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Testimony of Jonathan Rosenberg
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To the New York City Council Subcommittee on Capital Budget
Regarding Intro. 2328 - Reporting on Design-Build Contracts

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Good morning Chair Rosenthal and members of the Subcommittee on Capital Budget. I am Jonathan Rosenberg, Assistant Director for Budget Review at the New York City Independent Budget Office (IBO). Thank you for the opportunity to testify today regarding Intro. 2328, which would require the Administration to provide reports on the status of the city's design-build contracts.

IBO's role is to provide nonpartisan information on the city's budget to members of the City Council, other elected officials, and the public. IBO does not generally make policy recommendations except in the case of proposals affecting budget process. As such, we generally support efforts to increase government transparency, particularly when it provides information in a straightforward, easy to understand form. This proposed legislation has the potential to do just that, although we have several suggestions to make the information provided more useful to the City Council and others who monitor and analyze the city's capital budget.

For many years, those involved in New York City's capital construction program lobbied Albany for authorization to use the design-build method to deliver city-funded capital projects. Proponents of employing design-build in New York City's capital program see it as a way to save money and enable agencies to complete projects in a timelier manner, although research on the effects of this policy—particularly for infrastructure projects—remains inconclusive. In December 2019, Governor Cuomo signed into law S6293A, authorizing the city's use of design-build for certain types of capital projects.

IBO appreciates the Council's effort to gain a better understanding of the city's design-build program. In order to provide policy makers and researchers with the data necessary to analyze the advantages and disadvantages of design-build, we recommend the following changes and additions to the proposed legislation.

Pre-Award Phase: The legislation should require additional information on the pre-contract award phase, including information about the responses to the Request for Qualifications and Request for Proposals, as well as a summary of the final scores for all bids that that entities submitted. This information should be provided both at the project level and aggregated across projects by year.

Agency Involvement: Intro. 2328 calls for the reporting on the “agencies... involved in such projects”. We suggest this section of the legislation be clarified to require the new report identify the managing agency for each project, as well as the project’s client agency.

Project Milestones and Cost Projections: In order to allow for a rigorous evaluation of design-build, the legislation should require reporting of detailed information on original and current project milestones and cost projections. Original cost estimates should be presented by project phase or at some other relevant level of granularity to allow for comparisons across projects. Each phase’s original cost estimate should have a corresponding current estimate or actual cost (in the case of a completed phase). Additionally, details on original milestones for each project phase should be included along with current updated milestones or actual milestones (again, in the case of completed phases). Inclusion of this data would allow for a more comprehensive analysis of design-build project delivery, particularly in comparison to similar non-design-build projects.

Detailed Methodology of Estimates: The legislation calls for the Administration to provide estimates of how much time and money have been saved by the use of design-build for capital projects. Without a detailed presentation of the methodology by which cost savings are estimated, however, it is impossible to make meaningful comparisons between projects and across project delivery types. IBO suggests that the legislation either describe the methodology used to produce the estimates or, at a minimum, require the Administration provide information and supporting data for the estimation methods used for each project.

Minority and Women-Owned Business Enterprise Utilization: The legislation could also be strengthened by requiring information on the number of design-build contracts awarded to city or state registered minority- and women-owned business enterprises (M/WBE). At the project level, it would be useful to collect information on the contractor’s M/WBE participation goals and utilization plan at the time of contract award, as well as updates on current progress towards meeting those goals.

As you know, Section 13 of the 2019 state legislation authorizing the use of design-build in New York City requires that an annual report be submitted by the city containing information on each design-build contract procured pursuant to the act. The report is required to contain: a description of each such design-build contract; information on the procurement process, including a listing of responding entities that demonstrated the capability to perform the contract; the total cost and estimated savings resulting from each design-build contract; and the participation rate of and total dollar value of payments to M/WBEs under design-build contracts. Legislation passed by the Council should build upon the data and reporting already required by the existing state legislation.