



August 3, 2022

The Honorable Kathy Hochul
 Governor of the State of New York
 Executive Chamber
 State Capitol
 Albany, New York 12224

**RE: Veto Request – S.5994-C (Ryan)/A.1338-C (Magnarelli)
 Contractor and Subcontractor Registration**

Dear Governor Hochul:

The undersigned organizations strongly urge you to veto S.5994-C (Ryan /A.1338-C (Magnarelli) which, establishes a duplicative registration system at the New York State Department of Labor (NYSDOL) for contractors and subcontractors engaged in public work and covered projects.

While this legislation solves no actual problems, it does create many that will disrupt public works projects across New York State, make utilization of design-build procurement impossible and slam the door on the participation of many M/WBE firms.

This legislation is divorced from the realities of the bidding process, where bids from subcontractors are often provided minutes before bid opening. Often, those bids are from unexpected subcontractors and are based on an incomplete scope. Knowledge of sub-subcontractors at that stage is rarely, if ever, even hinted at. These realities, particularly on a complex building project, will increase the likelihood of bid disputes and even challenges to awarded contracts— potentially leading to a contract being declared a nullity. It will also severely hinder public owners' ability to engage in change order work.

If compliance with this law on design-bid-build procurements is a herculean task, fraught with risk, it is absolutely impossible on design-build procurements. By the very nature of design-build, the design is obviously not complete and subcontractors are unknowable. Enactment of this law, therefore, will end any ability for the State or City of New York to engage in design-build procurement.

Furthermore, this bill will severely limit opportunities for M/WBEs. Often M/WBEs submit their bids to general contractors after the general contractor has bid the project or redefine their scopes and negotiate post bid —and frequently public owners engage in a post-bid process with the general contractor to seek to utilize additional M/WBEs on the project. Under this legislation, none of that would be possible. M/WBEs who have not bid to the general contractor and been listed at the time of their bid will be unable to participate in the project.

The bill is also duplicative because the New York State Vendor Responsibility (VendRep) System administered by the New York State Comptroller's Office is a well-established online system to support more effective and efficient use of information in assessing vendor responsibility. The VendRep System is designed to support both business entities and State contracting entities in meeting their respective obligations for providing and assessing information to make vendor responsibility determinations. Currently, general contractors and subcontractor M/WBEs who are waiting for renewal/approval of their Vendor Responsibility forms with the Comptroller's Office are allowed to bid the project prior to that approval. This legislation would not only slow the procurement process, but exclude contractors and M/WBE's from bidding that have not completed the additional registration.

Other objections to this bill include:

- Increasing administrative burden to local governments and school districts.
- Technical deficiencies or a missed date on a registration submission could cause delays, work stoppages, and declare the contractor or subcontractor “unfit” leading to legal disputes, monetary penalties, bonding complications, and other expenses which could cause an undercapitalized small company to go out of business.
- Establishes an expensive unfunded mandate for the over-burdened NYSDOL because staff and a new information technology system would be required to process registrations, hold hearings, appeals and maintain a public database.
- Creates a prequalification process largely prohibited by NYS competitive bidding laws and is incompatible with design-build procurement.
- This legislation effectively grants the Department of Labor debarment capability far exceeding that which has been long-standing law, as contained in Article 8 of Labor Law.

Accordingly, the undersigned organizations strongly urge you to veto this unnecessary, ill-conceived, destructive and duplicative bill that would disrupt the delivery of critical public works projects at the local and state level across the state, dramatically increase risk for contractors and severely curtail opportunities for M/WBE firms and other small businesses.

Very truly yours,

Michael J. Elmendorf II, President & CEO
Associated General Contractors of New York State (AGC NYS)

Paul Zuber, Executive Vice President
The Business Council of New York

James Heyliger, President
Association of Minority Enterprises of New York (AMENY)

Kenneth Thomas, Executive Director
Minority & Women Contractors & Developers Association, Inc.

John T. Evers, PhD, President/CEO
American Council of Engineering Companies of New York

Brian Cechnicki, Executive Director
Association of School Business Officials

Gerry Geist, Executive Director
Association of Towns of the State of New York

Grant Loomis, VP Government Affairs & Economic Development
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Kim Gaylord, President & CEO
Builders Exchange of Rochester

John F. O'Hare, Managing Director
Building Contractors Association (NYC), Inc.

F. Matthew Pepe, Executive Director
Building Contractors Association of Westchester and Mid-Hudson Region

Earl R. Hall, CEO
Building Industry Employers of New York State

Steve Savoca, Board President
Building Owners and Managers Association of Rochester

Louis Coletti, President & CEO
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John Ravitz, Executive Vice President/COO
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Kim Gaylord, Executive Director
Design Build Institute of America Liberty Region

Todd G. Helfrich, President and CEO
Eastern Contractors Association, Inc.

John K. Bartow Jr., Executive Director
Empire State Forest Products Association

Michael J. Misenhimer, Executive Director
Empire State Subcontractors Association, Inc.

Stacey Duncan, President & CEO
Greater Binghamton Chamber of Commerce

Mitch Pally, CEO
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Marc Herbst, Executive Director
Long Island Contractors' Association

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Carlo A. Scissura, Esq., President & CEO
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Rich Benjamin, President
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Ronald L. Epstein, President & CEO
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Andrew Avery, P.E., President
New York State County Highway Superintendents Association

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Brian Fessler, Director of Governmental Relations
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Phil Reed, Executive Director
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James Whelan, President
Real Estate Board of New York (REBNY)

Earl R. Hall, Executive Director
Syracuse Builders Exchange

Justin Wilcox, Executive Director
Upstate United

Robert Wessels, Executive Director
General Contractors Association of New York (GCA)

Kendra Hems, President
Trucking Association of New York (TANY)

Brad Buyers, Co-Chair
Fair Apportionment of Infrastructure Revenues (FAIR) Committee

CC: Karen Perischilli Keogh, Secretary to the Governor
Elizabeth Fine, Counsel to the Governor
Paul Ryan, Assistant Counsel to the Governor