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MEMORANDUM OF OPPOSITION

BILL: A.9008-B (Budget – Part H) / S.6408-B (Budget – Part H)

SUBJECT: Mandated Project-Labor Agreements on Design-Build Procurement

DATE: March 11, 2016

The Associated General Contractors of New York State, (AGC NYS) the leading statewide trade association representing union and non-union construction companies opposes the provision of A.9008-B (Budget – Part H) / S.6408-B (Budget – Part H) which would mandate a project labor agreement (PLA) on design-build procurement for the projects listed in the Transformational Economic Development Infrastructure and Revitalization Projects Act.

Governor Cuomo's Transformational Economic Development Infrastructure and Revitalization Projects Act is a bold proposal to build, rebuild and modernize the Jacob V. Javits Convention Center, Empire State Station Complex, James A. Farley Building Replacement, and Pennsylvania Station. These historic projects will create thousands of new jobs and provide the framework to support New York's economy.

The Governor's proposal would enable these projects to utilize design-build procurement with a mandated PLA. AGC NYS strongly opposes requiring the use of mandated PLAs on all design-build projects because it will negate the program's benefits rendering the application of design-build useless. It would undermine the collective bargaining that takes place between union contractors and labor and hinder competition for these projects from open shop contractors. It also hampers the participation of MWBE contractors on these projects, further complicating the challenge of meeting the aggressive state imposed goals.

AGC NYS supports a transparent system of full and open competition among general and specialty contractors and their suppliers and service providers for these and all public projects, as this benefits the state, taxpayers and construction industry alike. Any consideration of a PLA must require a due diligence study with the input from the construction industry and an analysis of the impacts on competition and MWBE participation. Furthermore, all design-build procurements should be exempted from the onerous Wick's Law.

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. 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.

The Design-Build Institute of America (DBIA), an organization that teaches and promotes best practices in design-build, is opposed to mandated PLAs because no other state in the United States is limited by such a law. The DBIA's position is that design-build can work successfully when executed by a project team that works collaboratively with the owner and has demonstrated the qualifications needed to successfully complete the project. Through this delivery method, union versus non-union status becomes irrelevant, and there are even instances when union and non-union teams work successfully side by side.

Therefore, AGC NYS strongly opposes the provision of A.9008-B (Budget – Part H) / S.6408-B (Budget – Part H) which would mandate a project labor agreement (PLA) on design-build procurement for the projects listed in the Transformational Economic Development Infrastructure and Revitalization Projects Act.