

STATE OF NEW YORK

1761

2023-2024 Regular Sessions

IN SENATE

January 13, 2023

Introduced by Sens. COMRIE, SEPULVEDA -- read twice and ordered printed,
and when printed to be committed to the Committee on Cities 1

AN ACT to amend chapter 749 of the laws of 2019 authorizing, for certain public works undertaken pursuant to project labor agreements, use of the alternative delivery method known as design-build contracts, in relation to requiring qualification-based criteria for awarding certain contracts for services

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

1 Section 1. Section 2 of chapter 749 of the laws of 2019, authorizing,
2 for certain public works undertaken pursuant to project labor agree-
3 ments, use of the alternative delivery method known as design-build
4 contracts, is amended by adding a new subdivision (f) to read as
5 follows:

6 (f) "Qualifications-based" shall mean the basis for awarding a
7 contract for services to an entity that submits a statement of quali-
8 fications in response to a request for qualifications when an authorized
9 entity utilizes a one-step method.

10 § 2. Subdivision (a) of section 4 of chapter 749 of the laws of 2019,
11 authorizing, for certain public works undertaken pursuant to project
12 labor agreements, use of the alternative delivery method known as
13 design-build contracts, is amended to read as follows:

14 (a) A contractor selected by such an authorized entity to enter into a
15 design-build contract shall be selected through a one-step or two-step
16 method, as follows:

17 (1) Step one. Generation of a list of responding entities that have
18 demonstrated the general capability to perform the design-build
19 contract. Unless the authorized entity is utilizing a one-step method,
20 the authorized entity shall generate a list of responding entities that
21 have demonstrated the general capability to perform the design-build
22 contract. Such list shall consist of a specified number of responding

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

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1 entities, as determined by an authorized entity, and shall be generated
2 based upon the authorized entity's review of responses to a publicly
3 advertised request for qualifications. The authorized entity's request
4 for qualifications shall include a general description of the public
5 work, the maximum number of responding entities to be included on the
6 list, the selection criteria to be used and the relative weight of each
7 criteria in generating the list. Such selection criteria shall include
8 the qualifications and experience of the design and construction team,
9 organization, demonstrated responsibility, ability of the team or of a
10 member or members of the team to comply with applicable requirements,
11 including the provisions of articles 145, 147 and 148 of the education
12 law, past record of compliance with the labor law, and such other quali-
13 fications the authorized entity deems appropriate, which may include but
14 are not limited to project understanding, financial capability and
15 record of past performance. ~~[The]~~ Unless the authorized entity is
16 utilizing a one-step method, 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. If the authorized entity is utilizing a
21 one-step method, the authorized entity shall evaluate and rate all
22 statements of qualification submitted in response to the request for
23 qualifications and shall award the design-build contract to the best
24 qualified contractor. Notwithstanding any contrary provision of law, any
25 authorizing entity awarding a design-build contract to a contractor
26 determined to be the best qualified contractor in accordance with this
27 paragraph may elect either to enter into a single contract with two
28 phases or separate contracts for each of the two phases. To the extent
29 consistent with applicable federal law, the authorized entity shall
30 consider, when awarding any contract pursuant to this section, the
31 participation of (i) responding entities that are certified as minority-
32 or women-owned business enterprises pursuant to article 15-A of the
33 executive law, or certified pursuant to local law as minority- or
34 women-owned business enterprises, or, where the New York city school
35 construction authority acts as the authorized entity, certified pursuant
36 to section 1743 of the public authorities law; and (ii) small business
37 concerns identified pursuant to subdivision (b) of section 139-g of the
38 state finance law. In addition, nothing in this section shall be deemed
39 to supersede any pre-qualification guidelines or requirements otherwise
40 authorized by law for an authorized entity.

41 (2) Step two. Selection of the proposal which is the best value to the
42 authorized entity. The authorized entity shall issue a request for
43 proposals to the responding entities listed pursuant to paragraph one of
44 this subdivision. If such a responding entity consists of a team of
45 separate entities, the entities that comprise such a team must remain
46 unchanged from the responding entity as listed pursuant to paragraph one
47 of this subdivision unless otherwise approved by the authorized entity.
48 The request for proposals shall set forth the public work's scope of
49 work, and other requirements, as determined by the authorized entity,
50 which may include separate goals for work under the contract to be
51 performed by businesses certified as minority- or women-owned business
52 enterprises pursuant to article 15-A of the executive law or section
53 1743 of the public authorities law, or certified pursuant to local law
54 as minority- or women-owned business enterprises. The request for
55 proposals shall also specify the criteria to be used to evaluate the
56 responses and the relative weight of each of such criteria. Such crite-

1 ria shall include the proposal's cost, the quality of the proposal's
2 solution, the qualifications and experience of the proposer, and other
3 factors deemed pertinent by the authorized entity, which may include,
4 but shall not be limited to, the proposal's manner and schedule of
5 project implementation, the proposer's ability to complete the work in a
6 timely and satisfactory manner, maintenance costs of the completed
7 public work, maintenance of traffic approach, and community impact.

8 (3) Any contract awarded pursuant to this act shall be awarded to a
9 responsive and responsible proposer, which, in consideration of these
10 and other specified criteria deemed pertinent, offers the best value, or
11 in the case of a contract awarded utilizing a one-step method, is the
12 best-qualified contractor, as determined by the authorized entity in
13 accordance with this section. The request for proposals, or the request
14 for qualifications if the contract is awarded utilizing a one-step meth-
15 od, shall include a statement that proposers shall designate in writing
16 those portions of the proposal that contain trade secrets or other
17 proprietary information that are to remain confidential; that the mate-
18 rial designated as confidential shall be readily separable from the
19 proposal. Nothing in this subdivision shall be construed to prohibit the
20 authorized entity from negotiating final contract terms and conditions
21 including cost. All proposals or responses submitted shall be scored
22 according to the criteria listed in the request for proposals, or the
23 request for qualifications if the contract is awarded utilizing a one-
24 step method, and such final scores shall be published on the authorized
25 entity's website after registration of such contract or the date upon
26 which such contract may be implemented, if registration requirements do
27 not apply.

28 § 3. This act shall take effect immediately; provided, however that
29 the amendments to chapter 749 of the laws of 2019 made by sections one
30 and two of this act shall not affect the repeal of such chapter and
31 shall be deemed repealed therewith.