

CONCERNS WITH STATE “OPEN PROCUREMENT” LEGISLATION

Background

- There is a national effort to deny engineers, utilities, municipalities, public entities and other water works professionals the ability to design water, wastewater and storm water projects in the manner that best serves the needs of their community. This effort focuses on pipe in particular, but could be expanded to other infrastructure materials
- In 2014, state legislation was introduced and defeated in Indiana, Tennessee and Ohio
 - The legislation did not make it out of Committee in Ohio and Tennessee and could not get the votes to bring it to the Senate floor in Indiana
- In 2015, state legislation has been introduced in Arkansas, North Carolina, Oklahoma and South Carolina
 - The legislation has yet to pass in any state
- As described in the synopsis of the Ohio bill, the purpose is “to ensure that all proven and acceptable piping materials be included in bids for water and wastewater utility service improvement projects”
- In these states, we have seen widespread opposition to the legislation from groups such as engineers, utilities, public entities, engineers, architects and the business community.

Concerns

- Local communities and engineers evaluate and select specific pipe or other materials based on numerous considerations, including environmental conditions at the site, function of the material and integration with existing infrastructure
- We should not adopt a one-size-fits-all, top-down mandate from the state on unique decisions that are best handled by design professionals and local entities
- The original version of the legislation introduced in Indiana included a reference to one material – PVC pipe – clearly indicating that the legislation attempts to pick winners and losers in the marketplace through government regulation
- Pipe materials, for example, are not interchangeable and are not equal -- they have very different service lives, strength, operating costs, environmental considerations, safety concerns and maintenance issues
- The initial acquisition cost of a material is just one factor among many that must be considered when designing a pipeline, as there are many long-term costs and other factors that determine pipe material selection
- The legislation will likely lead to a significant increase in bid protests and litigation over pipe selection on public projects, thereby wasting time and limited public resources

Our request

- Please leave local infrastructure procurement decisions in the hands of local officials and design and utility engineers and reject “Open Procurement” legislation