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**Testimony of the NYS Conference of Operating Engineers to the Transportation Joint Budget
Committee Hearing on the Executive Budget Fiscal Year 2017-2018**

Chairwoman Young, Chairman Farrell, members of the Senate Finance and Assembly Ways & Means Committees, thank you for the opportunity to submit this testimony on behalf of 30,000 New York members and 13 state locals of the International Union of Operating Engineers.

We want to express our strong opposition to Part P of S.2008/A.3008, the Transportation, Economic Development and Environmental Protection Bill.

As you know, current law authorizes unrestricted authority for five state agencies/public authorities (Department of Transportation, Office of Parks, Recreation and Historic Preservation, Department of Environmental Conservation, Thruway Authority, and the Bridge Authority) to circumvent competitive bidding on construction contracts through a practice known as “design-build.” The Executive Budget proposes to:

1. Make the law permanent;
2. Expand the types of projects that would be eligible; and,
3. Expand the authority for design-build contracts to every state agency, public authority, SUNY, CUNY and every county in the state, with the exception of New York City.

There has been no real, *independent* study of New York’s experience with design-build. Advocates for design-build claim there is a cost savings but we have not seen a study that shows how that cost savings was realized. Additionally, the so-called savings from design-build claimed by supporters is largely the result of project labor agreements (PLAs). When the State wants to do a PLA they must first do a feasibility study. The feasibility study must prove there is a cost savings in order for the State to agree to a PLA.

One of the principal objections to design-build is that enforcement and oversight of labor protections is tied to competitive bidding laws. Design-build circumvents competitive bidding laws, which provide for transparency and public oversight of the contracting process, and puts these essential labor protections at risk.

State and local contracts for public works should be awarded through a competitive bidding process designed to ensure fairness, weed out corruption and provide an even playing field for bidding contracts. When taxpayer dollars are funding a project, the public has a right to expect a fair process to ensure that public money is spent appropriately.

Government is supposed to guarantee a fair process. Unfortunately, design-build – which essentially eliminates competitive bidding – does *not* guarantee that fair process. Rather, design-build weakens transparency and the impartiality needed to protect taxpayers and workers. A true competitive bidding process *does* provide that public accountability.

Design-build simply makes it easier for bids that may not reflect the true cost of a project to be approved because design-build awards contract on the subjective basis of “best value” as opposed to the more objective “lowest responsible bidder.”

Since design-build contracts can be let without requiring it to be awarded to the lowest responsible bidder, the process lends itself to potential corruption. It is too easy to award a project to a favored contractor. Let me cite an example. The following, from United States Attorney Preet Bharara's [press release](#) announcing the arrest of former Senate Majority Leader Dean Skelos, highlights the corruption that can come from design-build:

"DEAN SKELOS also used his official position in an attempt to enact State "design-build" legislation that Nassau county officials had explained was necessary to fully implement the \$12 million contract with the Environmental Technology Company. Nassau County officials provided Dean Skelos with proposed legislation which Dean Skelos stated he would support if backed by the Governor. In a recorded call, ADAM SKELOS told CW-2 that DEAN SKELOS was "going to be sure that gets done" and that the plan involved the Nassau County executive lobbying the Governor to "[k]ind of make [the Governor] think it's his idea and you're supporting his agenda." ADAM SKELOS later told CW-2 and the CEO that while design-build legislation would not be enacted as part of the budget process, DEAN SKELOS would continue to pursue it in the legislative session continuing through June 2015."

In another case of alleged corruption, three executives of LPCiminelli were indicted last year by U.S. Attorney Bharara's office as part of a broader indictment regarding various state development projects. The indictment of these three executives revolves around, among other things, the design-build contract it was awarded to build SolarCity plant at RiverBend in Buffalo, as part of the Governor's Buffalo Billion program.

As NYPIRG's Blair Horner said in his testimony before the joint fiscal committees: "It is our understanding that the executive's plan exempts design-build projects from the practice of competitive bidding, as well as transparent pricing disclosures. Given the scandals triggered by alleged abuse of the state's contracting system, good practice should require widespread use of a competitive bidding system in which contracts are awarded to the lowest responsible bidder and that such contracts and project performance be as transparent as possible."

That's a solid idea worth repeating: Taxpayers should be assured that public contracts are awarded to the lowest responsible bidder and that the process should be transparent.

Let me provide another example of the danger to taxpayers from design-build. Its inherent lack of transparency goes so far as to allow a contractor to *not* publicly reveal or report on how taxpayer dollars are being spent.

One only has to look the ongoing scandal surrounding LPCiminelli's design-build contract with the Buffalo School Board. Yes, the same LPCiminelli. As *The Buffalo News* reported: "The Buffalo school district has filed a lawsuit against LPCiminelli, alleging that the company that managed the district's massive school renovation project [withheld financial information](#) as part of 'a scheme to conceal the excessive profits it was pocketing.'" Of course, it must be noted that this was also a design-build contract.

A further problem with this proposal, and one of particular concern to the IUOE and working men and women across New York, is the proposal includes no labor protections.

Now, we agree that in limited circumstances, design-build may make sense. In those instances, New York State has the ability to approve those projects – with the appropriate worker protections and transparency – through legislation on a case by case basis.

It is time to return to that process. We respectfully urge the Legislature to not expand design-build and in fact we urge you to allow the design-build law to expire on behalf of taxpayers and workers. On behalf of transparency and fairness. On behalf of eliminating the potential for further corruption as a result of design-build.