

STATE OF NEW YORK

4323--A

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

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:

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

15 Therefore, it is the intent of the legislature to establish an inde-
16 pendent advisory council charged with (a) studying the current public
17 contracting process; and (b) adopting recommendations, best practices
18 and legislative proposals in order to reform and improve the current
19 state public contracting process, by making it fairer, predictable and
20 equitable for all parties involved.

21 § 2. There is hereby created a construction industry advisory council
22 on public contracting reform (the "advisory council"), which shall

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

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1 consider and advise on matters concerning the improvement of the current
2 public works contracting process in New York state.

3 § 3. The advisory council shall consist of the following members
4 appointed by the governor as follows: four members representing the
5 various state agencies and authorities, two members upon the recommenda-
6 tion of the speaker of the assembly, one member upon recommendation
7 of the minority leader of the assembly, two members upon the recommendation
8 of the temporary president of the senate, one member upon the recommen-
9 dation of the minority leader of the senate, one member upon the recom-
10 mendation of the comptroller, three members representing general
11 contractors in the construction industry, three members representing
12 subcontractors in the construction industry, two members representing
13 employees in the construction industry and two members representing
14 minority and women business-owned enterprise contractors. Appointments
15 shall be made within 60 days of the effective date of this act. Vacan-
16 cies in the advisory council shall be filled in the same manner.

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

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

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

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

38 § 8. The advisory council shall convene not less than 3 regional
39 meetings on issues relating to the public contracting process, with a
40 focus on the following subject matters:

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

43 b. Substantial completion as it is defined in subdivision 1 of section
44 139-f of the state finance law;

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

47 d. Retainage in public works contracts; and

48 e. Contractual alternative dispute resolution.

49 § 9. No later than 365 days after the effective date of this act, the
50 advisory council shall issue a report of its findings, including any
51 recommendations for legislative, executive or regulatory action as it
52 may deem necessary and appropriate, and suggest best practices for a
53 more fair and efficient public works contracting process by addressing
54 the subject matters specified in section 8 of this act. The advisory
55 council shall terminate 60 days after the date on which it submits its
56 report as required by this section.

1 § 10. The report required by section nine of this act shall be deliv-
2 ered to the governor, the temporary president of the senate, the speaker
3 of the assembly, and the minority leaders of the senate and assembly.
4 The advisory council shall submit along with its report such legisla-
5 tive, executive or regulatory proposals as it deems necessary to imple-
6 ment its recommendations with respect to the subject matters specified
7 in section 8 of this act.

8 § 11. This act shall take effect immediately.