

STATE OF NEW YORK

8134

2017-2018 Regular Sessions

IN ASSEMBLY

May 31, 2017

Introduced by M. of A. BENEDETTO -- read once and referred to the
Committee on Cities

AN ACT to authorize, for certain public works undertaken pursuant to
project labor agreements, use of the alternative delivery method known
as design-build contracts; and providing for the repeal of such
provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

- 1 Section 1. Short title. This act shall be known and may be cited as
2 the "New York city public works investment act".
3 § 2. For the purposes of this act:
4 (a) "Authorized entity" shall mean the New York city department of
5 design and construction, the New York city department of transportation
6 and the New York city health and hospitals corporation.
7 (b) "Best value" shall mean the basis for awarding contracts for
8 services to a proposer that optimizes quality, cost and efficiency,
9 price and performance criteria, which may include, but is not limited
10 to:
11 (1) The quality of the proposer's performance on previous projects;
12 (2) The timeliness of the proposer's performance on previous projects;
13 (3) The level of customer satisfaction with the proposer's performance
14 on previous projects;
15 (4) The proposer's record of performing previous projects on budget
16 and ability to minimize cost overruns;
17 (5) The proposer's ability to limit change orders;
18 (6) The proposer's ability to prepare appropriate project plans;
19 (7) The proposer's technical capacities;
20 (8) The individual qualifications of the proposer's key personnel;
21 (9) The proposer's ability to assess and manage risk and minimize risk
22 impact;
23 (10) The proposer's financial capability;

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 (11) The proposer's ability to comply with applicable requirements,
2 including the provisions of articles 145, 147 and 148 of the education
3 law;

4 (12) The proposer's past record of compliance with federal, state and
5 local laws, rules, licensing requirements, where applicable, and execu-
6 tive orders, including but not limited to compliance with the labor law
7 and other applicable labor and prevailing wage laws, article 15-A of the
8 executive law, and any other applicable laws concerning minority- and
9 women-owned business enterprise participation;

10 (13) The proposer's record of complying with existing labor standards,
11 maintaining harmonious labor relations, and protecting the health and
12 safety of workers and payment of wages above any locally-defined living
13 wage; and

14 (14) A quantitative factor to be used in evaluation of bids or offers
15 for awarding of contracts for bidders or offerers that are certified as
16 minority- or women-owned business enterprises as defined in subdivisions
17 1, 7, 15 and 20 of section 310 of the executive law, or certified pursu-
18 ant to local law as minority- or women-owned business enterprises.

19 Such basis shall reflect, wherever possible, objective and quantifi-
20 able analysis.

21 (c) "Cost plus" shall mean compensating a contractor for the cost to
22 complete a contract by reimbursing actual costs for labor, equipment and
23 materials plus an additional amount for overhead and profit.

24 (d) "Design-build contract" shall mean a contract for the design and
25 construction of a public work with a single entity, which may be a team
26 comprised of separate entities.

27 (e) "Project labor agreement" shall have the meaning set forth in
28 subdivision 1 of section 222 of the labor law. A project labor agreement
29 shall require participation in apprentice training programs in accord-
30 ance with paragraph (e) of subdivision 2 of such section.

31 (f) "Public work" shall mean a public work in the city of New York
32 related to one of the following, and shall refer to any of the following
33 public works:

34 (1) the Brooklyn Queens Expressway - Atlantic avenue to Sands street;

35 (2) the Rodman's Neck firearms and tactical training facility;

36 (3) the Crossroads youth facility in the Brownsville section of Kings
37 county;

38 (4) the Horizons adolescent facility in the Mott Haven section of
39 Bronx county;

40 (5) a new police department precinct in Southeast Queens;

41 (6) the Staten Island ferry terminal and related facilities resiliency
42 efforts;

43 (7) the Pelham parkway bridge over the Hutchinson river parkway in
44 Bronx county; or

45 (8) the Elmhurst Hospital emergency room renovation in Queens county.

46 § 3. Any contract for a public work undertaken pursuant to a project
47 labor agreement in accordance with section 222 of the labor law may be a
48 design-build contract in accordance with this act.

49 § 4. Notwithstanding any general, special or local law, rule or regu-
50 lation to the contrary, including but not limited to article 5-A of the
51 general municipal law and section 8 of the New York city health and
52 hospitals corporation act, and in conformity with the requirements of
53 this act, for any public work that has an estimated total cost of not
54 less than ten million dollars and is undertaken pursuant to a project
55 labor agreement in accordance with section 222 of the labor law, an
56 authorized entity charged with awarding a contract for public work may

1 use the alternative delivery method referred to as design-build
2 contracts.

3 (a) A contractor selected by such authorized entity to enter into a
4 design-build contract shall be selected through a two-step method, as
5 follows:

6 (1) Step one. Generation of a list of responding entities that have
7 demonstrated the general capability to perform the design-build
8 contract. Such list shall consist of a specified number of responding
9 entities, as determined by an authorized entity, and shall be generated
10 based upon the authorized entity's review of responses to a publicly
11 advertised request for qualifications. The authorized entity's request
12 for qualifications shall include a general description of the public
13 work, the maximum number of responding entities to be included on the
14 list, the selection criteria to be used and the relative weight of each
15 criteria in generating the list. Such selection criteria shall include
16 the qualifications and experience of the design and construction team,
17 organization, demonstrated responsibility, ability of the team or of a
18 member or members of the team to comply with applicable requirements,
19 including the provisions of articles 145, 147 and 148 of the education
20 law, past record of compliance with the labor law, and such other quali-
21 fications the authorized entity deems appropriate, which may include but
22 are not limited to project understanding, financial capability and
23 record of past performance. The authorized entity shall evaluate and
24 rate all responding entities to the request for qualifications. Based
25 upon such ratings, the authorized entity shall list the responding enti-
26 ties that shall receive a request for proposals in accordance with para-
27 graph two of this subdivision. To the extent consistent with applicable
28 federal law, the authorized entity shall consider, when awarding any
29 contract pursuant to this section, the participation of (i) responding
30 entities that are certified as minority- or women-owned business enter-
31 prises as defined in subdivisions 1, 7, 15 and 20 of section 310 of the
32 executive law, or certified pursuant to local law as minority- or
33 women-owned business enterprises; and (ii) small business concerns iden-
34 tified pursuant to subdivision (b) of section 139-g of the state finance
35 law; and

36 (2) Step two. Selection of the proposal which is the best value to the
37 authorized entity. The authorized entity shall issue a request for
38 proposals to the responding entities listed pursuant to paragraph one of
39 this subdivision. If such a responding entity consists of a team of
40 separate entities, the entities that comprise such a team must remain
41 unchanged from the responding entity as listed pursuant to paragraph one
42 of this subdivision unless otherwise approved by the authorized entity.
43 The request for proposals shall set forth the public work's scope of
44 work, and other requirements, as determined by the authorized entity,
45 which may include separate goals for work under the contract to be
46 performed by businesses certified as minority- or women-owned business
47 enterprises as defined in subdivisions 1, 7, 15 and 20 of section 310 of
48 the executive law, or certified pursuant to local law as minority- or
49 women-owned business enterprises. The request for proposals shall also
50 specify the criteria to be used to evaluate the responses and the rela-
51 tive weight of each of such criteria. Such criteria shall include the
52 proposal's cost, the quality of the proposal's solution, the qualifica-
53 tions and experience of the proposer, and other factors deemed pertinent
54 by the authorized entity, which may include, but shall not be limited
55 to, the proposal's manner and schedule of project implementation, the
56 proposer's ability to complete the work in a timely and satisfactory

1 manner, maintenance costs of the completed public work, maintenance of
2 traffic approach, and community impact. Any contract awarded pursuant to
3 this act shall be awarded to a responsive and responsible proposer,
4 which, in consideration of these and other specified criteria deemed
5 pertinent, offers the best value, as determined by the authorized enti-
6 ty. The request for proposals shall include a statement that proposers
7 shall designate in writing those portions of the proposal that contain
8 trade secrets or other proprietary information that are to remain confi-
9 dential; that the material designated as confidential shall be readily
10 separable from the proposal. Nothing in this subdivision shall be
11 construed to prohibit the authorized entity from negotiating final
12 contract terms and conditions including cost. All proposals submitted
13 shall be scored according to the criteria listed in the request for
14 proposals and such final scores shall be published on the authorized
15 entity's website.

16 (b) An authorized entity awarding a design-build contract to a
17 contractor offering the best value may but shall not be required to use
18 the following types of contracts:

19 (1) A cost-plus not to exceed guaranteed maximum price form of
20 contract in which the authorized entity shall be entitled to monitor and
21 audit all costs. In establishing the schedule and process for determin-
22 ing a guaranteed maximum price, the contract between the authorized
23 entity and the contractor shall:

24 (i) Describe the scope of the work and the cost of performing such
25 work,

26 (ii) Include a detailed line item cost breakdown,

27 (iii) Include a list of all drawings, specifications and other infor-
28 mation on which the guaranteed maximum price is based,

29 (iv) Include the dates of substantial and final completion on which
30 the guaranteed maximum price is based, and

31 (v) Include a schedule of unit prices; or

32 (2) A lump sum contract in which the contractor agrees to accept a set
33 dollar amount for a contract which comprises a single bid without
34 providing a cost breakdown for all costs such as for equipment, labor,
35 materials, as well as such contractor's profit for completing all items
36 of work comprising the public work.

37 § 5. Any contract entered into pursuant to this act shall include a
38 clause requiring that any professional services regulated by articles
39 145, 147 and 148 of the education law shall be performed and stamped and
40 sealed, where appropriate, by a professional licensed in accordance with
41 the appropriate article.

42 § 6. Construction with respect to each contract entered into by an
43 authorized entity pursuant to this act shall be deemed a "public work"
44 to be performed in accordance with the provisions of article 8 of the
45 labor law, as well as subject to sections 200, 240, 241 and 242 of such
46 law and enforcement of prevailing wage requirements pursuant to applica-
47 ble law or, for projects or public works receiving federal aid, applica-
48 ble federal requirements for prevailing wage. Any contract entered into
49 pursuant to this act shall include a clause requiring the selected
50 design builder to obligate every tier of contractor working on the
51 public work to comply with the project labor agreement referenced in
52 section three of this act, and shall include project labor agreement
53 compliance monitoring and enforcement provisions consistent with the
54 applicable project labor agreement.

55 § 7. Each contract entered into by an authorized entity pursuant to
56 this act shall comply with the objectives and goals with regard to

1 minority- and women-owned business enterprises pursuant to, as applica-
2 ble, section 6-129 of the administrative code of the city of New York
3 and subdivision 6 of section 8 of the New York city health and hospitals
4 corporation act, or, for projects or public works receiving federal aid,
5 applicable federal requirements for disadvantaged business enterprises
6 or minority- and women-owned business enterprises.

7 § 8. Public works undertaken by an authorized entity pursuant to this
8 act shall be subject to the requirements of article 8 of the environ-
9 mental conservation law, and, where applicable, the requirements of the
10 National Environmental Policy Act.

11 § 9. (a) Notwithstanding any provision of law to the contrary, all
12 rights or benefits, including terms and conditions of employment, and
13 protection of civil service and collective bargaining status of all
14 employees of authorized entities solely in connection with the public
15 works identified in subdivision (f) of section two of this act, shall be
16 preserved and protected.

17 (b) Nothing in this act shall result in the: (1) displacement of any
18 currently employed worker or loss of position (including partial
19 displacement such as a reduction in the hours of non-overtime work,
20 wages or employment benefits), or result in the impairment of existing
21 collective bargaining agreements; and (2) transfer of existing duties
22 and functions related to maintenance and operations currently performed
23 by existing employees of authorized entities to a contractor.

24 (c) Employees of authorized entities using design-build contracts
25 serving in positions in newly created titles shall be assigned to the
26 appropriate bargaining unit. Nothing contained in this act shall be
27 construed to affect (1) the existing rights of employees of such enti-
28 ties pursuant to an existing collective bargaining agreement, (2) the
29 existing representational relationships among employee organizations
30 representing employees of such entities, or (3) the bargaining relation-
31 ships between such entities and such employee organizations.

32 § 10. The submission of a proposal or responses or the execution of a
33 design-build contract pursuant to this act shall not be construed to be
34 a violation of section 6512 of the education law.

35 § 11. Nothing contained in this act shall limit the right or obli-
36 gation of any authorized entity to comply with the provisions of any
37 existing contract or to award contracts as otherwise provided by law.

38 § 12. This act shall take effect immediately and shall expire and be
39 deemed repealed 4 years after such date; provided that, public works
40 with requests for qualifications issued prior to such repeal shall be
41 permitted to continue under this act notwithstanding such repeal.