

# STATE OF NEW YORK

8531--A

Cal. No. 1015

## IN SENATE

March 9, 2022

Introduced by Sen. GAUGHRAN -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government -- reported favorably from said committee and committed to the Committee on Finance -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT in relation to establishing the "Wyandanch Health and Wellness Center Design-Build Act"; 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 "Wyandanch  
2 Health and Wellness Center Design-Build Act".

3 § 2. For the purposes of this act:

4 (a) "Authorized entity" shall mean the Town of Babylon and the Town of  
5 Babylon L.D. Corp. II.

6 (b) "Authorized project" shall mean, in conformity with the require-  
7 ments of this act, any installation, construction, demolition, recon-  
8 struction, excavation, rehabilitation, repair, and renovation in  
9 connection with a health and recreational facility known as the "Wyan-  
10 danch Health and Wellness Center" located in the hamlet of Wyandanch in  
11 the town of Babylon at 20 Station Drive.

12 (c) "Best value" shall mean the basis for awarding contracts for  
13 services to the bidder that optimizes quality, cost and efficiency,  
14 price and performance criteria, which may include, but is not limited  
15 to:

16 (1) The quality of the contractor's performance on previous projects;

17 (2) The timeliness of the contractor's performance on previous  
18 projects;

19 (3) The level of customer satisfaction with the contractor's perform-  
20 ance on previous projects;

21 (4) The contractor's record of performing previous projects on budget  
22 and ability to minimize cost overruns;

23 (5) The contractor's ability to limit change orders;

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

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(6) The contractor's ability to prepare appropriate project plans;  
(7) The contractor's technical capacities;  
(8) The individual qualifications of the contractor's key personnel;  
(9) The contractor's ability to assess and manage risk and minimize risk impact;

(10) The contractor's financial capability;

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

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

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

(14) A quantitative factor to be used in evaluation of bids or offers for awarding of contracts for bidders or offerers that are certified as minority- or women-owned business enterprises pursuant to article 15-A of the executive law, and certified pursuant to local law as minority- or women-owned business enterprises. Where the authorized entity identifies a quantitative factor pursuant to this paragraph, the authorized entity must specify that businesses certified as minority- or women-owned business enterprises pursuant to article 15-A of the executive law as well as those certified as minority- or women-owned business enterprises are eligible to qualify for such factor. Nothing in this paragraph shall be construed as a requirement that such businesses be concurrently certified as minority- or women-owned business enterprises under article 15-A of the executive law to qualify for such quantitative factors. Such basis shall reflect, wherever possible, objective and quantifiable analysis.

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

(e) "Design-build contract" shall mean a contract for the design and construction of the authorized project with a single entity, which may be a team comprised of separate entities.

(f) "Project labor agreement" shall have the meaning as described in subdivision 1 of section 222 of the labor law. A project labor agreement shall require participation in apprentice training programs in accordance with paragraph (e) of subdivision 2 of such section.

§ 3. Notwithstanding any general, special or local law, rule or regulation to the contrary, including but not limited to article 5-A of the general municipal law, in conformity with the requirements of this act, and only when a project labor agreement is performed in accordance with section 222 of the labor law, an authorized entity may use the alternative delivery method referred to as a design-build contract for the authorized project in accordance with this act.

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

(1) Step one. Generation of a list of responding entities that have demonstrated the general capability to perform the design-build

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

28 (2) Step two. Selection of the proposal which is the best value to the  
29 authorized entity. The authorized entity shall issue a request for  
30 proposals to the responding entities listed pursuant to paragraph one of  
31 this subdivision. If such a responding entity consists of a team of  
32 separate entities, the entities that comprise such a team must remain  
33 unchanged from the responding entity as listed pursuant to paragraph one  
34 of this subdivision unless otherwise approved by the authorized entity.  
35 The request for proposals shall set forth the public work's scope of  
36 work, and other requirements, as determined by the authorized entity,  
37 which may include separate goals for work under the contract to be  
38 performed by businesses certified as minority- or women-owned business  
39 enterprises pursuant to article 15-A of the executive law, or certified  
40 pursuant to local law as minority- or women-owned business enterprises.  
41 The request for proposals shall also specify the criteria to be used to  
42 evaluate the responses and the relative weight of each of such criteria.  
43 Such criteria shall include the proposal's cost, the quality of the  
44 proposal's solution, the qualifications and experience of the proposer,  
45 and other factors deemed pertinent by the authorized entity, which may  
46 include, but shall not be limited to, the proposal's manner and schedule  
47 of project implementation, the contractor's ability to complete the work  
48 in a timely and satisfactory manner, maintenance costs of the completed  
49 public work, maintenance of traffic approach, and community impact. Any  
50 contract awarded pursuant to this act shall be awarded to a responsive  
51 and responsible proposer, which, in consideration of these and other  
52 specified criteria deemed pertinent, offers the best value, as deter-  
53 mined by the authorized entity. The request for proposals shall include  
54 a statement that proposers shall designate in writing those portions of  
55 the proposal that contain trade secrets or other proprietary information  
56 that are to remain confidential; that the material designated as confi-

dential shall be readily separable from the proposal. Nothing in this subdivision shall be construed to prohibit the authorized entity from negotiating final contract terms and conditions including cost. All proposals submitted shall be scored according to the criteria listed in the request for proposals and such final scores shall be published on the authorized entity's website.

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

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

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

(ii) Include a detailed line item cost breakdown,

(iii) Include a list of all drawings, specifications and other information on which the guaranteed maximum price is based,

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

(v) Include a schedule of unit prices; or

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

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

§ 6. Construction with respect to any contract entered into by an authorized entity pursuant to this act shall be deemed a "public work" to be performed in accordance with the provisions of article 8 of the labor law, as well as subject to sections 200, 240, 241 and 242 of such law and enforcement of prevailing wage requirements pursuant to applicable law or, for projects or public works receiving federal aid, applicable federal requirements for prevailing wage. Any contract entered into pursuant to this act shall include a clause requiring the selected contractor to obligate every tier of contractor working on the public work to comply with the project labor agreement referenced in section four of this act, and shall include project labor agreement compliance monitoring and enforcement provisions consistent with the applicable project labor agreement.

§ 7. Any contract entered into by an authorized entity pursuant to this act shall comply with the objectives and goals with regard to minority- and women-owned business enterprises and, for projects or public works receiving federal aid, applicable federal requirements for disadvantaged business enterprises or minority- and women-owned business enterprises.

§ 8. Any authorized project undertaken by an authorized entity pursuant to this act shall be subject to the requirements of article 8 of the environmental conservation law, and, where applicable, the requirements of the national environmental policy act.

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

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

14 (c) Employees of authorized entities using design-build contracts  
15 serving in positions in newly created titles shall be assigned to the  
16 appropriate bargaining unit. Nothing contained in this act shall be  
17 construed to affect: (1) the existing rights of employees of such enti-  
18 ties pursuant to an existing collective bargaining agreement, (2) the  
19 existing representational relationships among employee organizations  
20 representing employees of such entities, or (3) the bargaining relation-  
21 ships between such entities and such employee organizations.

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

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

28 § 12. This act shall take effect immediately and shall expire and be  
29 deemed repealed two years after such date; provided, however, that,  
30 public works with requests for qualifications issued prior to such  
31 repeal shall be permitted to continue under this act notwithstanding  
32 such repeal.