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MEMORANDUM OF OPPOSITION

BILL: S.4323 (Comrie) / A.6232 (Bichotte Hermelyn)

SUBJECT: Establishes a Construction Industry Advisory Council on Public Contracting Reform

DATE: March 10, 2021

The Associated General Contractors of New York State, (AGC NYS) the leading statewide trade association representing union and open shop construction companies opposes S.4323 (Comrie) / A.6232 (Bichotte Hermelyn).

This bill would establish an independent advisory council to study the current public contracting process, adopt recommendations and best practices with further legislative proposals in order to improve the current state of public contract process to make it fair, predictable, and equitable for all involved.

While well-intentioned, this bill would establish an ineffective seventeen-member advisory council to address public procurement issues such as delay damages and timely notification. On the issues supported by AGC NYS such as delay damages and timely notification, the Legislature has passed such bills which, were vetoed by Governor Cuomo at the request of those that would be appointed to the advisory council.

New York State has a long history of establishing advisory councils, task forces, and committees that are charged with conducting public meetings, reviewing public comments, and producing reports to address important issues that have produced little to no results. For example, on the issue of timely notice (S.6906/A.10136 - 2016) the veto message (304 of 2016) recognized that State agencies and authorities do not have standardized notice and forfeiture provisions and that the lack of uniformity may cause confusion for contractors, particularly small business owners. Governor Cuomo directed the Council of Contracting Agencies (CCA) to review the notice and forfeiture provisions for all State public works contracts to assess the feasibility of standardizing those provisions and to issue a report with their proposed recommendations no later than September 1, 2017. The CCA report included a set of five recommendations which did nothing to standardize timely notice and forfeiture of claims provisions on local and state public works contracts.

AGC NYS commends the sponsor of this bill to address problematic contractual provisions in public works contracts. On public procurements, it is the general contractor that assumes the risk when state and local governments delay projects, do not provide timely notice for claims, and include onerous forfeiture provisions in contracts. However, addressing the problem with a seventeen-member council is not the procurement reform that general contractors can support. For these reasons, AGC NYS opposes S.4323 (Comrie) / A.6232 (Bichotte Hermelyn).