

TESTIMONY ON BEHALF OF THE SUBCONTRACTORS TRADE ASSOCIATION
TO THE JOINT LEGISLATIVE BUDGET HEARING
ON GENERAL GOVERNMENT AND LOCAL GOVERNMENT

FEBRUARY 15, 2023

9:30 AM

Good morning, Chairwoman Krueger, Chairwoman Weinstein, and distinguished members of the New York State Legislature, and the members of Committee on General Government and Local Government. I am Felice Farber, Executive Director of the Subcontractors Trade Association (“STA”), which represents over 350 union subcontractors in the New York City metropolitan area. Thank you for the opportunity to provide this testimony in strong support of the state addressing the issue of unforeseen material price escalations in public works contracts as a result of supply chain interruptions brought on by the COVID-19 crisis.

Last year, the state legislature passed legislation addressing this issue (S.8844 Reichlin-Melnick/A.10109 Zebrowski) to allow certain pre-pandemic public works contracts to be adjusted where material prices had escalated in excess of five percent, as a result of extraordinary market conditions associated with COVID-19’s impact on the world’s supply chain for the distribution of construction materials and related commodities. This bill would have relieved this unfair and unforeseeable burden incurred by construction contractors and subcontractors by allowing them to apply for an adjustment to their respective public works contract in order to recoup the increased material costs which occurred subsequent to the awarding of the contract. STA thanks the legislature for listening to our concerns last year and responding so quickly by passing this important legislation. However, Governor Hochul vetoed the bill (Veto #186/2022) due to its

consideration outside of the state's 2023 fiscal plan. That being said, she was and remains sympathetic to our plight.

Unfortunately, the construction industry is still experiencing the aftershocks of the COVID-19 pandemic and subsequent economic crisis. Unprecedented record increases in material costs, supply-chain disruptions, and a tight labor market dramatically escalated construction material costs, in some instances by as much as 300 percent. As late as mid-2020, none of these circumstances could have been reasonably foreseen or anticipated. As a result, many public works contracts were awarded based on accepted bids that were received prior to the supply chain crisis, with very few of these contracts containing clauses allowing for future price modifications due to extreme cost increases. This has placed a significant hardship on some contractors and subcontractors who were saddled with extreme spikes in material costs on public works jobs resulting in some going out of business.

Without any relief, it is possible many more of these businesses will fail. That is why the state must address this crisis by including the substance of S.8844/A.10109 in the FY 2024 Budget, which must be adopted by April 1. This action would not be without precedent in New York, as the state has twice previously recognized its moral and legal responsibility to public works contractors by allowing for the modification of public works contracts due to the impact of unforeseen economic crises. In these two prior instances, the state allowed contract price adjustments to compensate for the escalated cost of materials and goods necessary to complete the job. We ask that the state do so again.

In one example, some of you may remember back in 2004, when a provision was included in the state budget to aid construction contractors after sharp increases in steel prices were triggered

by the 2001-2002 recession (2004 State Budget, S.6056-B/A9556-B). And in 1974, the state allowed price adjustments in certain public works contracts due to the international OPEC oil crisis, which unexpectedly drove up the cost of materials containing petroleum derivatives (Chapter 944, Laws of 1974). Likewise, we are now asking the State to employ this same logic and allow for material price adjustments due to the unforeseen economic circumstances wrought by the COVID-19 pandemic. The unprecedented shutdowns that triggered dramatic cost increases, particularly for the time period from December 2020 to December 2021, simply could not have been contemplated as contractors and subcontractors were preparing their initial bids on public works contracts.

It is important to note that public agencies do not have the unilateral discretion to make these adjustments without a directive from the legislature, thus the need for this critical statutory authorization. While researching how other states responded to the COVID-19 crisis, we learned that many of their public agencies already had the legal authority to make contract price adjustments under such circumstances. Unfortunately, though many state agencies here in New York were sympathetic to our request for relief, they also stated that they (except for NYSDOT) lacked the legal authority to take any action on our behalf (which is why we initially sought the relief contained in the 2022 legislation).

I would also like to recommend one important substantive correction to the language found in the bill the governor vetoed, should it be included in this year's budget. Specifically, the bid cut-off date from the bill text should be changed from April 1, 2020, to December 31, 2021, or at a minimum, to a date well after April 1, 2020. All reliable economic data indicates that material price increases first spiking in late 2020 with extreme and unanticipated accelerating in the cost of

materials through 2021. In April 2020, it was still possible to bid on a public works contract without knowing what trials and tribulations awaited us in the world. Thus, contractors who submitted their bids on public works contracts after April 2020 with what turned out to be artificially low bid prices through no fault of their own deserve and require the relief we seek through your action. In addition, last year's bill did not include public works contracts issued by the City of New York; STA respectfully requests that you consider adding this factor into budget consideration for this year's budget.

The 2022 legislation, while imperfect, attempted to address a problem that still exists: public works contractors facing extreme financial hardship or even bankruptcy due to unprecedented, historic material price increases which were beyond their reasonable contemplation or control, and the veto of this bill does not mark the end of our industry's crisis. That is why the STA is proud to join with its fellow construction industry contractor associations from across the state, representing thousands of contractors, subcontractors, and hundreds of thousands of construction workers, in asking for this critical and reasonable relief in the FY 2024 budget; relief that the state has previously recognized during similar times of economic crisis.

Finally, if the legislature decides not to track the language from the 2022 legislation in their respective budget proposals over the coming weeks, I respectfully offer two alternative ideas for the Committee's consideration. First, an appropriation of \$800 million in the 2024 state fiscal plan to create a limited, retroactive compensatory fund for small-sized contractors, subcontractors and MWBE subcontractors who have suffered financial loss during a stipulated timeframe when they bid on public works contracts based on material price costs that subsequently spiked dramatically through no fault of their own; and second, going forward, giving state agencies the discretionary

power (which they presently lack) to make material price adjustments in public works contracts for extenuating and unforeseen circumstances.

On behalf of the Subcontractors Trade Association, I thank the members of the Committee for their consideration of this important issue, and appreciate the opportunity to submit this testimony on a matter of such critical importance to the construction industry in New York.

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