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Innovation gains ground even with contracts under microscope

Kenneth Fisher



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Even in the best of times, the use of outside contractors by government can be controversial, with public employee unions clamoring for more work to be brought in house. These, however, are not the best of times. The city, state and country all continue to suffer from the deep impacts of the Great Recession. Although New York City seems to have weathered the storm better than many metropolitan areas, budgets continue to be cut while infrastructure needs remain unmet.

On top of this, a series of technology management scandals in New York have emboldened critics of contracting out, and when contracts go wrong, it is often difficult for lay observers to distinguish between systemic and human failures, or recognize that all forms of consulting agreements are not the same.

Nonetheless, there are some bright spots, including the adoption of design/build authorizing legislation by the New York State Legislature, largely to facilitate use of the technique by the Cuomo administration for the construction of a new Tappan Zee Bridge.

That the City of New York has had a series of colossal mishaps in the area of computer system contracts is undeniable. The most dramatic case was the City Time contract, intended to create an electronic timekeeping system for city workers. Ironically,

the project to prevent time and attendance fraud itself turned out to be one of the largest cases of cost overruns in city history, and potentially one of the largest frauds. Launched in the Giuliani administration with a projected cost of \$63 million it ballooned over the subsequent decade to over \$600 million.

With the indictment of certain managers and subcontractors, it is alleged that some portion of these overruns were attributed to criminal fraud. While some of the cost increase may have been attributable to wrongdoing, this was not the only case of mismanagement. A computerized personnel management system ballooned from \$63 million to \$363 million and there were outsized overruns with systems at the Department of Education and with the upgraded 911 system.

The cumulative effect of these and similar situations is a general cynicism about both outside vendors and government's ability to supervise them. As New York Times columnist Michael Powell captured the sentiment, "In keeping with a business-centered ethos, the administration's scandals tend to be of the 21st-century variety: contracted out... The administration ladles out large contracts and enjoys being seen as entrepreneurial and thoroughly modern. Unfortunately, oversight in some cases is of the 'que sera' variety."

Despite these specific failures, the Cuomo administration, to its credit, continues to recognize the general benefits contract work can provide, particularly when specialization and flexibility are required. An example of this was the adoption of design/build legislation late last year at the governor's initiative. The law applies to contracts above \$1.2 million, includ-

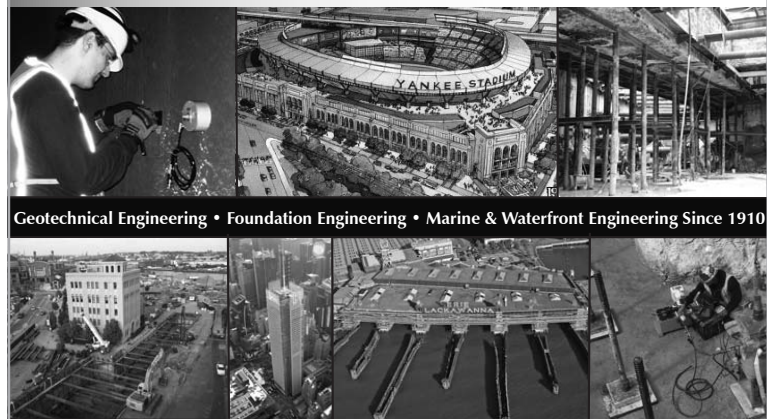
ing bridges, highways, dams, flood control projects and canals, through agencies including the Departments of Environmental Conservation and Transportation. As a former HUD Secretary and nonprofit housing developer, the governor appreciates the benefits of public-private collaboration, and was able to bring his colleagues in the Legislature along with him.

Between the challenges and the opportunities lies the need for education and advocacy. Public policy leaders need help in understanding how consulting engineering firms can bring innovative techniques drawn from diverse private sector experience to public works and mobilize talent as projects require. They also need help in understanding different forms of contracting and how to ensure that government managers can effectively protect the public weal.

This is part of the mission of the American Council of Engineering Companies of New York. Through its committees, conferences and participation in legislative hearings, ACEC members interact regularly with public officials to provide the perspective and information needed to make critical policy, funding and procurement decisions. The infrastructure agenda is extensive, and resources are limited. By volunteering their time to these efforts, ACEC members advance the public interest, as well as their professional and personal agendas.

Kenneth Fisher is a member of the law firm of Cozen O'Connor, and municipal affairs counsel to ACEC

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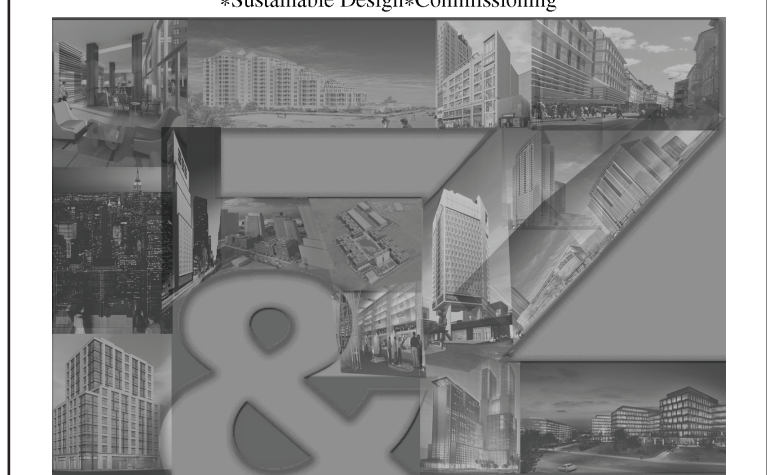
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