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NEW YORK  
BUILDING  
CONGRESS

**VIA OVERNIGHT MAIL**

September 26, 2008

The Honorable Leticia James  
Chairperson  
Contracts Committee  
New York City Council  
250 Broadway  
New York, NY 10007

**Re: Contracting Reforms for City Capital Construction Projects**

Dear Chairperson James:

On behalf of the New York Building Congress, the City's largest and most diverse coalition serving the common interests of the design, construction and real estate industry, please accept this letter in lieu of testimony at the September 19 Contracts Committee public hearing on the Bloomberg Administration's recent implementation of five contracting reforms for City capital construction projects. The Building Congress enthusiastically supports these reforms as a significant first step toward increasing competition and decreasing costs to build the City's infrastructure, and we commend the Administration on this important initiative. Even more can be done by the City, however, to improve conditions that impact the fate of infrastructure and development projects critical to New York's economic growth. Never has the need for those efforts been greater.

New York City has been experiencing a seemingly relentless increase in construction costs, which has ballooned in recent years to an escalation rate of approximately one percent per month that is expected to continue for the next two to three years. As discussed in the enclosed report by the New York Building Congress and New York Building Foundation, *New York City's Rising Construction Costs: Issues and Solutions*, which analyzes several of the local, national and global factors contributing to construction cost escalation, some of those factors can be combated at a local level, and the City, State and virtually every sector of the building industry has a role to play.

For its part, the City is off to a good start with the implementation of its five contracting reforms, particularly its pilot program to allow contractors to be compensated for construction delays that are due to the City's actions. The "no damages for delay" provision in the City's current standard construction contract prohibits the contractor from recovering reasonable increased costs for delay caused by the City and has been a long-standing impediment to contractor competition for City capital construction

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September 25, 2008  
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projects. It has also increased the costs of construction because knowledgeable contractors automatically build the risk of delay into their bids, ensuring that the City pays for potential delays whether they occur or not.

Allowing damages for delay, as the City will do over the next three years in a select group of projects, promotes more balanced risk sharing that, over time, will build contractor confidence to stimulate more bidding activity on City projects and reduce the number of contingencies contractors must incorporate into their bids to cover their risk exposure. In the short term, this change will provide City employees with the incentive to timely resolve issues, reducing overall project costs by helping to ensure that projects are delivered on schedule. The Building Congress urges the City to strengthen this reform by making it a permanent provision in all capital construction contracts, as well as by expanding the circumstances under which a contractor will be eligible to recover added costs to include delay cause by third parties.

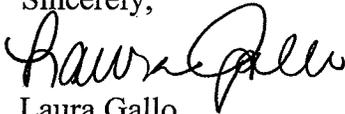
The Building Congress also urges the Administration and the City Council to examine additional ways to control construction costs. Among the potential solutions that should be explored are those identified in the Building Congress construction costs report, such as:

- lowering performance bond requirements to 50 percent of payment on jobs of \$100 million or more;
- issuing mobilization payments to subcontractors to ensure the availability of adequate cash flow to start the job on time and minimize delay; and
- incorporating a binding arbitration provision in agency contracts that provides for the resolution of disputes on jobs with a performance period of one or more years.

When taken together with the contracting reforms the City has implemented already, these and other measures would achieve tangible cost savings and help keep ongoing and proposed public capital projects on the path to completion.

The Building Congress encourages the Administration and the City Council to continue to work collaboratively with the building industry on further reform efforts and initiatives.

Sincerely,



Laura Gallo  
Vice President

Enclosure

cc (by U.S. Mail): The Honorable Christine C. Quinn, Speaker, New York City Council  
Members of the New York City Council Contracts Committee