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## **Testimony in Support of H.2971 AN ACT MAKING TECHNICAL CORRECTIONS TO THE CONSTRUCTION REFORM LAW**

Before the Joint Committee on State Administration

June 18, 2009

Our organization was privileged to serve on the Construction Reform Commission in 2004 and participate with representatives from across the industry in drafting the most comprehensive reforms of public construction in 50 years.

In an undertaking so massive – involving many people working on many complex statutory changes, and all in a very compressed time frame – it was inevitable that mistakes would be made. The ink was barely dry before we recognized the need for fine tuning, which has resulted in the Technical Corrections bill that is now before the Legislature.

Fortunately, most of the errors are typographical in nature, and of relatively minor significance. Perhaps that is why there has been little urgency about the need for technical corrections. Yet there are some that are of great significance, and need to be addressed. To some extent, the industry is proceeding as if the changes have already been made. But in some cases, the errors in the legislation have been the subject of bid protests. As time goes on, and memories of the original intent fade, disputes over the language grow more likely. We believe it is important for the Legislature to take action now to pass the technical corrections, before disputes end up in court.

Here, for example, are just a few of the significant corrections that must be made:

SECTION 8, simplifies the procedures for procurements under \$5,000 to provide relief to cities and towns.

SECTION 12, corrects a serious error in c.149, §44D relating to evaluation and certification of general contractors and subcontractors. Specifically, it deletes subsection 8, which had inadvertently been left unchanged, and effectively rescinds the new requirements for sub-bidder evaluation and certification that had been added by Construction Reform in subsections 11-17.

SECTIONS 13-27, clarify procedures for prequalification of general contractors and subcontractors under c. 149 §§ 44 D ½ and 44 D ¾.

SECTION 28, restores critical paragraphs in c.149 §44E that were inadvertently deleted, which allow awarding authorities to reject general bids and sub bids in certain circumstances.

SECTIONS 33-44, clarify provisions under the new CM at Risk procedures allowed by c.149A.

SECTIONS 45-54, clarify procedures and requirements under the Design-Build procedures allowed by c. 149A.

SECTIONS 29-32, 39-40, 43, 61, and 63 – all clarify and remove any doubt about the responsibility of subcontractors (instead of general contractors) to provide and pay for the cost of payment and performance bonds on all projects where prequalification takes place. The original legislation had made brief reference to that requirement, but did not make the necessary changes in all of the relevant portions of the statute, and it has been a great source of confusion and dispute ever since.

No doubt there will be other corrections that come to the fore. At the present, however, H., will make substantial – and critically necessary – improvements to a law that itself was a remarkable achievement.

Until the Technical Corrections are passed, the work of the Construction Commission remains incomplete. We respectfully ask the Committee to give H.2971 a favorable report and help speed the bill to passage in the current legislative session.

Sincerely,

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