The American Council of Engineering Companies of Wisconsin
3 S Pinckney Street, Suite 800 Madison, WI 53703
Tel: 608-257-0009 Fax: 608-257-0009 www.acecwi.org

the business voice of the Wisconsin consulting engineering industry

2010 – 2012 ACEC WI Government Affairs Agenda

Table of Contents

Introduction **2**
Procurement **3**
Qualifications-Based Selection 3
Design-Build 4
Infrastructure Investments **5**
Water and Wastewater 5
Transportation 6
Environmental and Development Issues **8**
Sustainable Development 8
Brownfield Development 8
Renewable Energy 9
Nonpoint Source Pollution 10
Business Issues **11**
Engineering Companies Service to the State of Wisconsin 11
Contract Fairness 11
Tort Reform 12
Municipal Finance 12
Rising Health Care Costs 13
State Budget **14**

Introduction

Consulting engineers perform essential roles in enhancing Wisconsin's economic development and the quality of life for its citizens. From designing the infrastructure vital to public safety and a healthy business climate to developing ways to clean up and protect the environment, consulting engineers are at the forefront.

The American Council of Engineering Companies of Wisconsin (ACEC WI) is the business voice of the Wisconsin consulting engineering industry. Founded in 1958, it represents more than 70 firms with over 150 offices across the state. These firms employ over 3,500 engineers, architects, planners, land surveyors, geologists, soil scientists, and other highly educated, experienced professionals. ACEC WI monitors legislative, regulatory, and legal issues as they impact Wisconsin's economic development both today and into the future. Our agenda is focused on protecting the health, safety, and welfare of the people of Wisconsin and enhancing the business environment for Wisconsin's engineering companies.

Like many states, Wisconsin has faced significant budget challenges in recent years. However, state and local governments continue to deliver critical infrastructure projects by working with ACEC WI member firms to fund and develop innovative approaches to complex issues.

The industry's work is a driving force in Wisconsin's economic development. Consulting engineers provide professional services to all levels of government, as well as to business and industrial enterprises. ACEC WI member firms are involved in designing and overseeing a majority of the construction and renovation projects in the state, from bridges, buildings, and parking structures to water treatment plants and energy-efficient generation and distribution systems. We design ventilation and electrical systems for hospitals. We plan, design, and assist in building roadways to reduce congestion and improve safety while being friendly to the environment and sensitive to community needs. We design and renovate public water systems for communities of all sizes. We contribute to environmental sustainability by creating innovative solutions that address environmental and ecological issues associated with wetlands, brownfields, and hazardous waste disposal.

As Wisconsin residents and business owners, our member firms have a vested interest in retaining their workforce in Wisconsin, benefiting the state and ensuring projects are delivered in a cost effective, efficient manner. Most importantly, as Wisconsin citizens, our members have an interest in helping provide the resources and tools needed to make our state the best that it can be. We encourage the use of Wisconsin firms to retain our highly skilled talent pool, grow family-supporting jobs, and keep taxpayer funds in the state.

Procurement

Qualifications-Based Selection

ACEC WI supports

- Legislation requiring the use of a Qualifications-Based Selection (QBS) process for procurement of consulting engineering services on all publicly funded projects.

Background

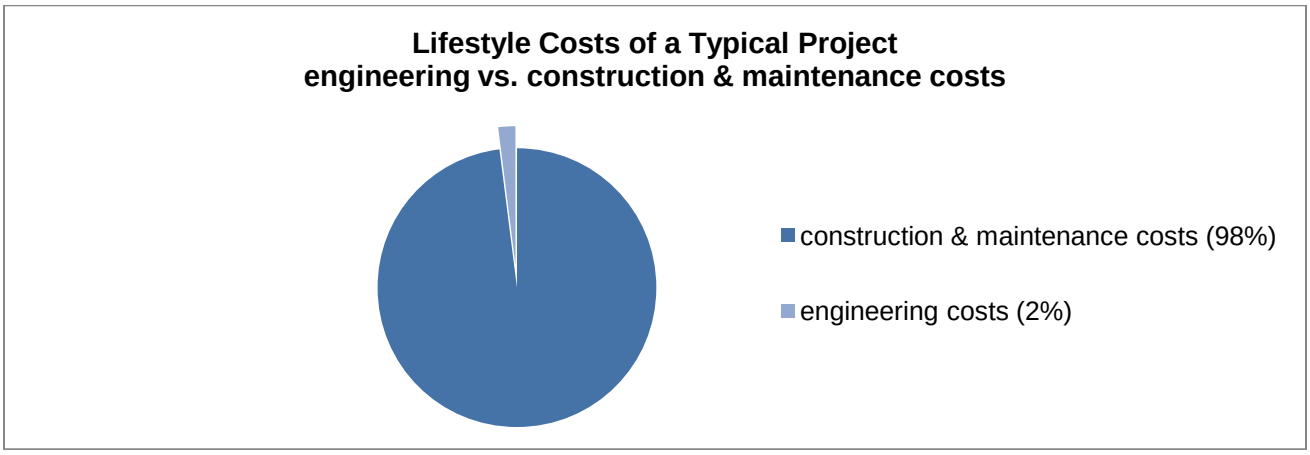
Comprehensive studies have demonstrated it is in the public's best interest when engineering firms are selected on the basis of qualifications rather than price. Engineering services address technically complex issues. Licensed design professionals require years of education and experience to effectively apply these skills to obtain the best value for the public client. Public decision makers are sometimes encouraged to revert to the procurement of engineering services based on open bidding and awarding contracts based on the lowest price. Low priced procurement can prevent the use of comprehensive engineering approaches and innovative solutions that can result in lower life cycle costs, reduced change orders, and more rapid delivery of projects. Engineering and design of unique infrastructure projects differs significantly from construction or manufacturing activities.

The federal government and 46 states mandate the use of Qualifications-Based Selection (QBS) to select and contract for engineering and architectural services. The QBS process is required on federally funded projects. The Wisconsin Departments of Transportation, Natural Resources, and Administration (Division of State Facilities) all support the use of the QBS process in selecting design professionals for state projects.

The American Public Works Association has endorsed this process.

> "The American Public Works Association believes the public interest is best served when governmental agencies select architects, engineers, and related professional technical consultants for projects and studies through QBS procedures. Basing selection on qualifications and competence, rather than price alone, fosters greater creativity and flexibility and minimizes the potential for disputes and litigation."

High quality engineering and design services represent a very small percentage of total project costs, yet they directly affect the entire project budget and long-term costs. QBS safeguards public safety and public funds by enabling public agencies to acquire the services of the most qualified engineering firm for a particular project at a reasonable cost.



Design-Build

ACEC WI supports

- The ability of public owners to make educated decisions when selecting a project delivery method, including design-build.
- Legislation that requires the use of a Qualifications-Based Selection (QBS) process when selecting participants in a design-build project.

Background

Various delivery methods are available to take a project from concept to completion, including design-bid-build, design-build, design-build-operate-maintain, and construction management. Each method has benefits and risks that need to be evaluated for each project. Design-build is a system of procuring the design and construction of a project from a single source under one contract with the owner.

Increasingly, public owners are requesting to use design-build for delivering construction projects. Current state statute recognizes only design-bid-build for most public projects. It has been successfully used in the private sector as a method for facility improvements or new facilities. It has been used on select public projects in Wisconsin when it is in the best interest of the public.

Infrastructure Investments

ACEC WI supports

- Local government funding through state revolving funds (SRF) and other avenues to help address necessary replacement of aging water and wastewater systems as well as other infrastructure needs.
- Innovative and creative funding approaches that assure adequate monies to help retain Wisconsin's infrastructure in a condition that accommodates growth, while fully complying with state and federal environmental regulations.
- A balanced, reasoned implementation of environmental regulations that are sensitive to economic impacts.

Background

Public understanding of the infrastructure and its importance to social well being is critical. Economic pressure has been a factor in evaluating projects for our deteriorating cities, roads, and public services. Consulting engineers have been important partners for municipal and state governments in planning and designing technically feasible, yet cost effective measures to solve challenges and minimize the adverse impact of this deterioration. The technical and telecommunication (broadband) infrastructure is also critical to economic growth. A strong infrastructure leads to continued economic growth for Wisconsin's business and its residents.

Economic growth must happen now to build a greater Wisconsin of the future. To start the economic engine, the state must first invest in its infrastructure. Due to the time element involved in these engineering projects, it is important to look ahead 10 to 20 years to see how decisions made today will affect infrastructure, transportation, and economic issues in the future.

Throughout Wisconsin, people are discussing the pace of growth in their communities. Communities are challenged with making necessary improvements to their aging infrastructure, while facing other monetary demands and ever increasing budgetary challenges. They are managing future development, preventing overcrowding in schools, and preserving open space. As our state continues to grow, infrastructure improvements and development must be closely coordinated and complement each other to produce healthy, vibrant communities.

Water and Wastewater

ACEC WI supports

- Increased funding for the Safe Drinking Water and Clean Water State Revolving Loan programs.
- Funding for systems to improve the security of our water and wastewater facilities.
- Identification and prototype or full scale testing of potential solutions like wastewater recharge and water reuse to better manage the State's natural resources.
- Regulations that allow consulting engineers to utilize innovative solutions.
- Funding Great Lakes clean-up efforts to protect the environment and development of lakefront communities.
- Continued use of the Department of Commerce's Community Development Block Grants (CDBG) funding for public infrastructure projects.

Background
Our quality of life and economy depend on the availability of good drinking water and effective wastewater treatment systems. Continuous investment in water and wastewater infrastructure is necessary.

Many communities face a critical backlog of unfunded needs due to aging water and wastewater systems. According to the latest EPA Needs Assessment for water and wastewater systems in Wisconsin, water systems require an investment of almost $600 million and wastewater systems require almost $1.3 billion over the next 20 years.

Transportation

ACEC WI supports

- Promoting Wisconsin's transportation infrastructure as a stimulus for economic growth.
- Aggressively pursuing new and different revenue sources for the entire multi-modal transportation program, such as:
  - gas tax indexing
  - increasing the gas tax
  - tolling on certain roadways
  - vehicle miles traveled taxing
- Maintaining the segregated account for transportation funding.
- Providing for adequate, timely maintenance of the system.
- Maintaining a strong investment in major projects, including convening the TPC this year.
- Exploring public-private teamwork for programming, planning, designing, building, maintaining, and operating parts of the system.
- Making transportation safety a funding priority.

Background
Wisconsin's transportation industry is at a crossroads. Decisions made in the next few years have the potential to move our transportation infrastructure forward, keeping up with the rest of the world as it invests heavily in robust transportation programs. Our economic strength and quality of life depend on our transportation system and our ability to maintain it. Investments in transportation infrastructure are essential to a prospering economy. We can lead the nation in job creation through transportation infrastructure investment.

Now is the time to change the way Wisconsin funds its transportation systems. The current situation of a shrinking funding base, escalating construction costs, and increased demand puts our aging infrastructure at risk. Traditionally, Wisconsin has relied on the gas tax to provide approximately 95% of the state-generated transportation revenue. Revenues have seen a hit due to the repeal of automatic indexing, an inflation adjustment typical of other state revenues such as income and sales tax. The increased use of fuel efficient cars and alternative fuels lead to lower revenues. Transfers of transportation funds and increased reliance on bonding for projects cause competition for funds and limit our purchasing power.

While funding revenues decline, program costs continue to rise. In as few as 10 years, the net buying power for investments in our transportation system is expected to decrease by 22%. Wisconsin spends 20% less than the national average and less than any other Midwest state on a cost per mile of travel basis.

The Wisconsin Department of Transportation is in the midst of reconstructing the southeast freeway system and USH 41. We must continue to make investments in these projects and projects in other areas of the state to improve system safety and efficiency.

While many budget items are viewed as costs, investments in transportation provide a 3:1 return (according to a Cambridge Systematics study). Investment in transportation equates to increased jobs. The recent American Recovery and Reinvestment Act devoted 4% of the funds to transportation; however, 25% of the jobs created under this act were in the transportation industry.

We encourage improving the transportation funding system using a segregated fund and utilizing other funding mechanisms to generate the capital required to maintain and improve our transportation systems.

Wisconsin's economic growth depends on adequate transportation. In a globally competitive marketplace, many factors can cost the state new or existing jobs – factors like poorly maintained, antiquated, or over crowded roads. We can control this variable through investing in our transportation system.

Environmental and Development Issues

Wisconsin has long been a leader in the area of environmental protection. This commitment is a reality through the combined efforts of business, industry, government, and environmental groups. While protecting and enhancing the environmental quality in Wisconsin continues to be a priority, economic and mobility issues must also be addressed. New laws or requirements must be based on sound science and prioritized to ensure scarce resources, address environmental and development issues, and produce meaningful, positive results without damaging economic vitality.

Sustainable Development

ACEC WI supports

- Working with local and state governments to initiate economic and tax incentive programs to encourage the incorporation of sustainable elements and the use of LEED certification on development projects.
- Regulatory changes that recognize alternative design practices, such as naturalized stormwater treatment and conservation subdivision design.
- Legislation and governmental programs, such as *Conserve Wisconsin*, which require sustainable elements on projects funded with tax dollars.
- Use of Wisconsin registered professional engineers, architects, and scientists as key partners in supporting and implementing required sustainable design practice.

Background

Sustainable development utilizes systems design and construction practices that result in holistic benefits to the environment, economy, and society. Sustainable development is being incorporated into a growing number of development projects across the state.

An opportunity exists for the consulting community to work with state, county, and local governments to develop methods for encouraging sustainable development practices in Wisconsin. It is important that consulting engineers maintain an active role in sustainable development. Through innovative technology and design practice, the industry is in a unique position to improve development procedures, processes, energy conservation, and manufacturing innovations. By collaborating with developers, local governments, and industry, landscapes may be preserved and enhanced, while providing quality environments in which to live, work, and play.

Brownfield Development

ACEC WI supports

- Economic and tax incentives to encourage the cleanup, redevelopment, and reuse of brownfields.
- Increased Brownfield Grant funding and legislation that limits liability of consultants and developers of brownfield sites.
- Requirements that Wisconsin registered professional engineers, geologists, hydrogeologists, and soil scientists are key partners in the investigation and clean up teams.
- Processes in which the Brownfield Grant applications are reviewed and awarded to Wisconsin communities on a continuous application cycle.
- A regulatory climate that streamlines the brownfield redevelopment process.

Background
Brownfields are abandoned, idled, or under used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination. These sites, often found in urban areas, provide opportunities for development and the creation of jobs.

Brownfield properties are an economic burden. These sites contribute little or nothing to the tax base and cause a greater tax burden for other properties to offset the idle site. Brownfield incentives can help industry manage these environmental liabilities, create new jobs and increase local tax revenue, state, and federal income taxes. Secondary benefits include increasing construction jobs, decreasing neighborhood crime, and increasing the value of neighboring properties.

It is important that Wisconsin engineering companies have a strong voice in brownfield reform. Our professionals can effectively identify and communicate the cleanup process, which contributes to urban redevelopment and helps control suburban sprawl.

Renewable Energy

ACEC WI supports:

- Evaluation and utilization of renewable energy sources to meet operational needs.
- Incentives for private entities and public-private partnerships to purse the use of renewable energy sources.
- Streamlined permitting and licensing procedures for renewable energy projects.

Background
The state's dependence on fossil fuels depletes scarce natural resources, increases reliance on foreign supplies, and furthers the debate regarding the environmental impacts of these fuels. The state has a growing need for reliable energy sources at affordable costs. The situation dictates a closer evaluation of alternative fuel supplies, including renewable energy sources such as: water (hydroelectric), wind, landfill and digester gas, and biomass. Consulting engineers can assist with the evaluation of these alternative energy sources and, where feasible, design and manage their implementation.

Nonpoint Source Pollution

ACEC WI supports

- Grant programs established under Chapters NR153 and NR155 of the Wisconsin Administrative Code to help fund municipal stormwater management planning and construction projects.
- The use of consulting engineers to develop innovative solutions to control stormwater quantity and quality.
- Policies that cost effectively reduce nonpoint source pollution from agricultural sources and provide funding opportunities for their implementation.
- Technical standards and evaluation of pollutant removal efficiencies for stormwater treatment devices.

Background

Reducing nonpoint sources of pollutants has become a focal point in efforts to clean up and protect our state's valuable surface waters. In response to EPA rules, the DNR adopted Chapter NR216 of the Wisconsin Administrative Code in 1994, which established the stormwater discharge permit program. Phase I of this program has required many communities and businesses throughout the state to begin managing stormwater runoff discharged from separate storm sewer systems. Phase II, which is currently being implemented, will impact about 100 municipalities in Wisconsin. Phase I required the state's largest municipalities (populations of 100,000 or more) to manage their stormwater consistent with NR216. Phase II requires the same compliance of the next tier of municipalities in Wisconsin, those with populations of 50,000 or more.

Business Issues

Government cannot create businesses, but it can create fertile conditions for growth by building a strong business environment. Government can help Wisconsin businesses grow by utilizing consulting engineers efficiently, reducing excessive litigation, making unreasonable indemnification clauses unenforceable, and working to control health care costs.

Engineering Companies Service to the State of Wisconsin

ACEC WI supports:

- A state budget that encourages the use of engineering companies to complement state agency work.
- The use of engineering companies to assist in the management of special programs and initiatives.
- State agencies that recognize the benefit of using local Wisconsin firms.

Background

Wisconsin's public infrastructure needs are far greater than state government's internal capacity to deliver. This is where Wisconsin professional service firms are vital assets. Effective use of public agency staffs and private sector companies for the most efficient use of limited resources is the answer to the significant funding challenges facing government today.

High quality teams of engineers, planners, architects, scientists, and other related professional technical staff are available in the private sector to complement state government agencies by providing expertise, state-of-the-art technology, and experience necessary to complete high quality projects in an efficient, cost effective manner.

Use of Wisconsin engineering companies provides employment for state residents, contributes property and business taxes to help support state and local programs, and encourages the development of technologies that benefit economic growth

Contract Fairness

ACEC WI supports

- Legislation that makes illegal those contract provisions that seek to impose liability upon Wisconsin engineering companies for the debts, negligence, errors, omissions, or acts of third parties by virtue of the firm's participation in the project. Engineering firms should be accountable only to the extent of their own negligence, errors, or omissions.

Background

Professional services delivered in support of state, county, and local government projects typically involve multiple parties contributing to enhancements of the public infrastructure, facilities, and environment. Consulting engineers often subcontract with smaller firms in advancement of public policy related to small and disadvantaged businesses. Contractually, the prime consultant is held accountable for subconsultants' technical performance as well as any financial post-project audit adjustments and claims. The prime consultant becomes responsible to that agency for the debt of the subconsultant.

It is common for construction contractor services to accept broad or intermediate form indemnification language, and it is common for state, county, and local government to impose this type of contract language upon professional services. The prime engineering firm is placed

in the position of making a promise of indemnification for losses outside its control and/or unrelated to its own negligence; items completely uninsurable. The prime engineering firm is forced to assume risk for other parties' negligence or misconduct.

These risks are not insurable within the professional services industry. Transferring these risks to the prime engineering firm is considered inappropriate and against public policy in many states. If the indemnity were limited to non-professional operations triggered by damage or bodily injury, it would mirror the broadest coverage available under a typical commercial general liability (CGL) policy. However, CGL policies expressly exclude professional services. Extending the demand that the engineering firm's CGL policy cover losses, damages, lawsuits for injury to persons, or damages to property, arising from or related to the services provided, regardless of contributory negligence, imposes a liability upon the firm to act as the insurer of the client for all possible claims.

Many states across the country have recognized the inequity of such indemnification clauses and have passed legislation making such clauses illegal.

Tort Reform

ACEC WI supports

- Strengthened anti-fraud provisions of the Workers' Compensation Act to ensure that fraudulent claims are discouraged and prosecuted.
- Legislative initiatives that reform the legal system to reduce the number of frivolous lawsuits filed each year and make the plaintiff responsible for all legal costs when proven to be the major responsible party when a suit is judged to be frivolous.
- Legislation that makes illegal those contract provisions that seek to impose a duty of the engineering firm to defend the state, county, or local government agency against all claims.

Background

Excessive litigation continues to cost businesses and individuals huge sums of money. The current tort liability system is inefficient. Significant dollars are spent on the process of assigning blame, rather than compensating for injuries. Excessive litigation slows productivity, discourages innovation, and slows economic growth. Tort liability reform seeks to streamline the civil justice system by providing fairness, equity, and justice through the legal system.

Municipal Finance

ACEC WI supports

- Continued availability of TIFs for promoting planned growth and development for local government units.
- Assurances that TIF revenues are not reduced by future tax reduction proposals.

Background

Local units of government should be allowed to choose methods they believe appropriate for their communities, including property tax, impact fees, and utilities. While it may not be possible to keep shared revenue at existing levels, maintaining the current Tax Incremental Finance (TIF) law is vital.

Wisconsin TIF revenues are a major source of funding the local community share of Department of Commerce's public facilities projects for economic development block grants. Commerce is projecting a reduction of federal community development block grant (CDBG) funding. A reduction in the amount of funding for each CDBG potential project is therefore anticipated. TIF revenues may be the best funding source to be utilized by Wisconsin communities to fill the funding gap left by grant reductions.

Rising Health Care Costs

ACEC WI supports

- Legislation that develops and implements innovative policies that will help address rising health care costs.

Background

Health care costs are rising dramatically, often at double-digit growth rates. It is one of the most challenging issues facing businesses, schools, local governments, and individuals. If Wisconsin can control health care costs, it will reap a significant economic development advantage by increasing the competitive position of its firms and becoming a more attractive place to do business.

State Budget

ACEC WI Supports

- Initiatives supporting economic development and jobs, with consideration of future costs, safety concerns, and allowing state and local governments to meet bond obligations.
- Reasonable investments in future infrastructure for both short and long-term needs.
- Collaborative partnerships with state and local governments to provide innovative problem solving and promote cost effective delivery of critical projects.

Background

ACEC WI member firms understand the budget challenges facing the State of Wisconsin and local governments. We support responsible spending and tax policies. We also recognize public infrastructure projects are a key component of what drives our state's economy. We contribute to sound infrastructure planning and seek to avoid poorly considered measures that may have unintended and far reaching negative results for Wisconsin's citizens.

Some states place a greater emphasis on user fees as a funding source for transportation and many other infrastructure programs, while maintaining a lower tax rate. Because Wisconsin has a reputation as a high tax state, most budget solutions have focused on holding the line on tax increases while ignoring the impact of lower user fees. For example, highway users in Wisconsin pay less in total user fees and gasoline taxes combined than do those in any surrounding state and have an average total burden when compared to the nation as a whole. Public opinion surveys show a majority of the public is willing to make needed investments if these taxes or fees will actually go for the intended purpose.

Adopted by the ACEC WI Board of Directors June 8, 2010