

Subcommittee for Capital Budget
Chair Helen Rosenthal
OPENING: Design-Build and Intro 2328
October 20, 2021

Good morning. I am Council Member Helen Rosenthal, and I am the Chair of the Subcommittee on Capital Budget.

*****INTRODUCE COLLEGUES*****

This Subcommittee conducts oversight of the Administration's planning and delivery of capital projects. We often focus on procurement inefficiencies, but we are always looking to identify best practices and promising innovations. Today our focus is the promise and reality of design-build procurement.

State law has long-imposed the design-*bid*-build framework on capital projects, under which architects and engineers who design projects cannot help contractors understand what they are bidding on. Likewise, contractors are unable to offer design services as part of their bids, which might permit them to improve constructability of the plans. It should come as no surprise, then, that design-bid-build projects are often derailed in an endless stream of change orders. This set up can also make it difficult to determine who should be held accountable for delays and overages.

Ten years ago, the State Legislature authorized several State agencies to proceed with a different procurement method known as "design build" on a trial basis. It was a method which had been growing in popularity in other states as well as in the private sector. The design-build method is where an owner contracts with

a single entity that takes full responsibility for both design and construction of the project. This, in turn, eliminates the need for most change orders. By one estimate, the State saved nine percent on the first nine, transportation-related design-build contracts that were entered into after this legislation was passed. One of those contracts was for the replacement of the Tappan Zee Bridge which we all know came in well under budget and ahead of schedule.

Following these initial success stories, many City officials began agitating for design-build authority of our own. However, it took years, and several failed City Council resolutions and State bills, for the balance of forces to begin to shift. Fierce and persistent lobbying by the Mayor, senior Administration officials, Council Members, and business leaders finally broke through in March 2018, with the State's grant of narrow design-build authorization for the BQE cantilever replacement, Rikers Island jail replacement, and NYCHA repairs. It wasn't until December 2019 that the design-build authority was expanded to additional City agencies and projects.

Indeed, many on this Council have vivid memories of how members of the Administration testified at hearings about how "familiar" City agencies already were with design-build, and the considerable savings that would materialize were design-build granted or expanded. Often, these boasts were coupled with effusive thanks to the Council for our own efforts to lobby lawmakers in Albany – indeed, many of us took up the cause as our own.

The State's grant of authority to the City is set to sunset at the end of December 2022, meaning we're well over half-way through our window to justify our efforts and demonstrate results. Now is the time to ask what the Administration has done with its newfound authority, and whether design-build is yet living up to its full potential.

We might have some better idea about the Administration's progress with design-build, had they complied with their reporting obligation set forth in the 2019 state authorizing law. But, the report due in June 2020 was never filed because of the pandemic PAUSE on capital construction, and the report due this past June is apparently "still being put together." Indeed, from what I've heard, one reason the task of generating the required report has been languishing is that no single agency, office or person has been charged with spearheading efforts to gather the specific information required for inclusion. Indeed, it would appear there hasn't been much of a coordinated cross-agency effort to implement design-build in general.

There has been some progress by the Department of Design and Construction as well as the Department of Transportation, which have each put out Requests for Qualification and are scoping design-build projects with bidders – and I am truly excited to hear specifics from representatives of those agencies. But it's a real shame that they are the only ones who came today. After all, design-build authority was also extended to the Department of Environmental Protection, Parks, the Health and Hospitals Corporation, NYCHA, and the School Construction Authority. Some of

the gaps in reporting on progress might also be fillable by a representative of the Mayor's office or a Deputy Mayor's office, but they haven't come today either despite the Council's repeated request that someone with a cross-agency grasp of the bigger picture be made available.

This apparent lack of coordination underscores the need for the legislation that is being heard today. Introduction 2328, which I have sponsored, would impose reporting obligations on the administration on their use of design build. One important way in which the proposed reporting is different from what the Administration is already supposed to be doing under State law, is that our bill seeks to tie the reporting to the Capital Commitment Plan, so that the Council can understand how individual projects are progressing, and how savings are being accounted for. In this way, I'm hoping to further institutionalize the use of design-build while enhancing transparency and accountability.

Before I conclude, I want to thank the staff who helped prepare for this hearing and, in particular I would like to thank the Finance Division and Subcommittee staff:

- Nathan Toth, Deputy Director
- Chima Obichere, Unit Head
- Monika Bujak, Financial Analyst
- Rebecca Chasan, Senior Counsel; and
- Noah Brick, Assistant Counsel

I will now turn it over to our Committee Counsel to go over some procedural

items and to swear in the witnesses. Then we will hear testimony from Jamie Torres-Springer, the Commissioner of DDC. Also here for Q&A from DDC are David Varoli, General Counsel, Alison Landry, Assistant Commissioner of Public Buildings Design Build, and Wayne Lambert, Chief Diversity and Industry Relations Officer. For Q&A from DOT we have Tanvi Pandya, Executive Director of the BQE Design-Build, and Miranda Alquist, Assistant Director of Legislative Affairs.