducting testing on construction sites. While nine DOTs reported encountering PFAS on a project, only three states indicated that those encounters resulted in the development of formal protocols. These findings underscore the urgent need for consistent national guidance from EPA and FHWA in addition to PFAS liability protections for public infrastructure projects

To support safe and cost-effective project delivery, the AASHTO–AGC–ARTBA Joint Committee supports the following:

- **Support Interagency Collaboration and Education**: Encourage DOTs, contractors, and consultants to jointly plan and coordinate on PFAS-related procedures. Several states have benefited from early collaboration, risk assessment during design, and transparent communication around potential contamination zones.
- **Clarify Liability Under CERCLA:** Congress should develop clear statutory language specifying that parties acting in good faith and without fault should not be held liable under Superfund cleanup requirements. EPA's enforcement discretion is appreciated, but inadequate to protect parties from third party lawsuits.

AASHTO-AGC-ARTBA Joint Committee
2025 Position Paper
"Promoting Mutual Understanding of Project Cost Drivers"

The transportation construction industry and its public agency partners share a long history of enduring market forces that affect project costs. However, recent years have brought increased – and often unprecedented – challenges from the effects of the COVID-19 pandemic, weather events, trade policies and workforce trends, among other causes.

Factors potentially driving project costs, and their associated risks, include but are not limited to:

- Extended design timelines,
- Drawn out and often redundant permitting processes,
- Multiple layers of review and approvals from federal, state and local agencies,
- Uncertain or incremental availability of project funding,
- Changes in specifications and job scope, especially during a project's latter stages,
- Delays resulting from weather, contract disputes or supply chain disruptions,
- Unforeseen situations (sometimes called "unknown unknowns") such as subsurface conditions, unexpected utility conflicts or contamination,
- Workforce costs, influenced in some areas by shortages of skilled labor or the expense of complying with certain government policies, and reduced work hours or night work,
- Timeliness in decision making,
- Cost escalations from sources unrelated to construction (such as litigation or insurance),
- Challenges in forecasting conditions over the duration of multi-year projects, and
- Volatility in pricing and availability for key materials such as steel, concrete, asphalt and lumber.

Over the past several years, the Joint Committee has regularly explored issues relating to risk. The subject of project costs remains timely given the challenges referenced above, evolving federal and state responsibilities in administering projects, continued generational changes in the public and private sector workforce, and the imperative of maximizing the value of all transportation investments.

Accordingly, the Joint Committee will develop content for workshops, webinars and conference sessions, seeking to facilitate a better understanding of project cost drivers across all parties. Potential topics include:

- Implications from delegating more responsibilities to states for administering federal-aid projects and requirements.
- What the "time value of money" means to contractors.
- Proven strategies for effective owner-industry communication on project costs.
- Examples of "real time" forecasting and cost estimating by state agencies.
- Overview of price adjustment clauses, and the role of industry, federal and state agencies in deploying them.

Using the content of these sessions, the Joint Committee will also explore developing best practices in cost estimating procedures and collaborations, which would be shared among the membership of the three associations.

FINAL

AASHTO-AGC-ARTBA Joint Committee Position Statement
September 9, 2025
"Refocusing the Federal Program Around Formula Funding and Strategically Deploying Discretionary Grants"

The Federal Aid Road Act of 1916 established the foundation of a federally funded, state-administered highway program. More than a century later, the underpinning formula-based funding model remains the optimal approach for effective and efficient state and local project delivery by ensuring the flexibility necessary for each state to best meet its unique investment needs. It enables funds to be distributed to states in a stable and predictable manner and allows states to efficiently deliver projects identified and prioritized through the statewide and metropolitan planning process.

With surface transportation reauthorization on the horizon, the federal highway program needs to be refocused around the formula program given its ability to translate federal funding into tangible project benefits quickly. According to a Congressional Budget Office (CBO) estimate, 67 percent of formula dollars provided to states in the Infrastructure Investment and Jobs Act (IIJA) are estimated to be "spent out" via cash—and thus put into actual projects—two years after obligation. This is likely due to the fact that projects funded through formula funds are in a predictable and constantly moving pipeline.

Conversely, there are numerous projects of regional and national significance across the nation that would not have moved forward over the last four years without innovative financing and discretionary grants. However, applying for and receiving discretionary grants has become very costly—both time and dollar-wise. For state and local agencies, each discretionary grant application can cost up to $200,000 to develop, while the chance of landing such a grant is less than 10 percent, creating significant uncertainties and challenges in developing a multiyear capital program. Similarly, discretionary grants under the IIJA are estimated to spend out at a rate somewhere between 1 percent to 7.4 percent two years after obligation. The proliferation of discretionary grant programs created under the IIJA have often awarded projects that have not been fully considered through the established planning process, leading to delays taking years to reach the construction phase.

In order to inform reauthorization deliberations around formula-based funding and discretionary grants, the Joint Committee recommends the following actions:

- Develop resources that showcase Congress the ability of the formula program to turn federal dollars into projects quickly and generate the most value for the taxpayer.
- Strengthen messaging coordination between state DOTs and industry to show tangible community and regional benefits from individual projects funded with formula dollars, and enable members of Congress to claim specific credit similar to earmarks and discretionary grant awards.
- Identify the most important formula and discretionary programs and their funding levels to be prioritized as the foundation of the next reauthorization bill.
- Develop a threshold standard of project characteristics that merit funding through discretionary grants, such as its impact in advancing federal interest, project cost, and regionally and nationally significant to states and communities of all sizes. For the current discretionary grant programs that may not fit the project characteristics identified above, make them eligible activities for current formula programs, allowing those states that would like to bring forward these types of projects the flexibility to do so.
- State DOTs and industry should work together to suggest constructive reforms to the discretionary grant application process, with the goal of making the procedure less costly, not as time-consuming, and more transparent.
- State DOTs and industry should advocate that the next surface transportation law include timelines and criteria for executed discretionary grants that aim to ensure projects move forward in a timely manner. If

a grantee cannot meet the timelines, the resources should be returned to USDOT for redistribution through formula programs.

- Identify ways to improve the process of administering federal discretionary grants and earmarks. An example includes requiring USDOT to administer all discretionary grants awarded to state DOTs like how it handles formula dollars, namely through FHWA's Financial Management and Information Systems (FMIS).