

STATE OF NEW YORK

6667

2017-2018 Regular Sessions

IN ASSEMBLY

March 15, 2017

Introduced by M. of A. BENEDETTO, RODRIGUEZ -- 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 Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "New York
2 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 environmental
6 protection, the New York city department of parks and recreation, the
7 New York city department of transportation, the New York city health and
8 hospitals corporation, the New York city housing authority and the New
9 York city school construction authority.

10 (b) "Best value" shall mean the basis for awarding contracts for
11 services to a proposer that optimizes quality, cost and efficiency,
12 price and performance criteria, which may include, but is not limited
13 to:

14 (1) The quality of the proposer's performance on previous projects;

15 (2) The timeliness of the proposer's performance on previous projects;

16 (3) The level of customer satisfaction with the proposer's performance
17 on previous projects;

18 (4) The proposer's record of performing previous projects on budget
19 and ability to minimize cost overruns;

20 (5) The proposer's ability to limit change orders;

21 (6) The proposer's ability to prepare appropriate project plans;

22 (7) The proposer's technical capacities;

23 (8) The individual qualifications of the proposer's key personnel;

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

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1 (9) The proposer's ability to assess and manage risk and minimize risk
2 impact;

3 (10) The proposer's financial capability;

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

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

13 (13) The prospective bidder's record of complying with existing labor
14 standards, maintaining harmonious labor relations, and protecting the
15 health and safety of workers and payment of wages above any locally-de-
16 fined living wage; and

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

22 Such basis shall reflect, wherever possible, objective and quantifi-
23 able analysis.

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

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

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

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

37 § 4. Notwithstanding any general, special or local law, rule or regu-
38 lation to the contrary, including but not limited to article 5-A of the
39 general municipal law, section 8 of the New York city health and hospi-
40 tals corporation act, sections 1734 and 1735 of the public authorities
41 law and article 8 of the public housing law, and in conformity with the
42 requirements of this act, for any public work that has an estimated
43 total cost of not less than ten million dollars and is undertaken pursu-
44 ant to a project labor agreement in accordance with section 222 of the
45 labor law, an authorized entity charged with awarding a contract for
46 public work may use the alternative delivery method referred to as
47 design-build contracts.

48 (a) A contractor selected by such authorized entity to enter into a
49 design-build contract shall be selected through the submission of a
50 proposal which provides the best value. Such authorized entity shall
51 issue a request for proposals which shall set forth the scope of work,
52 and other requirements, as determined by the authorized entity, which
53 may include separate goals for work under the contract to be performed
54 by businesses certified as minority- or women-owned business enterprises
55 as defined in subdivisions 1, 7, 15 and 20 of section 310 of the execu-
56 tive law, or certified pursuant to local law as minority- or women-owned

1 business enterprises. The request for proposals shall also specify the
2 criteria to be used to evaluate the responses and the relative weight of
3 each of such criteria. Such criteria shall include the proposal's cost,
4 the quality of the proposal's solution, the qualifications and experi-
5 ence of the proposer, and other factors deemed pertinent by the author-
6 ized entity, which may include, but shall not be limited to, the
7 proposal's manner and schedule of project implementation, the proposer's
8 ability to complete the work in a timely and satisfactory manner, main-
9 tenance costs of the completed public work, maintenance of traffic
10 approach, and community impact. Any contract awarded pursuant to this
11 act shall be awarded to a responsive and responsible entity that submits
12 the proposal, which, in consideration of these and other specified
13 criteria deemed pertinent, offers the best value, as determined by the
14 authorized entity. Nothing herein shall be construed to prohibit the
15 authorized entity from negotiating final contract terms and conditions
16 including cost.

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

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

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

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

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

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

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

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

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

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

1 § 7. Each contract entered into by an authorized entity pursuant to
2 this act shall comply with the objectives and goals with regard to
3 minority- and women-owned business enterprises pursuant to, as applica-
4 ble, section 6-129 of the administrative code of the city of New York,
5 subdivision 6 of section 8 of the New York city health and hospitals
6 corporation act and section 1743 of the public authorities law, or, for
7 projects or public works receiving federal aid, applicable federal
8 requirements for disadvantaged business enterprises or minority- and
9 women-owned business enterprises.

10 § 8. Public works undertaken by an authorized entity pursuant to this
11 act shall be subject to the requirements of article 8 of the environ-
12 mental conservation law, and, where applicable, the requirements of the
13 national environmental policy act.

14 § 9. (a) Notwithstanding any provision of law to the contrary, all
15 rights or benefits, including terms and conditions of employment, and
16 protection of civil service and collective bargaining status of all
17 employees of authorized entities, shall not be impaired or reduced
18 because of the use of a design-build contract pursuant to this act.

19 (b) Nothing in this act shall result in the displacement of any
20 current employee of an authorized entity using design-build contracts
21 who is represented by a "certified employee organization" as defined by
22 section 12-303 of the administrative code of the city of New York, or
23 loss of position of such employee (including partial displacement such
24 as a reduction in the hours of non-overtime work, wages or employment
25 benefits), or result in the impairment of existing collective bargaining
26 agreements.

27 (c) Employees of authorized entities using design-build contracts
28 serving in positions in newly created titles shall be assigned to the
29 appropriate bargaining unit. Nothing contained herein shall be construed
30 to affect (1) the existing rights of employees of such entities pursuant
31 to an existing collective bargaining agreement, (2) the existing repres-
32 entational relationships among employee organizations representing
33 employees of such entities or (3) the bargaining relationships between
34 such entities and such employee organizations.

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

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

41 § 12. This act shall take effect immediately and shall expire and be
42 deemed repealed 5 years after such date, provided that, public works
43 with requests for proposals issued prior to such repeal shall be permit-
44 ted to continue under this act notwithstanding such repeal.