

8331

I N   S E N A T E

June 24, 2010

---

Introduced by Sen. DILAN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the highway law, the state finance law, the public authorities law and the education law, in relation to alternative project delivery methodologies

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1     Section 1. Legislative finding and intent. The federal government and  
2 numerous states regularly engage in what is termed "alternative project  
3 delivery" options for the procurement and construction of both building  
4 and transportation projects. These methods, which include design-build,  
5 construction manager at-risk, public/private partnerships and integrated  
6 project delivery have become proven methods for the efficient and effective  
7 delivery of public construction projects. Such methodologies have  
8 often produced high-quality projects at lower costs and at greatly  
9 improved timeframes.
- 10     Although design-bid-build should remain the primary method to deliver  
11 most public construction projects, the legislature declares that the  
12 department of transportation, the office of general services, the dormitory  
13 authority, the thruway authority, the state university construction  
14 fund, the city university construction fund, the New York city school  
15 construction authority and the metropolitan transportation authority  
16 should be permitted to engage in such "alternative project delivery"  
17 methods, subject to certain limitations and protections.
- 18     S 2. Section 38 of the highway law is amended by adding a new subdivision  
19 10 to read as follows:
- 20     10. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION OR THE  
21 PROVISIONS OF SECTION ONE HUNDRED SIXTY-THREE OF THE STATE FINANCE LAW,  
22 THE DEPARTMENT MAY PROCURE SERVICES TO CONSTRUCT OR IMPROVE A STATE  
23 HIGHWAY PURSUANT TO AN ALTERNATIVE PROJECT DELIVERY METHODOLOGY AS  
24 PROVIDED FOR IN SECTION ONE HUNDRED SIXTY-THREE-D OF THE STATE FINANCE  
25 LAW.
- 26     S 3. The state finance law is amended by adding a new section 163-d to  
27 read as follows:

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

LBD17869-01-0

1 S 163-D. ALTERNATIVE PROJECT DELIVERY METHODS. 1. FOR PURPOSES OF THIS  
2 SECTION:

3 A. "ALTERNATIVE PROJECT DELIVERY METHODOLOGY" SHALL MEAN ANY  
4 CONSTRUCTION PROJECT DELIVERY METHODOLOGY WHEREBY THE PROCUREMENT FOR  
5 THE CONSTRUCTION SERVICES IS OTHER THAN THE TRADITIONAL DESIGN-BID-BUILD  
6 PROCESS.

7 B. "STATE CONTRACTING AGENCY" OR "AGENCY" SHALL MEAN THE OFFICE OF  
8 GENERAL SERVICES AND/OR THE DEPARTMENT OF TRANSPORTATION.

9 C. "EVALUATION TEAM" SHALL MEAN A TEAM OF NOT LESS THAN FIVE PERSONS  
10 KNOWLEDGEABLE IN THE CONSTRUCTION INDUSTRY, TO BE FORMED BY A STATE  
11 CONTRACTING AUTHORITY TO EVALUATE THE QUALIFICATIONS AND PROPOSALS  
12 SUBMITTED FOR THAT PROJECT.

13 2. NOTWITHSTANDING THE PROVISIONS OF SECTION ONE HUNDRED SIXTY-THREE  
14 OF THIS ARTICLE, SECTION THIRTY-EIGHT OF THE HIGHWAY LAW, OR ANY GENER-  
15 AL, SPECIAL OR LOCAL LAW THAT MAY REQUIRE AN AGENCY TO AWARD CONTRACTS  
16 TO THE LOWEST RESPONSIBLE BIDDER AFTER ADVERTISING FOR SEALED BIDS, A  
17 STATE CONTRACTING AGENCY MAY PROCURE CONSTRUCTION SERVICES THROUGH AN  
18 ALTERNATIVE PROJECT DELIVERY METHODOLOGY FOR ANY PROJECT HAVING A COST  
19 OF TWENTY-FIVE MILLION DOLLARS OR MORE, PROVIDED THAT THE STATE  
20 CONTRACTING AGENCY DETERMINES THAT SUCH ALTERNATIVE PROJECT DELIVERY  
21 METHODOLOGY, RATHER THAN THE TRADITIONAL DESIGN-BID-BUILD PROCESS, WILL  
22 PROVIDE BEST VALUE TO THE STATE. PRIOR TO UTILIZING AN ALTERNATIVE  
23 PROJECT DELIVERY METHODOLOGY, THE AGENCY SHALL MAKE A WRITTEN DETERMI-  
24 NATION IDENTIFYING THE REASONS FOR USING AN ALTERNATIVE PROJECT DELIVERY  
25 METHODOLOGY, AND THE METHODOLOGY SELECTED. SUCH REASONS MAY INCLUDE, BUT  
26 NEED NOT BE LIMITED TO, BENEFITS RELATING TO THE PROJECT SCHEDULE, COST  
27 OF THE PROJECT, AND PROJECT FEASIBILITY.

28 3. A STATE CONTRACTING AGENCY THAT ELECTS TO USE AN ALTERNATIVE  
29 PROJECT DELIVERY METHODOLOGY SHALL AWARD A CONTRACT FOR SUCH SERVICES BY  
30 COMPLETING A TWO STEP PROCESS: A. STEP ONE. THE AGENCY SHALL GENERATE A  
31 LIST OF ENTITIES THAT HAVE DEMONSTRATED THE GENERAL CAPABILITY TO  
32 PROVIDE THE ALTERNATIVE PROJECT DELIVERY SERVICES CHOSEN FOR THE  
33 PROJECT. SUCH LIST SHALL BE GENERATED BASED ON THE AGENCY'S EVALUATION  
34 TEAM'S REVIEW OF RESPONSES TO A PUBLICLY ADVERTISED REQUEST FOR QUALI-  
35 FICATIONS. THE AGENCY'S REQUEST FOR QUALIFICATIONS SHALL INCLUDE A  
36 GENERAL DESCRIPTION OF THE PROJECT, THE MAXIMUM NUMBER OF ENTITIES TO BE  
37 INCLUDED ON THE LIST, AND THE SELECTION CRITERIA TO BE USED IN DETERMIN-  
38 ING WHICH ENTITIES ARE ELIGIBLE TO RECEIVE REQUESTS FOR PROPOSALS PURSU-  
39 ANT TO PARAGRAPH B OF THIS SUBDIVISION. THE SELECTION CRITERIA SHALL  
40 INCLUDE A DESCRIPTION OF THE RELATIVE WEIGHT TO BE ASSIGNED TO EACH  
41 CRITERIA. IN DETERMINING WHETHER AN ENTITY QUALIFIES FOR INCLUSION ON  
42 SUCH LIST, THE EVALUATION TEAM SHALL CONSIDER THE EXPERIENCE, EXPERTISE  
43 AND PAST PERFORMANCE OF THE ENTITY, THE ENTITY'S ABILITY TO UNDERTAKE  
44 THE PROJECT, THE FINANCIAL CAPABILITY, RESPONSIBILITY AND RELIABILITY OF  
45 THE ENTITY, AND SUCH OTHER QUALIFICATIONS AS THE AGENCY DEEMS APPROPRI-  
46 ATE. THE EVALUATION TEAM SHALL ALSO CONSIDER SKILLED LABOR FORCE AVAIL-  
47 ABILITY, WHETHER PROPOSED KEY PERSONNEL HAVE SUFFICIENT EXPERIENCE AND  
48 TRAINING TO COMPETENTLY MANAGE AND COMPLETE THE DESIGN AND CONSTRUCTION  
49 OF THE PROJECT, AND OTHER NON-PRICE RELATED FACTORS. IN ADDITION, THE  
50 AGENCY SHALL CONSIDER THE ENTITY'S WORKERS' COMPENSATION EXPERIENCE  
51 HISTORY AND WORKER SAFETY PROGRAMS. THE EVALUATION TEAM SHALL EVALUATE  
52 AND RATE ALL ENTITIES RESPONDING TO THE REQUEST FOR QUALIFICATIONS.  
53 BASED UPON SUCH RATINGS, THE EVALUATION TEAM SHALL LIST THE ENTITIES  
54 THAT SHALL RECEIVE A REQUEST FOR PROPOSALS IN ACCORDANCE WITH PARAGRAPH  
55 B OF THIS SUBDIVISION.

1 B. STEP TWO. THE AGENCY SHALL ISSUE A REQUEST FOR PROPOSALS TO THE  
2 ENTITIES LISTED PURSUANT TO PARAGRAPH A OF THIS SUBDIVISION. IF SUCH AN  
3 ENTITY CONSISTS OF A TEAM OF SEPARATE ENTITIES, THE ENTITIES THAT  
4 COMPRISE SUCH A TEAM MUST REMAIN UNCHANGED FROM THE ENTITY AS LISTED  
5 PURSUANT TO PARAGRAPH A OF THIS SUBDIVISION, UNLESS APPROVED BY THE  
6 AGENCY. THE REQUEST FOR PROPOSALS SHALL SET FORTH THE PROJECT'S SCOPE OF  
7 WORK, AND OTHER REQUIREMENTS AS DETERMINED BY THE AGENCY. THE REQUEST  
8 FOR PROPOSALS SHALL SPECIFY THE SELECTION CRITERIA TO BE USED TO EVALU-  
9 ATE THE RESPONSES AND THE RELATIVE WEIGHT TO BE ASSIGNED TO EACH CRITE-  
10 RION. THE RESPONSES SHALL THEN BE EVALUATED BASED UPON THE WEIGHTED  
11 CRITERIA AND SELECTION PROCEDURES IDENTIFIED IN THE REQUEST FOR  
12 PROPOSALS. SUCH CRITERIA SHALL INCLUDE THE PROPOSAL'S COST, THE QUALITY  
13 OF THE PROPOSAL'S SOLUTION, THE QUALIFICATIONS AND EXPERIENCE OF THE  
14 DESIGN AND CONSTRUCTION TEAM, AND OTHER FACTORS DEEMED PERTINENT BY THE  
15 AGENCY, WHICH MAY INCLUDE, BUT SHALL NOT BE LIMITED TO, THE PROPOSAL'S  
16 PROJECT IMPLEMENTATION, ABILITY TO COMPLETE THE WORK IN A TIMELY, COST-  
17 EFFECTIVE AND SATISFACTORY MANNER, THE SIZE, TYPE, AND DESIRED DESIGN  
18 CHARACTER OF THE PROJECT, PERFORMANCE SPECIFICATIONS COVERING THE QUALI-  
19 TY OF MATERIALS, EQUIPMENT, WORKMANSHIP, PRELIMINARY PLANS, AND ANY  
20 OTHER INFORMATION THAT THE AGENCY DEEMS PERTINENT TO THE CONSTRUCTION OF  
21 THE PROJECT. ANY CONTRACT AWARDED PURSUANT TO THIS SECTION SHALL BE  
22 AWARDED TO THE RESPONSIVE AND RESPONSIBLE ENTITY THAT SUBMITS THE  
23 PROPOSAL, WHICH OFFERS THE BEST VALUE TO THE STATE, AS DETERMINED BY THE  
24 EVALUATION TEAM IN ACCORDANCE WITH THE ESTABLISHED SELECTION CRITERIA.

25 4. WITHIN NINETY DAYS FOLLOWING THE SELECTION, THE AGENCY SHALL  
26 PROVIDE A REPORT OF THE FINDINGS OF THE EVALUATION TEAM. THE REPORT  
27 SHALL BE AVAILABLE TO THE PUBLIC FOR REVIEW.

28 5. ANY CONTRACT ENTERED INTO PURSUANT TO THIS SECTION SHALL REQUIRE  
29 THAT ANY PROFESSIONAL SERVICES REGULATED BY ARTICLES ONE HUNDRED FORTY-  
30 FIVE, ONE HUNDRED FORTY-SEVEN AND ONE HUNDRED FORTY-EIGHT OF THE EDUCA-  
31 TION LAW SHALL BE PERFORMED BY A PROFESSIONAL LICENSED IN ACCORDANCE  
32 WITH SUCH ARTICLES.

33 6. ANY PROJECT UNDERTAKEN PURSUANT TO THIS SECTION SHALL BE DEEMED A  
34 PUBLIC WORK TO BE PERFORMED IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE  
35 EIGHT OF THE LABOR LAW AND SUBJECT TO ENFORCEMENT OF PREVAILING WAGE  
36 REQUIREMENTS BY THE DEPARTMENT OF LABOR.

37 7. EACH CONTRACT ENTERED INTO BY THE AGENCY PURSUANT TO THIS SECTION  
38 SHALL COMPLY WITH THE OBJECTIVES AND GOALS OF MINORITY AND WOMEN-OWNED  
39 BUSINESS ENTERPRISES PURSUANT TO ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW  
40 AND, FOR PROJECTS RECEIVING FEDERAL AID, SHALL COMPLY WITH APPLICABLE  
41 FEDERAL REQUIREMENTS FOR DISADVANTAGED BUSINESS ENTERPRISES.

42 S 4. The public authorities law is amended by adding a new section  
43 2880-b to read as follows:

44 S 2880-B. ALTERNATIVE PROJECT DELIVERY METHODS. 1. FOR THE PURPOSES OF  
45 THIS SECTION:

46 A. "ALTERNATIVE PROJECT DELIVERY METHODOLOGY" SHALL MEAN ANY  
47 CONSTRUCTION PROJECT DELIVERY METHODOLOGY WHEREBY THE PROCUREMENT FOR  
48 THE CONSTRUCTION SERVICES IS OTHER THAN THE TRADITIONAL DESIGN-BID-BUILD  
49 PROCESS.

50 B. "STATE CONTRACTING AUTHORITY" OR "AUTHORITY" SHALL MEAN THE DORMI-  
51 TORY AUTHORITY, THE NEW YORK STATE THRUWAY AUTHORITY, THE NEW YORK CITY  
52 SCHOOL CONSTRUCTION AUTHORITY, AND THE METROPOLITAN COMMUTER TRANSPORTA-  
53 TION AUTHORITY.

54 C. "EVALUATION TEAM" SHALL MEAN A TEAM OF NOT LESS THAN FIVE PERSONS  
55 KNOWLEDGEABLE IN THE CONSTRUCTION INDUSTRY, TO BE FORMED BY A STATE

1 CONTRACTING AUTHORITY TO EVALUATE THE QUALIFICATIONS AND PROPOSALS  
2 SUBMITTED FOR THAT PROJECT.

3 2. NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS TITLE OR THE  
4 PROVISIONS OF ANY GENERAL, SPECIAL OR LOCAL LAW THAT MAY REQUIRE AN  
5 AUTHORITY TO AWARD CONTRACTS TO THE LOWEST RESPONSIBLE BIDDER AFTER  
6 ADVERTISING FOR SEALED BIDS, A STATE CONTRACTING AUTHORITY MAY PROCURE  
7 CONSTRUCTION SERVICES THROUGH AN ALTERNATIVE PROJECT DELIVERY METHODOLOGY FOR ANY PROJECT HAVING A COST OF TWENTY-FIVE MILLION DOLLARS OR  
8 MORE, PROVIDED THAT THE STATE CONTRACTING AUTHORITY DETERMINES THAT SUCH  
9 ALTERNATIVE PROJECT DELIVERY METHODOLOGY, RATHER THAN THE TRADITIONAL  
10 DESIGN-BID-BUILD PROCESS, WILL PROVIDE BEST VALUE TO THE STATE. PRIOR TO  
11 UTILIZING AN ALTERNATIVE PROJECT DELIVERY METHODOLOGY, THE AUTHORITY  
12 SHALL MAKE A WRITTEN DETERMINATION IDENTIFYING THE REASONS FOR USING AN  
13 ALTERNATIVE PROJECT DELIVERY METHODOLOGY, AND THE METHODOLOGY SELECTED.  
14 SUCH REASONS MAY INCLUDE, BUT NEED NOT BE LIMITED TO, BENEFITS RELATING  
15 TO THE PROJECT SCHEDULE, COST OF THE PROJECT, AND PROJECT FEASIBILITY.

17 3. A STATE CONTRACTING AUTHORITY THAT ELECTS TO USE AN ALTERNATIVE  
18 PROJECT DELIVERY METHODOLOGY SHALL AWARD A CONTRACT FOR SUCH SERVICES BY  
19 COMPLETING A TWO STEP PROCESS: A. STEP ONE. THE AUTHORITY SHALL GENERATE  
20 A LIST OF ENTITIES THAT HAVE DEMONSTRATED THE GENERAL CAPABILITY TO  
21 PROVIDE THE ALTERNATIVE PROJECT DELIVERY SERVICES CHOSEN FOR THE  
22 PROJECT. SUCH LIST SHALL BE GENERATED BASED ON THE AUTHORITY'S EVALUATION TEAM'S REVIEW OF RESPONSES TO A PUBLICLY ADVERTISED REQUEST FOR  
23 QUALIFICATIONS. THE AUTHORITY'S REQUEST FOR QUALIFICATIONS SHALL INCLUDE  
24 A GENERAL DESCRIPTION OF THE PROJECT, THE MAXIMUM NUMBER OF ENTITIES TO  
25 BE INCLUDED ON THE LIST, AND THE SELECTION CRITERIA TO BE USED IN DETERMINING WHICH ENTITIES ARE ELIGIBLE TO RECEIVE REQUESTS FOR PROPOSALS  
26 PURSUANT TO PARAGRAPH B OF THIS SUBDIVISION. THE SELECTION CRITERIA  
27 SHALL INCLUDE A DESCRIPTION OF THE RELATIVE WEIGHT TO BE ASSIGNED TO  
28 EACH CRITERIA. IN DETERMINING WHETHER AN ENTITY QUALIFIES FOR INCLUSION  
29 ON SUCH LIST, THE EVALUATION TEAM SHALL CONSIDER THE EXPERIENCE, EXPERIENCE AND PAST PERFORMANCE OF THE ENTITY, THE ENTITY'S ABILITY TO UNDERTAKE THE PROJECT, THE FINANCIAL CAPABILITY, RESPONSIBILITY AND RELIABILITY OF THE ENTITY, AND SUCH OTHER QUALIFICATIONS AS THE AUTHORITY DEEMS  
30 APPROPRIATE. THE EVALUATION TEAM SHALL ALSO CONSIDER SKILLED LABOR FORCE  
31 AVAILABILITY, WHETHER PROPOSED KEY PERSONNEL HAVE SUFFICIENT EXPERIENCE  
32 AND TRAINING TO COMPETENTLY MANAGE AND COMPLETE THE DESIGN AND  
33 CONSTRUCTION OF THE PROJECT, AND OTHER NON-PRICE RELATED FACTORS. IN  
34 ADDITION, THE AUTHORITY SHALL CONSIDER THE ENTITY'S WORKERS' COMPENSATION EXPERIENCE HISTORY AND WORKER SAFETY PROGRAMS. THE EVALUATION  
35 TEAM SHALL EVALUATE AND RATE ALL ENTITIES RESPONDING TO THE REQUEST FOR  
36 QUALIFICATIONS. BASED UPON SUCH RATINGS, THE EVALUATION TEAM SHALL LIST  
37 THE ENTITIES THAT SHALL RECEIVE A REQUEST FOR PROPOSALS IN ACCORDANCE  
38 WITH PARAGRAPH (B) OF THIS SUBDIVISION.

45 B. STEP TWO. THE AUTHORITY SHALL ISSUE A REQUEST FOR PROPOSALS TO THE  
46 ENTITIES LISTED PURSUANT TO PARAGRAPH A OF THIS SUBDIVISION. IF SUCH AN  
47 ENTITY CONSISTS OF A TEAM OF SEPARATE ENTITIES, THE ENTITIES THAT  
48 COMPRISE SUCH A TEAM MUST REMAIN UNCHANGED FROM THE ENTITY AS LISTED  
49 PURSUANT TO PARAGRAPH A OF THIS SUBDIVISION, UNLESS APPROVED BY THE  
50 AUTHORITY. THE REQUEST FOR PROPOSALS SHALL SET FORTH THE PROJECT'S SCOPE  
51 OF WORK, AND OTHER REQUIREMENTS AS DETERMINED BY THE AUTHORITY. THE  
52 REQUEST FOR PROPOSALS SHALL SPECIFY THE SELECTION CRITERIA TO BE USED TO  
53 EVALUATE THE RESPONSES AND THE RELATIVE WEIGHT TO BE ASSIGNED TO EACH  
54 CRITERION. THE RESPONSES SHALL THEN BE EVALUATED BASED UPON THE WEIGHTED  
55 CRITERIA AND SELECTION PROCEDURES IDENTIFIED IN THE REQUEST FOR  
56 PROPOSALS. SUCH CRITERIA SHALL INCLUDE THE PROPOSAL'S COST, THE QUALITY

1 OF THE PROPOSAL'S SOLUTION, THE QUALIFICATIONS AND EXPERIENCE OF THE  
2 DESIGN AND CONSTRUCTION TEAM, AND OTHER FACTORS DEEMED PERTINENT BY THE  
3 AUTHORITY, WHICH MAY INCLUDE, BUT SHALL NOT BE LIMITED TO, THE  
4 PROPOSAL'S PROJECT IMPLEMENTATION, ABILITY TO COMPLETE THE WORK IN A  
5 TIMELY, COST-EFFECTIVE AND SATISFACTORY MANNER, THE SIZE, TYPE, AND  
6 DESIRED DESIGN CHARACTER OF THE PROJECT, PERFORMANCE SPECIFICATIONS  
7 COVERING THE QUALITY OF MATERIALS, EQUIPMENT, WORKMANSHIP, PRELIMINARY  
8 PLANS, AND ANY OTHER INFORMATION THAT THE AUTHORITY DEEMS PERTINENT TO  
9 THE CONSTRUCTION OF THE PROJECT. ANY CONTRACT AWARDED PURSUANT TO THIS  
10 SECTION SHALL BE AWARDED TO THE RESPONSIVE AND RESPONSIBLE ENTITY THAT  
11 SUBMITS THE PROPOSAL, WHICH OFFERS THE BEST VALUE TO THE STATE, AS  
12 DETERMINED BY THE EVALUATION TEAM IN ACCORDANCE WITH THE ESTABLISHED  
13 SELECTION CRITERIA.

14 4. WITHIN NINETY DAYS FOLLOWING THE SELECTION, THE STATE CONTRACTING  
15 AUTHORITY SHALL PROVIDE A REPORT OF THE FINDINGS OF THE EVALUATION TEAM.  
16 THE REPORT SHALL BE AVAILABLE TO THE PUBLIC FOR REVIEW.

17 5. ANY CONTRACT ENTERED INTO PURSUANT TO THIS SECTION SHALL REQUIRE  
18 THAT ANY PROFESSIONAL SERVICES REGULATED BY ARTICLES ONE HUNDRED FORTY-  
19 FIVE, ONE HUNDRED FORTY-SEVEN AND ONE HUNDRED FORTY-EIGHT OF THE EDUCA-  
20 TION LAW SHALL BE PERFORMED BY A PROFESSIONAL LICENSED IN ACCORDANCE  
21 WITH SUCH ARTICLES.

22 6. ANY PROJECT UNDERTAKEN PURSUANT TO THIS SECTION SHALL BE DEEMED A  
23 PUBLIC WORK TO BE PERFORMED IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE  
24 EIGHT OF THE LABOR LAW AND SUBJECT TO ENFORCEMENT OF PREVAILING WAGE  
25 REQUIREMENTS BY THE DEPARTMENT OF LABOR.

26 7. EACH CONTRACT ENTERED INTO BY THE AUTHORITY PURSUANT TO THIS  
27 SECTION SHALL COMPLY WITH THE OBJECTIVES AND GOALS OF MINORITY AND  
28 WOMEN-OWNED BUSINESS ENTERPRISES PURSUANT TO ARTICLE FIFTEEN-A OF THE  
29 EXECUTIVE LAW AND, FOR PROJECTS RECEIVING FEDERAL AID, SHALL COMPLY WITH  
30 APPLICABLE FEDERAL REQUIREMENTS FOR DISADVANTAGED BUSINESS ENTERPRISES.

31 S 5. The education law is amended by adding a new section 376-b to  
32 read as follows:

33 S 376-B. ALTERNATIVE PROJECT DELIVERY METHODS. 1. FOR PURPOSES OF THIS  
34 SECTION:

35 A. "ALTERNATIVE PROJECT DELIVERY METHODOLOGY" SHALL MEAN ANY  
36 CONSTRUCTION PROJECT DELIVERY METHODOLOGY WHEREBY THE PROCUREMENT FOR  
37 THE CONSTRUCTION SERVICES IS OTHER THAN THE TRADITIONAL DESIGN-BID-BUILD  
38 PROCESS.

39 B. "EVALUATION TEAM" SHALL MEAN A TEAM OF NOT LESS THAN FIVE PERSONS  
40 KNOWLEDGEABLE IN THE CONSTRUCTION INDUSTRY, TO BE FORMED BY A STATE  
41 CONTRACTING AUTHORITY TO EVALUATE THE QUALIFICATIONS AND PROPOSALS  
42 SUBMITTED FOR THAT PROJECT.

43 2. NOTWITHSTANDING THE PROVISIONS OF SECTION THREE HUNDRED SEVENTY-SIX  
44 OF THIS ARTICLE, OR THE PROVISIONS OF ANY GENERAL, SPECIAL OR LOCAL LAW  
45 THAT MAY REQUIRE AN AGENCY TO AWARD CONTRACTS TO THE LOWEST RESPONSIBLE  
46 BIDDER AFTER ADVERTISING FOR SEALED BIDS, THE FUND MAY PROCURE  
47 CONSTRUCTION SERVICES THROUGH AN ALTERNATIVE PROJECT DELIVERY METHODOLOGY FOR ANY PROJECT HAVING A COST OF TWENTY-FIVE MILLION DOLLARS OR MORE, PROVIDED THAT THE FUND DETERMINES THAT SUCH ALTERNATIVE PROJECT DELIVERY METHODOLOGY, RATHER THAN THE TRADITIONAL DESIGN-BID-BUILD PROCESS, WILL PROVIDE BEST VALUE TO THE STATE. PRIOR TO UTILIZING AN ALTERNATIVE PROJECT DELIVERY METHODOLOGY, THE FUND SHALL MAKE A WRITTEN DETERMINATION IDENTIFYING THE REASONS FOR USING AN ALTERNATIVE PROJECT DELIVERY METHODOLOGY, AND THE METHODOLOGY SELECTED. SUCH REASONS MAY INCLUDE, BUT NEED NOT BE LIMITED TO, BENEFITS RELATING TO THE PROJECT SCHEDULE, COST OF THE PROJECT, AND PROJECT FEASIBILITY.

1 3. IF THE FUND ELECTS TO USE AN ALTERNATIVE PROJECT DELIVERY METHODOL-  
2 OGY, THE FUND SHALL AWARD A CONTRACT FOR SUCH SERVICES BY COMPLETING A  
3 TWO STEP PROCESS: A. STEP ONE. THE FUND SHALL GENERATE A LIST OF ENTI-  
4 TIES THAT HAVE DEMONSTRATED THE GENERAL CAPABILITY TO PROVIDE THE ALTER-  
5 NATIVE PROJECT DELIVERY SERVICES CHOSEN FOR THE PROJECT. SUCH LIST SHALL  
6 BE GENERATED BASED ON THE FUND'S EVALUATION TEAM'S REVIEW OF RESPONSES  
7 TO A PUBLICLY ADVERTISED REQUEST FOR QUALIFICATIONS. THE FUND'S REQUEST  
8 FOR QUALIFICATIONS SHALL INCLUDE A GENERAL DESCRIPTION OF THE PROJECT,  
9 THE MAXIMUM NUMBER OF ENTITIES TO BE INCLUDED ON THE LIST, AND THE  
10 SELECTION CRITERIA TO BE USED IN DETERMINING WHICH ENTITIES ARE ELIGIBLE  
11 TO RECEIVE REQUESTS FOR PROPOSALS PURSUANT TO PARAGRAPH B OF THIS SUBDI-  
12 VISION. THE SELECTION CRITERIA SHALL INCLUDE A DESCRIPTION OF THE RELA-  
13 TIVE WEIGHT TO BE ASSIGNED TO EACH CRITERIA. IN DETERMINING WHETHER AN  
14 ENTITY QUALIFIES FOR INCLUSION ON SUCH LIST, THE EVALUATION TEAM SHALL  
15 CONSIDER THE EXPERIENCE, EXPERTISE AND PAST PERFORMANCE OF THE ENTITY,  
16 THE ENTITY'S ABILITY TO UNDERTAKE THE PROJECT, THE FINANCIAL CAPABILITY,  
17 RESPONSIBILITY AND RELIABILITY OF THE ENTITY, AND SUCH OTHER QUALIFICA-  
18 TIONS AS THE FUND DEEMS APPROPRIATE. THE EVALUATION TEAM SHALL ALSO  
19 CONSIDER SKILLED LABOR FORCE AVAILABILITY, WHETHER PROPOSED KEY PERSON-  
20 NEL HAVE SUFFICIENT EXPERIENCE AND TRAINING TO COMPETENTLY MANAGE AND  
21 COMPLETE THE DESIGN AND CONSTRUCTION OF THE PROJECT, AND OTHER NON-PRICE  
22 RELATED FACTORS. IN ADDITION, THE FUND SHALL CONSIDER THE ENTITY'S WORK-  
23 ERS' COMPENSATION EXPERIENCE HISTORY AND WORKER SAFETY PROGRAMS. THE  
24 EVALUATION TEAM SHALL EVALUATE AND RATE ALL ENTITIES RESPONDING TO THE  
25 REQUEST FOR QUALIFICATIONS. BASED UPON SUCH RATINGS, THE EVALUATION TEAM  
26 SHALL LIST THE ENTITIES THAT SHALL RECEIVE A REQUEST FOR PROPOSALS IN  
27 ACCORDANCE WITH PARAGRAPH B OF THIS SUBDIVISION.

28 B. STEP TWO. THE FUND SHALL ISSUE A REQUEST FOR PROPOSALS TO THE ENTI-  
29 TIES LISTED PURSUANT TO PARAGRAPH A OF THIS SUBDIVISION. IF SUCH AN  
30 ENTITY CONSISTS OF A TEAM OF SEPARATE ENTITIES, THE ENTITIES THAT  
31 COMPRISE SUCH A TEAM MUST REMAIN UNCHANGED FROM THE ENTITY AS LISTED  
32 PURSUANT TO PARAGRAPH A OF THIS SUBDIVISION, UNLESS APPROVED BY THE  
33 FUND. THE REQUEST FOR PROPOSALS SHALL SET FORTH THE PROJECT'S SCOPE OF  
34 WORK, AND OTHER REQUIREMENTS AS DETERMINED BY THE FUND. THE REQUEST FOR  
35 PROPOSALS SHALL SPECIFY THE SELECTION CRITERIA TO BE USED TO EVALUATE  
36 THE RESPONSES AND THE RELATIVE WEIGHT TO BE ASSIGNED TO EACH CRITERION.  
37 THE RESPONSES SHALL THEN BE EVALUATED BASED UPON THE WEIGHTED CRITERIA  
38 AND SELECTION PROCEDURES IDENTIFIED IN THE REQUEST FOR PROPOSALS. SUCH  
39 CRITERIA SHALL INCLUDE THE PROPOSAL'S COST, THE QUALITY OF THE  
40 PROPOSAL'S SOLUTION, THE QUALIFICATIONS AND EXPERIENCE OF THE DESIGN AND  
41 CONSTRUCTION TEAM, AND OTHER FACTORS DEEMED PERTINENT BY THE FUND, WHICH  
42 MAY INCLUDE, BUT SHALL NOT BE LIMITED TO, THE PROPOSAL'S PROJECT IMPE-  
43 LEMENTATION, ABILITY TO COMPLETE THE WORK IN A TIMELY, COST-EFFECTIVE AND  
44 SATISFACTORY MANNER, THE SIZE, TYPE, AND DESIRED DESIGN CHARACTER OF THE  
45 PROJECT, PERFORMANCE SPECIFICATIONS COVERING THE QUALITY OF MATERIALS,  
46 EQUIPMENT, WORKMANSHIP, PRELIMINARY PLANS, AND ANY OTHER INFORMATION  
47 THAT THE FUND DEEMS PERTINENT TO THE CONSTRUCTION OF THE PROJECT. ANY  
48 CONTRACT AWARDED PURSUANT TO THIS SECTION SHALL BE AWARDED TO THE  
49 RESPONSIVE AND RESPONSIBLE ENTITY THAT SUBMITS THE PROPOSAL, WHICH  
50 OFFERS THE BEST VALUE TO THE STATE, AS DETERMINED BY THE EVALUATION TEAM  
51 IN ACCORDANCE WITH THE ESTABLISHED SELECTION CRITERIA.

52 4. WITHIN NINETY DAYS FOLLOWING THE SELECTION, THE FUND SHALL PROVIDE  
53 A REPORT OF THE FINDINGS OF THE EVALUATION TEAM. THE REPORT SHALL BE  
54 AVAILABLE TO THE PUBLIC FOR REVIEW.

55 5. ANY CONTRACT ENTERED INTO PURSUANT TO THIS SECTION SHALL REQUIRE  
56 THAT ANY PROFESSIONAL SERVICES REGULATED BY ARTICLES ONE HUNDRED FORTY-

1 FIVE, ONE HUNDRED FORTY-SEVEN AND ONE HUNDRED FORTY-EIGHT OF THIS CHAP-  
2 TER SHALL BE PERFORMED BY A PROFESSIONAL LICENSED IN ACCORDANCE WITH  
3 SUCH ARTICLES.

4 6. ANY PROJECT UNDERTAKEN PURSUANT TO THIS SECTION SHALL BE DEEMED A  
5 PUBLIC WORK TO BE PERFORMED IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE  
6 EIGHT OF THE LABOR LAW AND SUBJECT TO ENFORCEMENT OF PREVAILING WAGE  
7 REQUIREMENTS BY THE DEPARTMENT OF LABOR.

8 7. EACH CONTRACT ENTERED INTO BY THE FUND PURSUANT TO THIS SECTION  
9 SHALL COMPLY WITH THE OBJECTIVES AND GOALS OF MINORITY AND WOMEN-OWNED  
10 BUSINESS ENTERPRISES PURSUANT TO ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW  
11 AND, FOR PROJECTS RECEIVING FEDERAL AID, SHALL COMPLY WITH APPLICABLE  
12 FEDERAL REQUIREMENTS FOR DISADVANTAGED BUSINESS ENTERPRISES.

13 S 6. The education law is amended by adding a new section 6283 to read  
14 as follows:

15 S 6283. ALTERNATIVE PROJECT DELIVERY METHODS. 1. FOR PURPOSES OF THIS  
16 SECTION:

17 A. "ALTERNATIVE PROJECT DELIVERY METHODOLOGY" SHALL MEAN ANY  
18 CONSTRUCTION PROJECT DELIVERY METHODOLOGY WHEREBY THE PROCUREMENT FOR  
19 THE CONSTRUCTION SERVICES IS OTHER THAN THE TRADITIONAL DESIGN-BID-BUILD  
20 PROCESS.

21 B. "EVALUATION TEAM" SHALL MEAN A TEAM OF NOT LESS THAN FIVE PERSONS  
22 KNOWLEDGEABLE IN THE CONSTRUCTION INDUSTRY, TO BE FORMED BY THE FUND TO  
23 EVALUATE THE QUALIFICATIONS AND PROPOSALS SUBMITTED FOR THAT PROJECT.

24 2. NOTWITHSTANDING THE PROVISIONS OF ANY GENERAL, SPECIAL OR LOCAL LAW  
25 THAT MAY REQUIRE AN AGENCY TO AWARD CONTRACTS TO THE LOWEST RESPONSIBLE  
26 BIDDER AFTER ADVERTISING FOR SEALED BIDS, THE FUND MAY PROCURE  
27 CONSTRUCTION SERVICES THROUGH AN ALTERNATIVE PROJECT DELIVERY METHODOL-  
28 OGY FOR ANY PROJECT HAVING A COST OF TWENTY-FIVE MILLION DOLLARS OR  
29 MORE, PROVIDED THAT THE FUND DETERMINES THAT SUCH ALTERNATIVE PROJECT  
30 DELIVERY METHODOLOGY, RATHER THAN THE TRADITIONAL DESIGN-BID-BUILD PROC-  
31 ESS, WILL PROVIDE BEST VALUE TO THE STATE. PRIOR TO UTILIZING AN ALTER-  
32 NATIVE PROJECT DELIVERY METHODOLOGY, THE FUND SHALL MAKE A WRITTEN  
33 DETERMINATION IDENTIFYING THE REASONS FOR USING AN ALTERNATIVE PROJECT  
34 DELIVERY METHODOLOGY, AND THE METHODOLOGY SELECTED. SUCH REASONS MAY  
35 INCLUDE, BUT NEED NOT BE LIMITED TO, BENEFITS RELATING TO THE PROJECT  
36 SCHEDULE, COST OF THE PROJECT, AND PROJECT FEASIBILITY.

37 3. IF THE FUND ELECTS TO USE AN ALTERNATIVE PROJECT DELIVERY METHODOL-  
38 OGY, THE FUND SHALL AWARD A CONTRACT FOR SUCH SERVICES BY COMPLETING A  
39 TWO STEP PROCESS: A. STEP ONE. THE FUND SHALL GENERATE A LIST OF ENTI-  
40 TIES THAT HAVE DEMONSTRATED THE GENERAL CAPABILITY TO PROVIDE THE ALTER-  
41 NATIVE PROJECT DELIVERY SERVICES CHOSEN FOR THE PROJECT. SUCH LIST SHALL  
42 BE GENERATED BASED ON THE FUND'S EVALUATION TEAM'S REVIEW OF RESPONSES  
43 TO A PUBLICLY ADVERTISED REQUEST FOR QUALIFICATIONS. THE FUND'S REQUEST  
44 FOR QUALIFICATIONS SHALL INCLUDE A GENERAL DESCRIPTION OF THE PROJECT,  
45 THE MAXIMUM NUMBER OF ENTITIES TO BE INCLUDED ON THE LIST, AND THE  
46 SELECTION CRITERIA TO BE USED IN DETERMINING WHICH ENTITIES ARE ELIGIBLE  
47 TO RECEIVE REQUESTS FOR PROPOSALS PURSUANT TO PARAGRAPH B OF THIS SUBDI-  
48 VISION. THE SELECTION CRITERIA SHALL INCLUDE A DESCRIPTION OF THE RELA-  
49 TIVE WEIGHT TO BE ASSIGNED TO EACH CRITERIA. IN DETERMINING WHETHER AN  
50 ENTITY QUALIFIES FOR INCLUSION ON SUCH LIST, THE EVALUATION TEAM SHALL  
51 CONSIDER THE EXPERIENCE, EXPERTISE AND PAST PERFORMANCE OF THE ENTITY,  
52 THE ENTITY'S ABILITY TO UNDERTAKE THE PROJECT, THE FINANCIAL CAPABILITY,  
53 RESPONSIBILITY AND RELIABILITY OF THE ENTITY, AND SUCH OTHER QUALIFICA-  
54 TIONS AS THE FUND DEEMS APPROPRIATE. THE EVALUATION TEAM SHALL ALSO  
55 CONSIDER SKILLED LABOR FORCE AVAILABILITY, WHETHER PROPOSED KEY PERSON-  
56 NEL HAVE SUFFICIENT EXPERIENCE AND TRAINING TO COMPETENTLY MANAGE AND

1 COMPLETE THE DESIGN AND CONSTRUCTION OF THE PROJECT, AND OTHER NON-PRICE  
2 RELATED FACTORS. IN ADDITION, THE FUND SHALL CONSIDER THE ENTITY'S WORK-  
3 ERS' COMPENSATION EXPERIENCE HISTORY AND WORKER SAFETY PROGRAMS. THE  
4 EVALUATION TEAM SHALL EVALUATE AND RATE ALL ENTITIES RESPONDING TO THE  
5 REQUEST FOR QUALIFICATIONS. BASED UPON SUCH RATINGS, THE EVALUATION TEAM  
6 SHALL LIST THE ENTITIES THAT SHALL RECEIVE A REQUEST FOR PROPOSALS IN  
7 ACCORDANCE WITH PARAGRAPH B OF THIS SUBDIVISION.

8 B. STEP TWO. THE FUND SHALL ISSUE A REQUEST FOR PROPOSALS TO THE ENTI-  
9 TIES LISTED PURSUANT TO PARAGRAPH A OF THIS SUBDIVISION. IF SUCH AN  
10 ENTITY CONSISTS OF A TEAM OF SEPARATE ENTITIES, THE ENTITIES THAT  
11 COMPRISE SUCH A TEAM MUST REMAIN UNCHANGED FROM THE ENTITY AS LISTED  
12 PURSUANT TO PARAGRAPH A OF THIS SUBDIVISION, UNLESS APPROVED BY THE  
13 FUND. THE REQUEST FOR PROPOSALS SHALL SET FORTH THE PROJECT'S SCOPE OF  
14 WORK, AND OTHER REQUIREMENTS AS DETERMINED BY THE FUND. THE REQUEST FOR  
15 PROPOSALS SHALL SPECIFY THE SELECTION CRITERIA TO BE USED TO EVALUATE  
16 THE RESPONSES AND THE RELATIVE WEIGHT TO BE ASSIGNED TO EACH CRITERION.  
17 THE RESPONSES SHALL THEN BE EVALUATED BASED UPON THE WEIGHTED CRITERIA  
18 AND SELECTION PROCEDURES IDENTIFIED IN THE REQUEST FOR PROPOSALS. SUCH  
19 CRITERIA SHALL INCLUDE THE PROPOSAL'S COST, THE QUALITY OF THE  
20 PROPOSAL'S SOLUTION, THE QUALIFICATIONS AND EXPERIENCE OF THE DESIGN AND  
21 CONSTRUCTION TEAM, AND OTHER FACTORS DEEMED PERTINENT BY THE FUND, WHICH  
22 MAY INCLUDE, BUT SHALL NOT BE LIMITED TO, THE PROPOSAL'S PROJECT IMPL-  
23 EMENTATION, ABILITY TO COMPLETE THE WORK IN A TIMELY, COST-EFFECTIVE AND  
24 SATISFACTORY MANNER, THE SIZE, TYPE, AND DESIRED DESIGN CHARACTER OF THE  
25 PROJECT, PERFORMANCE SPECIFICATIONS COVERING THE QUALITY OF MATERIALS,  
26 EQUIPMENT, WORKMANSHIP, PRELIMINARY PLANS, AND ANY OTHER INFORMATION  
27 THAT THE FUND DEEMS PERTINENT TO THE CONSTRUCTION OF THE PROJECT. ANY  
28 CONTRACT AWARDED PURSUANT TO THIS SECTION SHALL BE AWARDED TO THE  
29 RESPONSIVE AND RESPONSIBLE ENTITY THAT SUBMITS THE PROPOSAL, WHICH  
30 OFFERS THE BEST VALUE TO THE STATE, AS DETERMINED BY THE EVALUATION TEAM  
31 IN ACCORDANCE WITH THE ESTABLISHED SELECTION CRITERIA.

32 4. WITHIN NINETY DAYS FOLLOWING THE SELECTION, THE FUND SHALL PROVIDE  
33 A REPORT OF THE FINDINGS OF THE EVALUATION TEAM. THE REPORT SHALL BE  
34 AVAILABLE TO THE PUBLIC FOR REVIEW.

35 5. ANY CONTRACT ENTERED INTO PURSUANT TO THIS SECTION SHALL REQUIRE  
36 THAT ANY PROFESSIONAL SERVICES REGULATED BY ARTICLES ONE HUNDRED FORTY-  
37 FIVE, ONE HUNDRED FORTY-SEVEN AND ONE HUNDRED FORTY-EIGHT OF THIS CHAP-  
38 TER SHALL BE PERFORMED BY A PROFESSIONAL LICENSED IN ACCORDANCE WITH  
39 SUCH ARTICLES.

40 6. ANY PROJECT UNDERTAKEN PURSUANT TO THIS SECTION SHALL BE DEEMED A  
41 PUBLIC WORK TO BE PERFORMED IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE  
42 EIGHT OF THE LABOR LAW AND SUBJECT TO ENFORCEMENT OF PREVAILING WAGE  
43 REQUIREMENTS BY THE DEPARTMENT OF LABOR.

44 7. EACH CONTRACT ENTERED INTO BY THE FUND PURSUANT TO THIS SECTION  
45 SHALL COMPLY WITH THE OBJECTIVES AND GOALS OF MINORITY AND WOMEN-OWNED  
46 BUSINESS ENTERPRISES PURSUANT TO ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW  
47 AND, FOR PROJECTS RECEIVING FEDERAL AID, SHALL COMPLY WITH APPLICABLE  
48 FEDERAL REQUIREMENTS FOR DISADVANTAGED BUSINESS ENTERPRISES.

49 S 7. This act shall take effect immediately.