S T A T E O F N E W Y O R K

S. 3035--A A. 4735--A

2011-2012 Regular Sessions

S E N A T E - A S S E M B L Y

February 7, 2011

IN SENATE -- Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- Introduced by M. of A. CANESTRARI -- Multi-Sponsored by -- M. of A. LATIMER -- read once and referred to the Committee on Higher Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, the state finance law, the transportation law, the public authorities law, the general municipal law and the business corporation law, in relation to authorizing the use of an alternative project delivery method, including design-build and construction management-at-risk as methods for the construction, reconstruction, alteration, repair or improvement of a state building

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

Section 1. Section 2513 of the education law, as added by chapter 861 of the laws of 1953, is amended to read as follows:

S 2513. Contracts; advertisement for bids. The board of education shall let all contracts for public work and all purchase contracts to the lowest responsible bidder after advertisement for bids where so required by section one hundred three of the general municipal law, PROVIDED, HOWEVER THAT NOTWITHSTANDING ANY OTHER PROVISION OF THE LAW THAT REQUIRES THE BOARD OF EDUCATION TO AWARD PUBLIC WORK CONTRACTS TO THE LOWEST RESPONSIBLE BIDDER AFTER ADVERTISING FOR SEALED BIDS, THE BOARD OF EDUCATION SHALL HAVE THE POWER TO AWARD A CONTRACT USING AN ALTERNATIVE PROJECT DELIVERY METHOD, INCLUDING THE POWER TO SOLICIT AND AWARD A CONSTRUCTION MANAGEMENT-AT-RISK CONTRACT OR A DESIGN-BUILD CONTRACT AS SET FORTH IN SECTION ONE HUNDRED THIRTY-FIVE-B OF THE STATE FINANCE LAW.

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

LBD05786-02-1

S 2. Subdivision 10 of section 2556 of the education law, as added by chapter 861 of the laws of 1953, is amended to read as follows:

10. The board of education shall let all contracts for public work and all purchase contracts to the lowest responsible bidder after advertisement for bids where so required by section one hundred three of the general municipal law, PROVIDED, HOWEVER THAT NOTWITHSTANDING ANY OTHER PROVISION OF THE LAW THAT REQUIRES THE BOARD OF EDUCATION TO AWARD PUBLIC WORK CONTRACTS TO THE LOWEST RESPONSIBLE BIDDER AFTER ADVERTISING FOR SEALED BIDS, THE BOARD OF EDUCATION SHALL HAVE THE POWER TO AWARD A CONTRACT USING AN ALTERNATIVE PROJECT DELIVERY METHOD, INCLUDING THE POWER TO SOLICIT AND AWARD A CONSTRUCTION MANAGEMENT-AT-RISK CONTRACT OR A DESIGN-BUILD CONTRACT AS SET FORTH IN SECTION ONE HUNDRED THIRTY-FIVE-B OF THE STATE FINANCE LAW.

S 3. Subdivisions 8 and 12 of section 373 of the education law, as added by chapter 251 of the laws of 1962, are amended to read as follows:

8. To design, construct, acquire, reconstruct, rehabilitate and improve academic buildings, dormitories and other facilities for the state university [in accordance with sections three hundred seventy-five and three hundred seventy-six of this chapter] USING AN ALTERNATIVE PROJECT DELIVERY METHOD, INCLUDING BUT NOT LIMITED TO CONSTRUCTION MANAGEMENT-AT-RISK OR DESIGN-BUILD THAT WILL ASSIST THE FUND IN FULFILLING ITS PURPOSES UNDER SECTION THREE HUNDRED SEVENTY-TWO OF THIS ARTICLE;

12. To [make] PROCURE and execute contracts, lease agreements, and all other instruments necessary or convenient for the exercise of its corporate powers and the fulfillment of its corporate purposes under this article;

S 4. Section 6275 of the education law is amended by adding a new subdivision 16 to read as follows:

(16) NOTWITHSTANDING ANY OTHER PROVISION OF THE LAW THAT REQUIRES THE FUND TO AWARD PUBLIC WORK CONTRACTS TO THE LOWEST RESPONSIBLE BIDDER AFTER ADVERTISING FOR SEALED BIDS, THE FUND SHALL HAVE THE POWER TO AWARD A CONTRACT USING AN ALTERNATIVE PROJECT DELIVERY METHOD, INCLUDING THE POWER TO SOLICIT AND AWARD A CONSTRUCTION MANAGEMENT-AT-RISK CONTRACT OR DESIGN-BUILD CONTRACT, AS SET FORTH IN SECTION ONE HUNDRED THIRTY-FIVE-B OF THE STATE FINANCE LAW.

S 5. Section 454 of the education law is amended by adding a new subdivision 24 to read as follows:

24. NOTWITHSTANDING ANY OTHER PROVISION OF THE LAW THAT REQUIRES THE FUND TO AWARD PUBLIC WORK CONTRACTS TO THE LOWEST RESPONSIBLE BIDDER AFTER ADVERTISING FOR SEALED BIDS, THE FUND SHALL HAVE THE POWER TO AWARD A CONTRACT USING AN ALTERNATIVE PROJECT DELIVERY METHOD, INCLUDING THE POWER TO SOLICIT AND AWARD A CONSTRUCTION MANAGEMENT-AT-RISK CONTRACT OR DESIGN-BUILD CONTRACT, AS SET FORTH IN SECTION ONE HUNDRED THIRTY-FIVE-B OF THE STATE FINANCE LAW.

S 6. Subdivision 1 of section 7306 of the education law is amended by adding a new paragraph h to read as follows:

H. DESIGN-BUILD SERVICES PROVIDED BY A DESIGN-BUILD FIRM WHERE AN ARCHITECT WHO MEETS THE REQUIREMENTS OF SECTION SEVENTY-THREE HUNDRED FOUR OF THIS ARTICLE COMPLETES ALL DESIGN ELEMENTS.

S 7. Section 7208 of the education law is amended by adding a new subdivision q to read as follows:

Q. DESIGN-BUILD SERVICES PROVIDED BY A DESIGN-BUILD FIRM WHERE AN ENGINEER WHO MEETS THE REQUIREMENTS OF SECTION SEVENTY-TWO HUNDRED SIX

OF THIS ARTICLE IS RESPONSIBLE FOR COMPLIANCE WITH ALL ENGINEERING DESIGN REQUIREMENTS.

S 8. The state finance law is amended by adding a new section 135-b to read as follows:

S 135-B. ALTERNATIVE PROJECT DELIVERY. NOTWITHSTANDING ANY OTHER PROVISION OF THE LAW THAT REQUIRES A STATE AGENCY TO AWARD CONTRACTS TO THE LOWEST RESPONSIBLE BIDDER AFTER ADVERTISING FOR SEALED BIDS, ANY STATE AGENCY SHALL HAVE THE POWER TO AWARD A CONTRACT USING AN ALTERNATIVE PROJECT DELIVERY METHOD, INCLUDING THE POWER TO SOLICIT AND AWARD A DESIGN-BUILD CONTRACT OR A CONSTRUCTION MANAGEMENT-AT-RISK CONTRACT.

1. (A) ANY STATE AGENCY MAY USE THE DESIGN-BUILD METHOD FOR THE CONSTRUCTION, RECONSTRUCTION, ALTERATION, REPAIR OR IMPROVEMENT OF A STATE BUILDING. IN USING THAT METHOD AND IN ENTERING INTO A CONTRACT FOR THE SERVICES OF A DESIGN-BUILD FIRM, THE STATE AGENCY AND THE DESIGN-BUILD FIRM SHALL FOLLOW THE PROCEDURES PROVIDED BY THIS SECTION.

(B) THE STATE AGENCY SHALL SELECT OR DESIGNATE AN ENGINEER OR ARCHITECT INDEPENDENT OF THE DESIGN-BUILD FIRM TO ACT AS ITS REPRESENTATIVE FOR THE DURATION OF THE WORK ON THE FACILITY. IF THE STATE AGENCY'S ARCHITECT OR ENGINEER IS NOT A FULL-TIME EMPLOYEE OF THE STATE, THE GOVERNMENTAL ENTITY SHALL SELECT THE ARCHITECT OR ENGINEER ON THE BASIS OF DEMONSTRATED COMPETENCE AND QUALIFICATIONS AS PROVIDED BY SECTION ONE HUNDRED THIRTY-SIX-A OF THIS ARTICLE.

(C) THE STATE AGENCY SHALL PREPARE A REQUEST FOR QUALIFICATIONS THAT INCLUDES GENERAL INFORMATION ON THE PROJECT SITE, PROJECT SCOPE, BUDGET, SPECIAL SYSTEMS, SELECTION CRITERIA, AND OTHER INFORMATION THAT MAY ASSIST A POTENTIAL DESIGN-BUILD FIRM IN SUBMITTING PROPOSALS FOR THE PROJECT. THE STATE AGENCY SHALL ALSO PREPARE A DESIGN CRITERIA PACKAGE THAT INCLUDES MORE DETAILED INFORMATION ON THE PROJECT. IF THE PREPARATION OF THE DESIGN CRITERIA PACKAGE REQUIRES ENGINEERING OR ARCHITECTURAL SERVICES THAT CONSTITUTE THE PRACTICE OF ENGINEERING WITHIN THE MEANING OF ARTICLE ONE HUNDRED FORTY-FIVE OF THE EDUCATION LAW, OR THE PRACTICE OF ARCHITECTURE WITHIN THE MEANING OF ARTICLE ONE HUNDRED FORTY-SEVEN OF THE EDUCATION LAW, THOSE SERVICES SHALL BE PROVIDED IN ACCORDANCE WITH SECTION ONE HUNDRED THIRTY-SIX-A OF THIS ARTICLE.

(D) THE STATE AGENCY SHALL EVALUATE STATEMENTS OF QUALIFICATIONS AND SELECT A DESIGN-BUILD FIRM IN TWO PHASES. (I) IN PHASE ONE, THE STATE AGENCY SHALL PREPARE A REQUEST FOR QUALIFICATIONS AND EVALUATE EACH OFFERER'S EXPERIENCE, QUALIFICATIONS, PROJECT APPROACH, ORGANIZATION, RECORD OF PERFORMANCE, FINANCIAL CAPACITY, DEMONSTRATED ABILITY TO COMPLY WITH APPLICABLE REQUIREMENTS, STATUS AS A MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE CERTIFIED UNDER ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW OR ITS RECORD OF UTILIZATION OF SUCH CERTIFIED ENTERPRISES IN OTHER PROJECTS COMPLETED BY THE ENTITY, RECORD OF UTILIZATION OF SMALL AND OTHER NEW YORK STATE BUSINESS ENTERPRISES IN OTHER PROJECTS COMPLETED BY THE ENTITY, AND SUCH OTHER CRITERIA AS THE AUTHORITY DEEMS APPROPRIATE, EXCEPT THAT COST-RELATED OR PRICE-RELATED EVALUATION FACTORS ARE NOT PERMITTED. EACH OFFEROR MUST CERTIFY TO THE STATE AGENCY THAT EACH ENGINEER OR ARCHITECT THAT IS A MEMBER OF ITS TEAM WAS SELECTED BASED ON DEMONSTRATED COMPETENCE AND QUALIFICATIONS. THE STATE AGENCY SHALL QUALIFY A MAXIMUM OF FIVE OFFERORS TO SUBMIT ADDITIONAL INFORMATION AND, IF THE STATE AGENCY CHOOSES, TO INTERVIEW FOR FINAL SELECTION.

(II) IN PHASE TWO, THE STATE AGENCY SHALL EVALUATE THE INFORMATION SUBMITTED BY THE OFFERORS ON THE BASIS OF THE SELECTION CRITERIA STATED IN THE REQUEST FOR QUALIFICATIONS AND THE RESULTS OF AN INTERVIEW. THE STATE AGENCY MAY REQUEST ADDITIONAL INFORMATION REGARDING DEMONSTRATED

COMPETENCE AND QUALIFICATIONS, CONSIDERATIONS OF THE SAFETY AND LONG-TERM DURABILITY OF THE PROJECT, THE FEASIBILITY OF IMPLEMENTING THE PROJECT AS PROPOSED, THE ABILITY OF THE OFFEROR TO MEET SCHEDULES, COSTING METHODOLOGY, OR OTHER FACTORS AS APPROPRIATE. THE STATE AGENCY MAY NOT REQUIRE OFFERORS TO SUBMIT DETAILED ENGINEERING OR ARCHITECTURAL DESIGNS AS PART OF THE PROPOSAL. THE STATE AGENCY SHALL RANK EACH PROPOSAL SUBMITTED ON THE BASIS OF THE CRITERIA SET FORTH IN THE REQUEST FOR QUALIFICATIONS. THE STATE AGENCY SHALL SELECT THE DESIGN-BUILD FIRM THAT SUBMITS THE PROPOSAL OFFERING THE BEST VALUE FOR THE STATE AGENCY ON THE BASIS OF THE PUBLISHED SELECTION CRITERIA AND ON ITS RANKING EVALUATIONS. THE STATE AGENCY SHALL FIRST ATTEMPT TO NEGOTIATE A CONTRACT WITH THE SELECTED OFFEROR. IF THE STATE AGENCY IS UNABLE TO NEGOTIATE A SATISFACTORY CONTRACT WITH THE SELECTED OFFEROR, THE STATE AGENCY SHALL, FORMALLY AND IN WRITING, END NEGOTIATIONS WITH THAT OFFEROR AND PROCEED TO NEGOTIATE WITH THE NEXT OFFEROR IN THE ORDER OF THE SELECTION RANKING UNTIL A CONTRACT IS REACHED OR NEGOTIATIONS WITH ALL RANKED OFFERORS END.

(E) FOLLOWING SELECTION OF A DESIGN-BUILD FIRM UNDER PARAGRAPH (D) OF THIS SUBDIVISION, THAT DESIGN-BUILD FIRM'S ARCHITECTS OR ENGINEERS SHALL COMPLETE THE DESIGN, SUBMITTING ALL DESIGN ELEMENTS FOR REVIEW AND DETERMINATION OF SCOPE COMPLIANCE TO THE STATE AGENCY OR THE STATE AGENCY'S ARCHITECT OR ENGINEER BEFORE OR CONCURRENTLY WITH CONSTRUCTION.

(F) AN ENGINEER SHALL HAVE RESPONSIBILITY FOR COMPLIANCE WITH THE ENGINEERING DESIGN REQUIREMENTS AND ALL OTHER APPLICABLE REQUIREMENTS OF ARTICLE ONE HUNDRED FORTY-FIVE OF THE EDUCATION LAW. AN ARCHITECT SHALL HAVE RESPONSIBILITY FOR COMPLIANCE WITH THE REQUIREMENTS OF ARTICLE ONE HUNDRED FORTY-SEVEN OF THE EDUCATION LAW.

(G) THE STATE AGENCY SHALL PROVIDE OR CONTRACT FOR, INDEPENDENTLY OF THE DESIGN-BUILD FIRM, THE INSPECTION SERVICES, THE TESTING OF CONSTRUCTION MATERIALS ENGINEERING, AND THE VERIFICATION TESTING SERVICES NECESSARY FOR ACCEPTANCE OF THE BUILDING BY THE STATE AGENCY. THE STATE AGENCY SHALL SELECT THOSE SERVICES FOR WHICH IT CONTRACTS IN ACCORDANCE WITH SECTION ONE HUNDRED THIRTY-SIX-A OF THIS ARTICLE.

(H) THE STATE AGENCY MAY DEVELOP WRITTEN PROCEDURES GOVERNING THE SELECTION, EVALUATION, AND AWARD OF DESIGN-BUILD CONTRACTS. SUCH PROCEDURES SHALL BE CONSISTENT WITH THOSE DESCRIBED IN THIS SECTION AND MAY BE REVISED FROM TIME TO TIME AS DEEMED NECESSARY.

(I) THIS SECTION SHALL NOT BE CONSTRUED TO SUPERSEDE SECTION TWO HUNDRED TWENTY OF THE LABOR LAW REQUIRING THE PAYMENT OF PREVAILING WAGES FOR PUBLIC WORKS.

2. (A) ANY STATE AGENCY MAY USE THE CONSTRUCTION MANAGEMENT-AT-RISK METHOD FOR THE CONSTRUCTION, RECONSTRUCTION, ALTERATION, REPAIR OR IMPROVEMENT OF A STATE BUILDING. IN USING THAT METHOD AND IN ENTERING INTO A CONTRACT WITH A CONSTRUCTION MANAGER-AT-RISK, THE STATE AGENCY AND THE CONSTRUCTION MANAGER-AT-RISK SHALL FOLLOW THE PROCEDURES PROVIDED BY THIS SECTION.

(B) BEFORE OR CONCURRENTLY WITH SELECTING A CONSTRUCTION MANAGER-AT-RISK, THE STATE AGENCY SHALL SELECT OR DESIGNATE AN ENGINEER QUALIFIED UNDER ARTICLE ONE HUNDRED FORTY-FIVE OF THE EDUCATION LAW OR ARCHITECT QUALIFIED UNDER ARTICLE ONE HUNDRED FORTY-SEVEN OF THE EDUCATION LAW WHO SHALL PREPARE THE CONSTRUCTION DOCUMENTS FOR THE PROJECT. IF THE ENGINEER OR ARCHITECT IS NOT A FULL-TIME EMPLOYEE OF THE STATE, THE STATE AGENCY SHALL SELECT THE ENGINEER OR ARCHITECT ON THE BASIS OF DEMONSTRATED COMPETENCE AND QUALIFICATIONS AS PROVIDED BY SECTION ONE HUNDRED THIRTY-SIX-A OF THIS ARTICLE. THE AGENCY'S ENGINEER OR ARCHITECT FOR A PROJECT MAY NOT SERVE, ALONE OR IN COMBINATION WITH ANOTHER, AS

THE CONSTRUCTION MANAGER-AT-RISK. THIS SUBDIVISION DOES NOT PROHIBIT A STATE AGENCY ENGINEER OR ARCHITECT FROM PROVIDING CUSTOMARY CONSTRUCTION PHASE SERVICES UNDER THE ENGINEER'S OR ARCHITECT'S ORIGINAL PROFESSIONAL SERVICE AGREEMENT IN ACCORDANCE WITH APPLICABLE LICENSING LAWS.

(C) THE STATE AGENCY SHALL PROVIDE OR CONTRACT FOR, INDEPENDENTLY OF THE CONSTRUCTION MANAGER-AT-RISK, THE INSPECTION SERVICES, THE TESTING OF CONSTRUCTION MATERIALS ENGINEERING, AND THE VERIFICATION TESTING SERVICES NECESSARY FOR ACCEPTANCE OF THE BUILDING BY THE STATE AGENCY. THE STATE AGENCY SHALL SELECT THOSE SERVICES FOR WHICH IT CONTRACTS IN ACCORDANCE WITH SECTION ONE HUNDRED THIRTY-SIX-A OF THIS ARTICLE.

(D) THE STATE AGENCY SHALL SELECT THE CONSTRUCTION MANAGER-AT-RISK IN EITHER A ONE-STEP OR TWO-STEP PROCESS. THE STATE AGENCY SHALL PREPARE A REQUEST FOR PROPOSALS, IN THE CASE OF A ONE-STEP PROCESS, OR A REQUEST FOR QUALIFICATIONS, IN THE CASE OF A TWO-STEP PROCESS, THAT INCLUDES GENERAL INFORMATION ON THE PROJECT SITE, PROJECT SCOPE, SCHEDULE, SELECTION CRITERIA, AND THE TIME AND PLACE FOR RECEIPT OF PROPOSALS OR QUALIFICATIONS, AS APPLICABLE; A STATEMENT AS TO WHETHER THE SELECTION PROCESS IS A ONE-STEP OR TWO-STEP PROCESS; AND OTHER INFORMATION THAT MAY ASSIST THE STATE AGENCY IN ITS SELECTION OF A CONSTRUCTION MANAGER-AT-RISK. THE STATE AGENCY SHALL STATE THE SELECTION CRITERIA IN THE REQUEST FOR PROPOSALS OR QUALIFICATIONS, AS APPLICABLE. THE SELECTION CRITERIA MAY INCLUDE THE OFFEROR'S EXPERIENCE, PAST PERFORMANCE, SAFETY RECORD, PROPOSED PERSONNEL AND METHODOLOGY, AND OTHER APPROPRIATE FACTORS THAT DEMONSTRATE THE CAPABILITY OF THE CONSTRUCTION MANAGER-AT-RISK. IF A ONE-STEP PROCESS IS USED, THE STATE AGENCY MAY REQUEST, AS PART OF THE OFFEROR'S PROPOSAL, PROPOSED FEES AND PRICES FOR FULFILLING THE GENERAL CONDITIONS. IF A TWO-STEP PROCESS IS USED, THE STATE AGENCY MAY NOT REQUEST FEES OR PRICES IN STEP ONE. IN STEP TWO, THE STATE AGENCY MAY REQUEST THAT FIVE OR FEWER OFFERORS, SELECTED SOLELY ON THE BASIS OF QUALIFICATIONS, PROVIDE ADDITIONAL INFORMATION, INCLUDING THE CONSTRUCTION MANAGER-AT-RISK'S PROPOSED FEE AND ITS PRICE FOR FULFILLING THE GENERAL CONDITIONS.

(E) THE STATE AGENCY SHALL PUBLISH THE REQUEST FOR QUALIFICATIONS IN A MANNER PRESCRIBED BY THE STATE AGENCY.

(F) AT EACH STEP, THE STATE AGENCY SHALL RECEIVE, PUBLICLY OPEN, AND READ ALOUD THE NAMES OF THE OFFERORS. THE STATE AGENCY OR ITS REPRESENTATIVE SHALL EVALUATE AND RANK EACH PROPOSAL SUBMITTED IN RELATION TO THE CRITERIA SET FORTH IN THE REQUEST FOR PROPOSALS.

(G) THE STATE AGENCY OR ITS REPRESENTATIVE SHALL SELECT THE OFFEROR THAT SUBMITS THE PROPOSAL THAT OFFERS THE BEST VALUE FOR THE STATE AGENCY BASED ON THE PUBLISHED SELECTION CRITERIA AND ON ITS RANKING EVALUATION. THE STATE AGENCY OR ITS REPRESENTATIVE SHALL FIRST ATTEMPT TO NEGOTIATE A CONTRACT WITH THE SELECTED OFFEROR. IF THE STATE AGENCY OR ITS REPRESENTATIVE IS UNABLE TO NEGOTIATE A SATISFACTORY CONTRACT WITH THE SELECTED OFFEROR, THE AGENCY OR ITS REPRESENTATIVE SHALL, FORMALLY AND IN WRITING, END NEGOTIATIONS WITH THAT OFFEROR AND PROCEED TO NEGOTIATE WITH THE NEXT OFFEROR IN THE ORDER OF THE SELECTION RANKING UNTIL A CONTRACT IS REACHED OR NEGOTIATIONS WITH ALL RANKED OFFERORS END.

(H) A CONSTRUCTION MANAGER-AT-RISK SHALL PUBLICLY ADVERTISE, IN THE MANNER PRESCRIBED BY THE AGENCY, AND RECEIVE BIDS OR PROPOSALS FROM TRADE CONTRACTORS OR SUBCONTRACTORS FOR THE PERFORMANCE OF ALL MAJOR ELEMENTS OF THE WORK OTHER THAN THE MINOR WORK THAT MAY BE INCLUDED IN THE GENERAL CONDITIONS. A CONSTRUCTION MANAGER-AT-RISK MAY SEEK TO PERFORM PORTIONS OF THE WORK ITSELF IF THE CONSTRUCTION MANAGER-AT-RISK SUBMITS ITS BID OR PROPOSAL FOR THOSE PORTIONS OF THE WORK IN THE SAME MANNER AS ALL OTHER TRADE CONTRACTORS OR SUBCONTRACTORS AND IF THE AGEN-

CY DETERMINES THAT THE CONSTRUCTION MANAGER-AT-RISK'S BID OR PROPOSAL PROVIDES THE BEST VALUE FOR THE STATE AGENCY.

(I) THE CONSTRUCTION MANAGER-AT-RISK AND THE STATE AGENCY OR ITS REPRESENTATIVE SHALL REVIEW ALL TRADE CONTRACTOR OR SUBCONTRACTOR BIDS OR PROPOSALS IN A MANNER THAT DOES NOT DISCLOSE THE CONTENTS OF THE BID OR PROPOSAL DURING THE SELECTION PROCESS TO A PERSON NOT EMPLOYED BY THE CONSTRUCTION MANAGER-AT-RISK, ENGINEER, ARCHITECT, OR STATE AGENCY. ALL BIDS OR PROPOSALS SHALL BE MADE PUBLIC AFTER THE AWARD OF THE CONTRACT OR WITHIN SEVEN DAYS AFTER THE DATE OF FINAL SELECTION OF BIDS AND PROPOSALS, WHICHEVER IS LATER.

(J) IF THE CONSTRUCTION MANAGER-AT-RISK REVIEWS, EVALUATES, AND RECOMMENDS TO THE STATE AGENCY A BID OR PROPOSAL FROM A TRADE CONTRACTOR OR SUBCONTRACTOR BUT THE STATE AGENCY REQUIRES ANOTHER BID OR PROPOSAL TO BE ACCEPTED, THE STATE AGENCY SHALL COMPENSATE THE CONSTRUCTION MANAGER-AT-RISK BY A CHANGE IN PRICE, TIME, OR GUARANTEED MAXIMUM COST FOR ANY ADDITIONAL COST AND RISK THAT THE CONSTRUCTION MANAGER-AT-RISK MAY INCUR BECAUSE OF THE STATE AGENCY'S REQUIREMENT THAT ANOTHER BID OR PROPOSAL BE ACCEPTED.

(K) IF A SELECTED TRADE CONTRACTOR OR SUBCONTRACTOR DEFAULTS IN THE PERFORMANCE OF ITS WORK OR FAILS TO EXECUTE A SUBCONTRACT AFTER BEING SELECTED IN ACCORDANCE WITH THIS SECTION, THE CONSTRUCTION MANAGER-AT-RISK MAY, WITHOUT ADVERTISING, ITSELF FULFILL THE CONTRACT REQUIREMENTS OR SELECT A REPLACEMENT TRADE CONTRACTOR OR SUBCONTRACTOR TO FULFILL THE CONTRACT REQUIREMENTS.

(L) IF A FIXED CONTRACT AMOUNT OR GUARANTEED MAXIMUM PRICE HAS NOT BEEN DETERMINED AT THE TIME THE CONTRACT IS AWARDED, THE PENAL SUMS OF THE PERFORMANCE AND PAYMENT BONDS DELIVERED TO THE STATE AGENCY MUST EACH BE IN AN AMOUNT EQUAL TO THE PROJECT BUDGET, AS SET FORTH IN THE REQUEST FOR QUALIFICATIONS. THE CONSTRUCTION MANAGER-AT-RISK SHALL DELIVER THE BONDS NOT LATER THAN THE TENTH DAY AFTER THE DATE THE CONSTRUCTION MANAGER-AT-RISK EXECUTES THE CONTRACT UNLESS THE CONSTRUCTION MANAGER-AT-RISK FURNISHES A BID BOND OR OTHER FINANCIAL SECURITY ACCEPTABLE TO THE STATE AGENCY TO ENSURE THAT THE CONSTRUCTION MANAGER-AT-RISK WILL FURNISH THE REQUIRED PERFORMANCE AND PAYMENT BONDS WHEN A GUARANTEED MAXIMUM PRICE IS ESTABLISHED.

(M) THIS SECTION SHALL NOT BE CONSTRUED TO SUPERSEDE SECTION TWO HUNDRED TWENTY OF THE LABOR LAW REQUIRING THE PAYMENT OF PREVAILING WAGES FOR PUBLIC WORKS.

S 9. Section 135-a of the state finance law, as added by chapter 840 of the laws of 1980, is amended to read as follows:

S 135-a. Definitions. As used in this chapter, unless otherwise indicated, the [term "small business concern" shall mean] FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "SMALL BUSINESS CONCERN" MEANS a business which is resident in this state, independently owned and operated, not dominant in its field and employs one hundred or less persons.

2. "ARCHITECT" MEANS AN INDIVIDUAL LICENSED AS AN ARCHITECT UNDER ARTICLE ONE HUNDRED FORTY-SEVEN OF THE EDUCATION LAW.

3. "CONTRACTOR" IN THE CONTEXT OF A CONTRACT FOR THE CONSTRUCTION, RECONSTRUCTION, ALTERATION, REPAIR OR IMPROVEMENT OF A STATE BUILDING MEANS A SOLE PROPRIETORSHIP, PARTNERSHIP, CORPORATION, OR OTHER LEGAL ENTITY THAT ASSUMES THE RISK FOR CONSTRUCTING, REHABILITATING, ALTERING, OR REPAIRING ALL OR PART OF THE STATE BUILDING AT THE CONTRACTED PRICE.

4. "CONSTRUCTION MANAGER-AT-RISK" MEANS A SOLE PROPRIETORSHIP, PARTNERSHIP, CORPORATION, OR OTHER LEGAL ENTITY THAT ASSUMES THE RISK FOR CONSTRUCTION, REHABILITATION, ALTERATION, OR REPAIR OF A FACILITY AT A

GUARANTEED MAXIMUM PRICE AS A GENERAL CONTRACTOR AND PROVIDES CONSULTATION TO THE AGENCY REGARDING CONSTRUCTION DURING AND AFTER THE DESIGN OF THE FACILITY.

5. "DESIGN-BUILD CONTRACT" MEANS A SINGLE CONTRACT WITH A DESIGN-BUILD FIRM FOR THE DESIGN AND CONSTRUCTION OF A FACILITY.

6. "DESIGN-BUILD FIRM" MEANS A CORPORATION ORGANIZED UNDER ARTICLE FIFTEEN OF THE BUSINESS CORPORATION LAW THAT INCLUDES AN ARCHITECT OR ENGINEER AND CONTRACTOR QUALIFIED TO ENGAGE IN BUILDING DESIGN AND CONSTRUCTION IN NEW YORK.

7. "DESIGN CRITERIA PACKAGE" MEANS A SET OF DOCUMENTS THAT PROVIDES SUFFICIENT INFORMATION TO PERMIT A DESIGN-BUILD FIRM TO PREPARE A RESPONSE TO THE STATE AGENCY'S REQUEST FOR QUALIFICATIONS AND ANY ADDITIONAL INFORMATION REQUESTED, INCLUDING CRITERIA FOR SELECTION. THE DESIGN CRITERIA PACKAGE MUST SPECIFY CRITERIA THE STATE AGENCY CONSIDERS NECESSARY TO DESCRIBE THE PROJECT AND MAY INCLUDE, AS APPROPRIATE, THE LEGAL DESCRIPTION OF THE SITE, SURVEY INFORMATION CONCERNING THE SITE, INTERIOR SPACE REQUIREMENTS, SPECIAL MATERIAL REQUIREMENTS, MATERIAL QUALITY STANDARDS, CONCEPTUAL CRITERIA FOR THE PROJECT, SPECIAL EQUIPMENT REQUIREMENTS, COST OR BUDGET ESTIMATES, TIME SCHEDULES, QUALITY ASSURANCE AND QUALITY CONTROL REQUIREMENTS, SITE DEVELOPMENT REQUIREMENTS, APPLICABLE CODES AND ORDINANCES, PROVISIONS FOR UTILITIES, PARKING REQUIREMENTS, OR ANY OTHER REQUIREMENT, AS APPLICABLE.

8. "ENGINEER" MEANS AN INDIVIDUAL LICENSED AS AN ENGINEER UNDER ARTICLE ONE HUNDRED FORTY-FIVE OF THE EDUCATION LAW.

9. "GUARANTEED MAXIMUM PRICE" MEANS THE AGREED TOTAL DOLLAR AMOUNT FOR THE CONSTRUCTION MANAGEMENT-AT-RISK SERVICES, INCLUDING THE COST OF THE WORK, THE GENERAL CONDITIONS AND THE FEES CHARGED BY THE CONSTRUCTION MANAGEMENT-AT-RISK FIRM.

10. "STATE AGENCY" MEANS ANY OFFICER, DEPARTMENT, BOARD, COMMISSION, BUREAU, DIVISION, PUBLIC BENEFIT CORPORATION, AGENCY OR INSTRUMENTALITY OF THE STATE.

S 10. Subdivision 4 of section 163 of the state finance law is amended by adding a new paragraph h to read as follows:

H. NOTHING IN THIS SECTION SHALL PROHIBIT THE USE OF AN ALTERNATIVE PROJECT DELIVERY METHOD, INCLUDING CONSTRUCTION MANAGEMENT-AT-RISK OR DESIGN-BUILD, AS DEFINED IN SECTION ONE HUNDRED THIRTY-FIVE-B OF THIS CHAPTER, AS METHODS FOR THE CONSTRUCTION, RECONSTRUCTION, ALTERATION, REPAIR OR IMPROVEMENT OF A STATE BUILDING.

S 11. Subdivision 15 of section 14 of the transportation law, as amended by chapter 1065 of the laws of 1969, is amended to read as follows:

15. To prepare the plans, specifications, designs and estimates, and, by the procedures and methods provided by the laws relating thereto, NOTWITHSTANDING ANY OTHER PROVISION OF THE LAW THAT REQUIRES A STATE AGENCY TO AWARD CONTRACTS TO THE LOWEST RESPONSIBLE BIDDER AFTER ADVERTISING FOR SEALED BIDS, to construct and reconstruct USING AN ALTERNATIVE PROJECT DELIVERY METHOD, INCLUDING CONSTRUCTION MANAGEMENT-AT-RISK OR DESIGN-BUILD:

(a) The highways and other public ways that are now or shall hereafter be under the jurisdiction of the department for such purposes, whether generally or specially;

(b) The canals, waterways of the state and structures that are now or shall hereafter be under the jurisdiction of the department for such purposes;

(c) The bridges and grade separation structures that are now or shall hereafter be under the jurisdiction of the department for such purposes;

(d) Parking facilities and appurtenances at or adjacent to transportation interfaces and connections to such facilities.

S 12. Subdivision 10 of section 354 of the public authorities law, as amended by chapter 766 of the laws of 1992, is amended to read as follows:

10. To construct, reconstruct or improve on or along the thruway system in the manner herein provided, suitable facilities for gas stations, restaurants, and other facilities for the public, or to lease the right to construct, reconstruct or improve and operate such facilities; such facilities shall be publicly offered for leasing for operation, or the right to construct, reconstruct or improve and operate such facilities shall be publicly offered under rules and regulations to be established by the authority, provided, however, that lessees operating such facilities at the time [this act becomes] CHAPTER THREE HUNDRED FORTY-ONE OF THE LAWS OF NINETEEN HUNDRED SIXTY-FIVE BECAME effective, may reconstruct or improve them or may construct additional like facilities, in the manner and upon such terms and conditions as the board shall determine; and provided further, however, that such facilities constructed, reconstructed or improved on or along the canal system shall be consistent with the canal recreationway plan approved pursuant to section one hundred thirty-eight-c of the canal law and section three hundred eighty-two of this title; AND PROVIDED FURTHER THAT NOTWITHSTANDING ANY OTHER PROVISION OF THE LAW THAT REQUIRES A STATE AGENCY TO AWARD CONTRACTS TO THE LOWEST RESPONSIBLE BIDDER AFTER ADVERTISING FOR SEALED BIDS, THE AUTHORITY MAY USE AN ALTERNATIVE PROJECT DELIVERY METHOD, INCLUDING CONSTRUCTION MANAGEMENT-AT-RISK OR DESIGN-BUILD TO CONSTRUCT, RECONSTRUCT OR IMPROVE ON OR ALONG THE THRUWAY SYSTEM IN THE MANNER HEREIN PROVIDED, SUITABLE FACILITIES FOR GAS STATIONS, RESTAURANTS, AND OTHER FACILITIES FOR THE PUBLIC;

S 13. Section 1680 of the public authorities law is amended by adding a new subdivision 41 to read as follows:

41. THE AUTHORITY SHALL, NOTWITHSTANDING ANY OTHER PROVISION OF THE LAW THAT REQUIRES THE AUTHORITY TO AWARD CONTRACTS TO THE LOWEST RESPONSIBLE BIDDER AFTER ADVERTISING FOR SEALED BIDS, HAVE THE POWER TO AWARD A CONTRACT USING AN ALTERNATIVE PROJECT DELIVERY METHOD, INCLUDING THE POWER TO SOLICIT AND AWARD A CONSTRUCTION MANAGEMENT-AT-RISK CONTRACT OR DESIGN-BUILD CONTRACT, AS SET FORTH IN SECTION ONE HUNDRED THIRTY-FIVE-B OF THE STATE FINANCE LAW, FOR ANY PROJECT THAT WOULD BENEFIT FROM THE UTILIZATION OF AN ALTERNATIVE PROJECT DELIVERY METHOD OF PROCUREMENT.

S 14. Subdivision 9 of section 1204 of the public authorities law, as amended by chapter 732 of the laws of 1959, is amended to read as follows:

9. To construct, reconstruct, improve, maintain and operate buildings, structures and facilities as may be necessary or convenient and to maintain and operate, directly or enter into contracts or leases for the acquisition, maintenance, and operation of areas for the parking of motor vehicles in the vicinity of its transit facilities, and in its discretion to fix and charge for such parking a combination fee which shall include the established rate of fare for use of its transit facilities. NOTWITHSTANDING ANY OTHER PROVISION OF THE LAW THAT REQUIRES THE AUTHORITY TO AWARD CONTRACTS TO THE LOWEST RESPONSIBLE BIDDER AFTER ADVERTISING FOR SEALED BIDS, THE AUTHORITY MAY USE AN ALTERNATIVE PROJECT DELIVERY METHOD, INCLUDING BUT NOT LIMITED TO CONSTRUCTION MANAGEMENT-AT-RISK OR DESIGN-BUILD, TO CONSTRUCT, RECONSTRUCT, IMPROVE, MAINTAIN AND OPERATE BUILDINGS, STRUCTURES AND FACILITIES AS MAY BE NECESSARY OR CONVENIENT AND TO MAINTAIN AND OPERATE.

S 15. Paragraph (a) of subdivision 2 of section 1265-a of the public authorities law, as amended by chapter 334 of the laws of 2001, is amended to read as follows:

(a) Except as otherwise provided in this section, all purchase contracts for supplies, materials or equipment involving an estimated expenditure in excess of fifteen thousand dollars and all contracts for public work involving an estimated expenditure in excess of twenty-five thousand dollars shall be awarded by the authority to the lowest responsible bidder after obtaining sealed bids in the manner hereinafter set forth. For purposes hereof, contracts for public work shall exclude contracts for personal, engineering and architectural, or professional services. NOTWITHSTANDING ANY OTHER PROVISION OF THE LAW THAT REQUIRES THE AUTHORITY TO AWARD PUBLIC WORK CONTRACTS TO THE LOWEST RESPONSIBLE BIDDER AFTER ADVERTISING FOR SEALED BIDS, THE AUTHORITY SHALL HAVE THE POWER TO AWARD A CONTRACT USING AN ALTERNATIVE PROJECT DELIVERY METHOD, INCLUDING THE POWER TO SOLICIT AND AWARD A CONSTRUCTION MANAGEMENT-AT-RISK CONTRACT OR DESIGN-BUILD CONTRACT, AS SET FORTH IN SECTION ONE HUNDRED THIRTY-FIVE-B OF THE STATE FINANCE LAW. The authority may reject all bids and obtain new bids in the manner provided by this section when it is deemed in the public interest to do so or, in cases where two or more responsible bidders submit identical bids which are the lowest bids, award the contract to any of such bidders or obtain new bids from such bidders. Nothing herein shall obligate the authority to seek new bids after the rejection of bids or after cancellation of an invitation to bid. Nothing in this section shall prohibit the evaluation of bids on the basis of costs or savings including life cycle costs of the item to be purchased, discounts, and inspection services so long as the invitation to bid reasonably sets forth the criteria to be used in evaluating such costs or savings. Life cycle costs may include but shall not be limited to costs or savings associated with installation, energy use, maintenance, operation and salvage or disposal.

S 16. Section 559 of the public authorities law, as amended by chapter 6 of the laws of 1940, is amended to read as follows:

S 559. Construction contracts. The authority shall do all construction pursuant to a contract or contracts in the manner, so far as practicable, provided in the charter of the city for contracts of such city except that where the estimated expense of a contract does not exceed ten thousand dollars such contract may be entered into without public letting, but failure to comply with this section shall not invalidate such contracts. NOTWITHSTANDING ANY OTHER PROVISION OF THE LAW THAT REQUIRES THE AUTHORITY TO AWARD PUBLIC WORK CONTRACTS TO THE LOWEST RESPONSIBLE BIDDER AFTER ADVERTISING FOR SEALED BIDS, THE AUTHORITY SHALL HAVE THE POWER TO AWARD A CONTRACT USING AN ALTERNATIVE PROJECT DELIVERY METHOD, INCLUDING THE POWER TO SOLICIT AND AWARD A CONSTRUCTION MANAGEMENT-AT-RISK CONTRACT OR A DESIGN-BUILD CONTRACT, AS SET FORTH IN SECTION ONE HUNDRED THIRTY-FIVE-B OF THE STATE FINANCE LAW.

S 17. Paragraph a of subdivision 2 of section 1734 of the public authorities law, as added by chapter 738 of the laws of 1988, is amended to read as follows:

a. Except as otherwise provided in this section, all purchase contracts for supplies, materials or equipment involving an estimated expenditure in excess of ten thousand dollars and all contracts for public work involving an estimated expenditure in excess of fifty thousand dollars shall be awarded by the authority to the lowest responsible bidder after obtaining sealed bids in the manner hereinafter set forth. For purposes hereof, contracts for public work shall exclude contracts

for personal, engineering and architectural, or professional services. NOTWITHSTANDING ANY OTHER PROVISION OF THE LAW THAT REQUIRES THE AUTHORITY TO AWARD PUBLIC WORK CONTRACTS TO THE LOWEST RESPONSIBLE BIDDER AFTER ADVERTISING FOR SEALED BIDS, THE AUTHORITY SHALL HAVE THE POWER TO AWARD A CONTRACT USING AN ALTERNATIVE PROJECT DELIVERY METHOD, INCLUDING THE POWER TO SOLICIT AND AWARD A CONSTRUCTION MANAGEMENT-AT-RISK CONTRACT OR A DESIGN-BUILD CONTRACT, AS SET FORTH IN SECTION ONE HUNDRED THIRTY-FIVE-B OF THE STATE FINANCE LAW.

S 18. Section 103 of the general municipal law is amended by adding a new subdivision 16 to read as follows:

16. NOTWITHSTANDING ANY OTHER PROVISION OF THE LAW THAT REQUIRES THE APPROPRIATE OFFICER, BOARD OR AGENCY OF A POLITICAL SUBDIVISION OR OF ANY DISTRICT THEREIN TO AWARD PUBLIC WORK CONTRACTS TO THE LOWEST RESPONSIBLE BIDDER AFTER ADVERTISING FOR SEALED BIDS, THE APPROPRIATE OFFICER, BOARD OR AGENCY OF A POLITICAL SUBDIVISION OR OF ANY DISTRICT THEREIN SHALL HAVE THE POWER TO AWARD A CONTRACT USING AN ALTERNATIVE PROJECT DELIVERY METHOD, INCLUDING THE POWER TO SOLICIT AND AWARD A CONSTRUCTION MANAGEMENT-AT-RISK CONTRACT OR DESIGN-BUILD CONTRACT, AS SET FORTH IN SECTION ONE HUNDRED THIRTY-FIVE-B OF THE STATE FINANCE LAW.

S 19. Section 1501 of the business corporation law, as added by chapter 974 of the laws of 1970, is amended to read as follows:

S 1501. Definitions.

As used in this article, unless the context otherwise requires, the term: (a) "licensing authority" means the regents of the university of the state of New York or the state education department, as the case may be, in the case of all professions licensed under title eight of the education law, and the appropriate appellate division of the supreme court in the case of the profession of law.

(b) "Profession" includes any practice as an attorney and counselor-at-law, or as a licensed physician, and those occupations designated in title eight of the education law.

(c) "Professional service" means any type of service to the public which may be lawfully rendered by a member of a profession within the purview of his profession.

(d) "Professional service corporation" means a corporation organized under this article, INCLUDING A DESIGN-BUILD FIRM.

(e) "Officer" does not include the secretary or an assistant secretary of a corporation having only one shareholder.

(F) "DESIGN-BUILD FIRM" MEANS A CORPORATION ORGANIZED UNDER THIS ARTICLE TO ENGAGE IN THE DESIGN-BUILD METHOD AS SET FORTH IN SECTION ONE HUNDRED THIRTY-FIVE-B OF THE STATE FINANCE LAW THAT INCLUDES AN ARCHITECT OR ENGINEER AND CONTRACTOR QUALIFIED TO ENGAGE IN BUILDING DESIGN AND CONSTRUCTION IN NEW YORK.

S 20. Paragraph (a) of section 1503 of the business corporation law, as added by chapter 974 of the laws of 1970, is amended to read as follows:

(a) Notwithstanding any other provision of law, one or more individuals duly authorized by law to render the same professional service within the state may organize, or cause to be organized, a professional service corporation for pecuniary profit under this article for the purpose of rendering the same professional service, except that one or more individuals duly authorized by law to practice professional engineering, architecture, landscape architecture or land surveying within the state may organize, or cause to be organized, a professional service corporation for pecuniary profit under this article for the purpose of rendering such professional services as such individuals are authorized

to practice. ONE OR MORE INDIVIDUALS DULY AUTHORIZED BY LAW TO PRACTICE PROFESSIONAL ARCHITECTURE OR ENGINEERING WITHIN THE STATE, ALONG WITH A CONTRACTOR, MAY ALSO ORGANIZE, OR CAUSE TO BE ORGANIZED, A PROFESSIONAL SERVICE CORPORATION FOR PECUNIARY PROFIT UNDER THIS ARTICLE FOR THE PURPOSE OF ENGAGING IN THE DESIGN-BUILD METHOD AS SET FORTH IN SECTION ONE HUNDRED THIRTY-FIVE-B OF THE STATE FINANCE LAW.

S 21. This act shall take effect on the ninetieth day after it shall have become a law; provided that the amendment to subdivision 12 of section 373 of the education law made by section three of this act shall take effect on the same date as the reversion of such subdivision as provided in section 4 of subpart A of part D of chapter 58 of the laws of 2011, as amended; and further provided that the amendment to subdivision 4 of section 163 of the state finance law made by section ten of this act shall not affect the repeal of such section and shall be deemed repealed therewith.