

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 dormi-
13 tory 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 subdivi-
19 sion 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 METHODOL-
48 OGY FOR ANY PROJECT HAVING A COST OF TWENTY-FIVE MILLION DOLLARS OR
49 MORE, PROVIDED THAT THE FUND DETERMINES THAT SUCH ALTERNATIVE PROJECT
50 DELIVERY METHODOLOGY, RATHER THAN THE TRADITIONAL DESIGN-BID-BUILD PROC-
51 ESS, WILL PROVIDE BEST VALUE TO THE STATE. PRIOR TO UTILIZING AN ALTER-
52 NATIVE PROJECT DELIVERY METHODOLOGY, THE FUND SHALL MAKE A WRITTEN
53 DETERMINATION IDENTIFYING THE REASONS FOR USING AN ALTERNATIVE PROJECT
54 DELIVERY METHODOLOGY, AND THE METHODOLOGY SELECTED. SUCH REASONS MAY
55 INCLUDE, BUT NEED NOT BE LIMITED TO, BENEFITS RELATING TO THE PROJECT
56 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 IMPL-
43 EMENTATION, 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.