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MEMORANDUM OF OPPOSITION

BILL: A.9005-A (Budget – Part I) / S.6405-A (Budget – Part I)

SUBJECT: Extends the Authorization of the Dormitory Authority of the State of New York to Form Subsidiaries

DATE: February 24, 2016

The Associated General Contractors of New York State, (AGC NYS) the leading statewide trade association representing union and non-union construction companies strongly opposes A.9005-A (Budget – Part I) / S.6405-A (Budget – Part I) which would create the New York State Design and Construction Corporation (NYSDCC) as a subsidiary of the Dormitory Authority of the State of New York (DASNY).

The proposed NYSDCC would establish another costly layer of government bureaucracy on construction projects, in excess of \$50 million, undertaken by state agencies, departments, public authorities, and public benefit corporations without identifying any weaknesses this legislation is intended to solve. This additional layer of government bureaucracy is duplicative because contractors would be forced to adhere to the contract terms of the state agencies, authorities, and public benefit corporations combined with the unilateral authority of the proposed NYSDCC.

This bill would grant a three-member panel appointed by the Governor unilateral control over all construction projects by state agencies, departments, public authorities and public benefit corporations having a total or aggregate construction value in excess of \$50 million. The NYSDCC would have sole discretion on any project and broad powers to terminate contracts, contractors, subcontractors and other consultants.

AGC NYS concurs with the analysis of New York State Comptroller Thomas DiNapoli that the NYSDCC would have the power to terminate contracts, with no definition as to circumstances when such power could be used, as well as certain other aspects of the proposal could create uncertainty among potential contractors and thus reduce vendor participation, creating the risk of higher costs rather than savings. The DCC would be granted a number of additional 24 powers and duties including the ability to fix and collect fees and other charges for services provided and, without limitation, the power to exercise eminent domain.

AGC NYS supports a broader discussion about the structural impediments to successful construction projects like the limited contracting tools afforded the agencies in procurement and project delivery. Rather than creating another layer of government, the Governor and Legislature should be pursuing alternative construction procurement methods such as construction management at risk (CM at Risk). CM at Risk is a process by which a qualified general contracting firm works collaboratively in the planning, design and construction of a project to represent the interests of the owner by effectively managing the work, cost, time and quality aspects of the project.

While the Governor touts "Built to Lead", NYS stands as one of the most backward states in the nation when it comes to public construction procurement. Particularly with projects of the size referred to in this proposal, the Governor and Legislature should focus on giving the agencies the procurement tools for success and staffing, not placing another impediment in their way.

Therefore, AGC NYS strongly opposes A.9005-A (Budget – Part I) / S.6405-A (Budget – Part I) and urges the Legislature to reject this proposal.