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THE COUNCIL
REPORT OF THE FINANCE DIVISION
LATONIA MCKINNEY, DIRECTOR

COMMITTEE ON FINANCE
HON. DANIEL DROMM, CHAIR

April 18, 2018

RES. 286:

By Council Members Torres, Diaz, Menchaca and Brannan

TITLE:

Resolution calling upon the New York State Legislature to pass, and the Governor to sign, legislation that would give New York City, and any public authorities or public benefit corporations operating therein, broad authority to utilize the design-build delivery method for capital projects

Background

Design-build is a method of capital project delivery in which one entity works under a single contract provide both design and construction services. The design-build method is an alternative to the design-bid-build method under which design and construction are bid out separately to different entities each with their own contracts, subcontractors, and scope of work. The primary benefits of the design-build method are that its use substantially lessens the likelihood of delays and cost-overruns which currently plague many of the City's capital projects

New York City is generally barred from using the design-build method due to a variety of restrictions in State law, including, but not limited to, Wick's Law, contained in section 101 of the General Municipal Law, which requires the City to separately contract for various specified trades and section 103 of the General Municipal Law which requires that City contracts be awarded to the lowest responsible bidder.

Because design-build requires only a single contract, it would relieve the City from having to complete two lengthy procurement processes, thereby saving significant time at the start of a project, and because design-build firms commit to a total cost in the contract, they assume the risks for any delays and increased costs that arise during the project. Moreover, collaboration between the design and construction teams inherent in the design-build process leads to fewer change orders in the middle of the project, allows for construction to begin before the design is fully finalized, and encourages the design and construction teams to work together to find solutions to any issues that may arise during the course of the project.

In order for the City to have the authority to utilize design-build on appropriate projects as needed, the State must legislatively grant such permission. For the first time, the State's Fiscal 2019 Adopted Budget granted the City limited authority to use design-build contracts for three

specific capital projects. The three projects are the rehabilitation of the Brooklyn-Queens Expressway (BQE) triple cantilever; the construction or reconstruction of residential properties owned by the New York City Housing Authority (NYCHA) to remediate certain conditions of habitability; and the construction or reconstruction or reconstruction by the Department of Design and Construction of facilities necessary for the timely closure of Rikers Island, but only if such work is approved by the New York State Commission of Correction.

In addition to restricting the City's authority for design-build to only three projects, the State also imposed a condition that it could be used only if the City entered into the design-build contracts pursuant to a project labor agreement.

Besides the limited grants of authority contained in the Fiscal 2019 budget, many other agencies would benefit from the use of design-build for certain projects, including, but not limited to, the School Construction Authority, the Department of Environmental Protection, the Health and Hospitals Corporation, and the New York Police Department.

The State Legislature has recognized the benefits of the design-build method and, in fact, has granted the State the authority to use it on a variety of capital projects. Two oft-cited examples of the State's successful use of design-build are the replacements of the Tappan Zee and Kosciuszko Bridges both of which were completed on time and on budget at a significantly reduced price than had they been constructed using the traditional design-bid-build method. The State's continued denial of broad design-build authority to the City is fiscally irresponsible and without reasonable basis.

Res. 286

Res. 286 would call upon the New York State Legislature to pass, and the Governor to sign, legislation that would give New York City, and any public authorities or public benefit

corporations operating therein, broad authority to utilize the design-build delivery method for capital projects.

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Resolution calling upon the New York State Legislature to pass, and the Governor to sign, legislation that would give New York City, and any public authorities or public benefit corporations operating therein, broad authority to utilize the design-build delivery method for capital projects

By Council Members Torres, Diaz, Menchaca and Brannan

Whereas, Design-build is a method of capital project delivery in which one entity works under a single contract provide both design and construction services; and

Whereas, The design-build method is an alternative to the design-bid-build method under which design and construction are bid out separately to different entities each with their own contracts, subcontractors, and scope of work; and

Whereas, New York City is generally barred from using the design-build method due to a variety of restrictions in State law, including, but not limited to, Wick's Law, contained in section 101 of the General Municipal Law, which requires the City to separately contract for various specified trades and section 103 of the General Municipal Law which requires that City contracts be awarded to the lowest responsible bidder; and

Whereas, The primary benefits of the design-build method are that its use substantially lessens the likelihood of delays and cost-overruns which currently plague many of the City's capital projects; and

Whereas, Because design-build requires only a single contract, it would relieve the City from having to complete two lengthy procurement processes, thereby saving significant time at the start of a project, and because design-build firms commit to a total cost in the contract, they assume the risks for any delays and increased costs that arise during the project; and

Whereas, Moreover, collaboration between the design and construction teams inherent in the design-build process leads to fewer change orders in the middle of the project, allows for

construction to begin before the design is fully finalized, and encourages the design and construction teams to work together to find solutions to any issues that may arise during the course of the project; and

Whereas, According to a June 19, 2017 New York Times Article, “*A Streamlined Way to Build Projects Runs Into New York Politics*,” design-build is increasingly being used across the country with New York being only one of eight states where it remains a limited option; and

Whereas, In order for the City to have the authority to utilize design-build on appropriate projects as needed, the State must legislatively grant such permission; and

Whereas, While such authorization has previously been included in several State Executive Budgets and pieces of State legislation in various forms, it has yet to be approved for the City in a broad fashion; and

Whereas, New York State Governor Andrew Cuomo is supportive of design-build and its benefits with his spokesperson quoted in the above-referenced news article as saying “Governor Cuomo is the single biggest proponent of expanding design-build in New York State because it has consistently saved time and taxpayer money on major infrastructure projects”; and

Whereas, The State Legislature has also recognized the benefits of the design-build method and, in fact, has granted the State the authority to use it on a variety of capital projects; and

Whereas, The State Infrastructure Investment Act, first passed in 2011, expressly granted design-build authority to the New York State Thruway Authority, the Department of Transportation, the Office of Parks, Recreation and Historic Preservation, the Department of Environmental Conservation, and the New York State Bridge Authority for certain types of capital projects; and

Whereas, The State has also passed the Transformational Economic Development Infrastructure and Revitalization Projects Act, enacted as part of the State's Fiscal 2017 budget, which authorizes the State Urban Development Corporation and the New York Convention Center Development Corporation to use design-build for projects relating to the Jacob K. Javits Convention Center, the Empire Station Complex, the James A. Farley redevelopment, and the Pennsylvania Station New York redevelopment; and

Whereas, Two oft-cited examples of the State's successful use of design-build are the replacements of the Tappan Zee and Kosciuszko Bridges both of which were completed on time and on budget at a significantly reduced price than had they been constructed using the traditional design-bid-build method; and

Whereas, In 2016, after examining \$7.7 billion in planned bridge work, the Citizens Budget Commission concluded that the City would have saved as much as \$2 billion over ten years if the State had authorized the use of design-build; and

Whereas, For the first time, the State's Fiscal 2019 Adopted Budget granted the City limited authority to use design-build contracts for three specific capital projects; and

Whereas, The three projects are the rehabilitation of the Brooklyn-Queens Expressway (BQE) triple cantilever; the construction or reconstruction of residential properties owned by the New York City Housing Authority (NYCHA) to remediate certain conditions of habitability; and the construction or reconstruction or reconstruction by the Department of Design and Construction of facilities necessary for the timely closure of Rikers Island, but only if such work is approved by the New York State Commission of Correction; and

Whereas, On March 20, 2018, the Director of the Office of Management and Budget testified before the City Council that the use of a design-build would save approximately \$113.4

million and two years for the BQE project and at least six percent of the cost of NYCHA and Rikers-related projects; and

Whereas, In addition to restricting the City's authority for design-build to only three projects, the State also imposed a condition that it could be used only if the City entered into the design-build contracts pursuant to a project labor agreement; and

Whereas, Besides the limited grants of authority contained in the Fiscal 2019 budget, many other agencies would benefit from the use of design-build for certain projects, including, but not limited to, the School Construction Authority, the Department of Environmental Protection, the Health and Hospitals Corporation, and the New York Police Department; and

Whereas, The State's continued denial of broad design-build authority to the City is fiscally irresponsible and without reasonable basis; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the New York State Legislature to pass, and the Governor to sign, legislation that would give New York City, and any public authorities or public benefit corporations operating therein, broad authority to utilize the design-build delivery method for capital projects.

RKC
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