STATE OF NEW YORK

4323--C

Cal. No. 1539

2021-2022 Regular Sessions

IN SENATE

February 3, 2021

Introduced by Sens. COMRIE, COONEY, GAUGHRAN, MAYER, RAMOS -- read twice and ordered printed, and when printed to be committed to the Committee on Procurement and Contracts -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged and said bill committed to the Committee on Rules -- ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to establish a construction industry advisory council on public contracting reform

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative intent. The legislature finds that construction contractors often face significant challenges when bidding and working on public works projects in New York state. Often, the inclusion of onerous or inequitable contract terms and conditions governing issues such as contractor payment, job delays and dispute resolution, can place an unfair burden on contractors in public works projects. Furthermore, the legislature finds that many prior, piecemeal attempts to address these inequities through individual approaches have proven unsuccessful, and therefore a more equitable and comprehensive approach is warranted. The legislature also finds that current inefficiencies in the public contracting process are responsible for driving up the cost of construction, making New York a less competitive place to engage in such work in relation to other states, which in turn harms the New York state economy and costs jobs.

Therefore, it is the intent of the legislature to establish an independent advisory council charged with (a) studying the current public contracting process; and (b) adopting recommendations, best practices and legislative proposals in order to reform and improve the current

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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state public contracting process, by making it fairer, predictable and equitable for all parties involved.

§ 2. There is hereby created a construction industry advisory council on public contracting reform (the "advisory council"), which shall consider and advise on matters concerning the improvement of the current public works contracting process in New York state.

§ 3. The advisory council shall consist of the following members appointed by the governor as follows: three members representing the various state agencies and authorities, two members upon the recommendation of the speaker of the assembly, one member upon recommendation of the minority leader of the assembly, two members upon the recommendation of the temporary president of the senate, one member upon the recommendation of the minority leader of the senate, one member upon the recommendation of the comptroller, three members representing general contractors in the construction industry, three members representing subcontractors in the construction industry, three members representing employee trade councils in the construction industry and two members representing minority and women business-owned enterprise contractors. Appointments shall be made within 60 days of the effective date of this act. Vacancies in the advisory council shall be filled in the same manner.

§ 4. The advisory council shall elect a chair by majority vote and other necessary officers from among all appointed members.

§ 5. The advisory council shall first meet no later than 30 days after the last member has been appointed and shall have the power to convene public meetings. The advisory council may also meet at such other times as called by the chair at the request of a majority of the members of the advisory council. Meetings may be conducted via teleconference or other electronic means.

§ 6. The advisory council may also consult with other state agencies and authorities, contractor and subcontractor trade associations and their representatives, related professional trade associations, and other experts and consultants in the construction industry, and with such other persons as it shall determine necessary. Further, any state or local government agency or authority that engages in construction, construction financing or construction project ownership or oversight shall cooperate in good faith with an inquiry or request of the advisory council on matters germane to its work.

§ 7. Members of the advisory council shall serve without compensation for their services as members but shall be reimbursed for their actual expenses incurred in the performance of their duties in the work of the advisory council.

§ 8. The advisory council shall convene not less than 3 regional meetings on issues relating to the public contracting process, with a sole focus on the following subject matters, without exception:

a. Damages incurred by contractors, subcontractors and other parties due to delay in payments by public project owners or managers;

b. Substantial completion as it is defined in subdivision 1 of section 139-f of the state finance law;

c. Public works contracting issues affecting minority and women contractors and subcontractors; and

d. Retainage in public works contracts.

§ 9. No later than 365 days after the effective date of this act, the advisory council shall issue a report of its findings, including any recommendations for legislative, executive or regulatory action as it may deem necessary and appropriate, and suggest best practices for a

more fair and efficient public works contracting process by addressing the subject matters specified in section 8 of this act. The advisory council shall terminate 60 days after the date on which it submits its report as required by this section.

§ 10. The report required by section nine of this act shall be delivered to the governor, the temporary president of the senate, the speaker of the assembly, and the minority leaders of the senate and assembly. The advisory council shall submit along with its report such legislative, executive or regulatory proposals as it deems necessary to implement its recommendations with respect to the subject matters specified in section eight of this act.

§ 11. This act shall take effect immediately.