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

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2011-2012 Regular Sessions

I N A S S E M B L Y

February 8, 2011

Introduced by M. of A. KOLB, CONTE, McDONOUGH, REILICH, SAYWARD -- Multi-Sponsored by -- M. of A. AMEDORE, BARCLAY, BOYLE, BURLING, BUTLER, CALHOUN, CASTELLI, CROUCH, FINCH, FITZPATRICK, GIGLIO, HAWLEY, JORDAN, McKEVITT, MONTESANO, OAKS, RABBITT, RAIA, SALADINO, TOBACCO -- read once and referred to the Committee on Transportation

AN ACT to amend the highway law and the public authorities law, in relation to authorizing design-build contracts for transportation projects

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

Section 1. Legislative intent. The use of a single contract for the design and construction of transportation projects may reduce or minimize project delivery time, improve project quality, reduce project costs, and/or improve project coordination through a single point of responsibility. Therefore, it is appropriate to authorize the department of transportation and the thruway authority to utilize design-build contracts.

S 2. The highway law is amended by adding a new section 38-a to read as follows:

S 38-A. DESIGN-BUILD CONTRACTS. NOTWITHSTANDING THE PROVISIONS OF SECTION THIRTY-EIGHT OF THIS ARTICLE, SECTION ONE HUNDRED THIRTY-SIX-A OF THE STATE FINANCE LAW, SECTIONS SIXTY-FIVE HUNDRED TWELVE AND SEVENTY-TWO HUNDRED TEN OF THE EDUCATION LAW, AND THE PROVISIONS OF ANY OTHER LAW TO THE CONTRARY:

1. DESIGN-BUILD CONTRACTS. THE COMMISSIONER IS HEREBY AUTHORIZED TO CONTRACT FOR THE DESIGN AND CONSTRUCTION OF HIGHWAYS, STRUCTURES OR APPURTENANT FACILITIES WITH A SINGLE ENTITY, WHICH MAY BE A TEAM COMPRISED OF SEPARATE ENTITIES, IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION. CONTRACTS ENTERED INTO PURSUANT TO THE PROVISIONS OF THIS SECTION SHALL BE REFERRED TO AS "DESIGN-BUILD CONTRACTS."

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

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2. SELECTION. AN ENTITY SELECTED BY THE DEPARTMENT TO ENTER INTO A DESIGN-BUILD CONTRACT SHALL BE SELECTED THROUGH A TWO-STEP METHOD AS FOLLOWS:

(A) STEP ONE SHALL BE THE GENERATION OF A LIST OF ENTITIES THAT HAVE DEMONSTRATED THE GENERAL CAPABILITY TO PERFORM THE DESIGN-BUILD CONTRACT. SUCH LIST SHALL CONSIST OF A SPECIFIED NUMBER OF ENTITIES, AS DETERMINED BY THE COMMISSIONER, AND SHALL BE GENERATED BASED UPON THE DEPARTMENT'S REVIEW OF RESPONSES TO A PUBLICLY ADVERTISED REQUEST FOR QUALIFICATIONS. THE DEPARTMENT'S REQUEST FOR QUALIFICATIONS SHALL INCLUDE A GENERAL DESCRIPTION OF THE PROJECT, THE MAXIMUM NUMBER OF ENTITIES TO BE INCLUDED ON THE LIST, AND THE SELECTION CRITERIA TO BE USED IN GENERATING THE LIST. SUCH SELECTION CRITERIA SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO, THE QUALIFICATIONS AND EXPERIENCE OF THE DESIGN AND CONSTRUCTION TEAM, PROJECT APPROACH, ORGANIZATION, RECORD OF PERFORMANCE, FINANCIAL CAPACITY, DEMONSTRATED RESPONSIBILITY, ABILITY OF THE TEAM OR OF A MEMBER OR MEMBERS OF THE TEAM TO COMPLY WITH APPLICABLE REQUIREMENTS, INCLUDING THE PROVISIONS OF ARTICLES ONE HUNDRED FORTY-FIVE, ONE HUNDRED FORTY-SEVEN, AND ONE HUNDRED FORTY-EIGHT OF THE EDUCATION LAW, AND SUCH OTHER QUALIFICATIONS THE COMMISSIONER DEEMS APPROPRIATE. THE DEPARTMENT SHALL EVALUATE AND RATE ALL ENTITIES RESPONDING TO THE REQUEST FOR QUALIFICATIONS. BASED UPON SUCH RATINGS, THE DEPARTMENT SHALL LIST THE ENTITIES THAT SHALL RECEIVE A REQUEST FOR PROPOSALS IN ACCORDANCE WITH PARAGRAPH (B) OF THIS SUBDIVISION.

(B) STEP TWO SHALL BE THE SELECTION OF THE PROPOSAL WHICH IS THE BEST VALUE TO THE STATE. THE DEPARTMENT SHALL ISSUE A REQUEST FOR PROPOSALS TO THE ENTITIES LISTED PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION. IF SUCH ENTITY CONSISTS OF A TEAM OF SEPARATE ENTITIES, THE ENTITIES THAT COMPRISE SUCH A TEAM MUST REMAIN UNCHANGED FROM THE ENTITY AS LISTED PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION. THE REQUEST FOR PROPOSALS SHALL SET FORTH THE PROJECT'S SCOPE OF WORK, AND OTHER REQUIREMENTS, AS DETERMINED BY THE COMMISSIONER. THE REQUEST FOR PROPOSALS SHALL SPECIFY THE CRITERIA TO BE USED TO EVALUATE THE RESPONSES. SUCH CRITERIA SHALL INCLUDE THE PROPOSAL'S COST, THE QUALITY OF THE PROPOSAL'S SOLUTION, THE QUALIFICATIONS AND EXPERIENCE OF THE DESIGN AND CONSTRUCTION TEAM, AND OTHER FACTORS DEEMED PERTINENT BY THE DEPARTMENT, WHICH MAY INCLUDE, BUT SHALL NOT BE LIMITED TO, THE PROPOSAL'S PROJECT IMPLEMENTATION, ABILITY TO COMPLETE THE WORK IN A TIMELY AND SATISFACTORY MANNER, MAINTAINABILITY OF THE COMPLETED PROJECT, MAINTENANCE OF TRAFFIC APPROACH, AND COMMUNITY IMPACT. ANY CONTRACT AWARDED PURSUANT TO THIS SECTION SHALL BE AWARDED TO A RESPONSIBLE ENTITY THAT SUBMITS THE PROPOSAL, WHICH, IN CONSIDERATION OF THESE AND OTHER SPECIFIED CRITERIA DEEMED PERTINENT TO THE PROJECT, IS THE BEST VALUE TO THE STATE, AS DETERMINED BY THE COMMISSIONER.

3. CONFIDENTIALITY OF BUSINESS INFORMATION. ALL FINANCIAL INFORMATION, TRADE SECRETS OR OTHER INFORMATION CUSTOMARILY REGARDED AS CONFIDENTIAL BUSINESS INFORMATION THAT ARE IDENTIFIED AS SUCH INFORMATION AT THE TIME OF SUBMISSION TO THE DEPARTMENT AS PART OF A RESPONDENT'S RESPONSE TO THE SOLICITATIONS OR REQUESTS MADE BY THE DEPARTMENT PURSUANT TO SUBDIVISION TWO OF THIS SECTION SHALL NOT BE SUBJECT TO DISCLOSURE UNDER ARTICLE SIX OF THE PUBLIC OFFICERS LAW.

4. CONTRACTS. ANY CONTRACT ENTERED INTO PURSUANT TO THIS SECTION SHALL INCLUDE A CLAUSE REQUIRING THAT ANY PROFESSIONAL SERVICES REGULATED BY ARTICLES ONE HUNDRED FORTY-FIVE, ONE HUNDRED FORTY-SEVEN AND ONE HUNDRED FORTY-EIGHT OF THE EDUCATION LAW SHALL BE PERFORMED BY A PROFESSIONAL LICENSED IN ACCORDANCE WITH SUCH ARTICLES.

S 3. The public authorities law is amended by adding a new section 359-b to read as follows:

S 359-B. DESIGN-BUILD CONTRACTS. NOTWITHSTANDING ANY OTHER PROVISIONS OF LAW TO THE CONTRARY:

1. DESIGN-BUILD CONTRACTS. THE AUTHORITY IS HEREBY AUTHORIZED TO CONTRACT FOR THE DESIGN AND CONSTRUCTION OF HIGHWAYS, STRUCTURES OR APPURTENANT FACILITIES WITH A SINGLE ENTITY, WHICH MAY BE A TEAM COMPRISED OF SEPARATE ENTITIES, IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION. CONTRACTS ENTERED INTO PURSUANT TO THE PROVISIONS OF THIS SECTION SHALL BE REFERRED TO AS "DESIGN-BUILD CONTRACTS."

2. SELECTION. AN ENTITY SELECTED BY THE AUTHORITY TO ENTER INTO A DESIGN-BUILD CONTRACT SHALL BE SELECTED THROUGH A TWO-STEP METHOD AS FOLLOWS:

(A) STEP ONE SHALL BE THE GENERATION OF A LIST OF ENTITIES THAT HAVE DEMONSTRATED THE GENERAL CAPABILITY TO PERFORM THE DESIGN-BUILD CONTRACT. SUCH LIST SHALL CONSIST OF A SPECIFIED NUMBER OF ENTITIES, AS DETERMINED BY THE AUTHORITY, AND SHALL BE GENERATED BASED UPON THE AUTHORITY'S REVIEW OF RESPONSES TO A PUBLICLY ADVERTISED REQUEST FOR QUALIFICATIONS. THE REQUEST FOR QUALIFICATIONS SHALL INCLUDE A GENERAL DESCRIPTION OF THE PROJECT, THE MAXIMUM NUMBER OF ENTITIES TO BE INCLUDED ON THE LIST, AND THE SELECTION CRITERIA TO BE USED IN GENERATING THE LIST. SUCH SELECTION CRITERIA SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO, THE QUALIFICATION AND EXPERIENCE OF THE DESIGN AND CONSTRUCTION TEAM, PROJECT APPROACH, ORGANIZATION, RECORD OF PERFORMANCE, FINANCIAL CAPACITY, DEMONSTRATED RESPONSIBILITY, ABILITY OF THE TEAM OR OF A MEMBER OR MEMBERS OF THE TEAM TO COMPLY WITH APPLICABLE REQUIREMENTS, INCLUDING THE PROVISIONS OF ARTICLES ONE HUNDRED FORTY-FIVE, ONE HUNDRED FORTY-SEVEN, AND ONE HUNDRED FORTY-EIGHT OF THE EDUCATION LAW, AND SUCH OTHER QUALIFICATIONS THE AUTHORITY DEEMS APPROPRIATE. THE AUTHORITY SHALL EVALUATE AND RATE ALL ENTITIES RESPONDING TO THE REQUEST FOR QUALIFICATIONS. BASED UPON SUCH RATINGS, THE AUTHORITY SHALL LIST THE ENTITIES THAT SHALL RECEIVE A REQUEST FOR PROPOSALS IN ACCORDANCE WITH PARAGRAPH (B) OF THIS SUBDIVISION.

(B) STEP TWO SHALL BE THE SELECTION OF THE PROPOSAL WHICH IS THE BEST VALUE TO THE AUTHORITY. THE AUTHORITY SHALL ISSUE A REQUEST FOR PROPOSALS TO THE ENTITIES LISTED PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION. IF SUCH AN ENTITY CONSISTS OF A TEAM OF SEPARATE ENTITIES, THE ENTITIES THAT COMPRISE SUCH A TEAM MUST REMAIN UNCHANGED FROM THE ENTITY AS LISTED PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION. THE REQUEST FOR PROPOSALS SHALL SET FORTH THE PROJECT'S SCOPE OF WORK, AND OTHER REQUIREMENTS, AS DETERMINED BY THE AUTHORITY. THE REQUEST FOR PROPOSALS SHALL SPECIFY THE CRITERIA TO BE USED TO EVALUATE THE RESPONSES. SUCH CRITERIA SHALL INCLUDE THE PROPOSAL'S COST, THE QUALITY OF THE PROPOSAL'S SOLUTION, THE QUALIFICATIONS AND EXPERIENCE OF THE DESIGN AND CONSTRUCTION TEAM, AND OTHER FACTORS DEEMED PERTINENT BY THE AUTHORITY, WHICH MAY INCLUDE, BUT SHALL NOT BE LIMITED TO, THE PROPOSAL'S PROJECT IMPLEMENTATION, ABILITY TO COMPLETE THE WORK IN A TIMELY AND SATISFACTORY MANNER, MAINTAINABILITY OF THE COMPLETED PROJECT, MAINTENANCE OF TRAFFIC APPROACH, AND COMMUNITY IMPACT. ANY CONTRACT AWARDED PURSUANT TO THIS SECTION SHALL BE AWARDED TO A RESPONSIBLE ENTITY THAT SUBMITS THE PROPOSAL WHICH, IN CONSIDERATION OF THESE AND OTHER SPECIFIED CRITERIA DEEMED PERTINENT TO THE PROJECT, IS THE BEST VALUE TO THE AUTHORITY.

3. CONFIDENTIALITY OF BUSINESS INFORMATION. ALL FINANCIAL INFORMATION, TRADE SECRETS OR OTHER INFORMATION CUSTOMARILY REGARDED AS CONFIDENTIAL BUSINESS INFORMATION THAT ARE IDENTIFIED AS SUCH INFORMATION AT THE TIME

OF SUBMISSION TO THE AUTHORITY AS PART OF A RESPONDENT'S RESPONSE TO THE SOLICITATIONS OR REQUESTS MADE BY THE AUTHORITY PURSUANT TO SUBDIVISION TWO OF THIS SECTION SHALL NOT BE SUBJECT TO DISCLOSURE UNDER ARTICLE SIX OF THE PUBLIC OFFICERS LAW.

4. CONTRACTS. ANY CONTRACT ENTERED INTO PURSUANT TO THIS SECTION SHALL INCLUDE A CLAUSE REQUIRING THAT ANY PROFESSIONAL SERVICES REGULATED BY ARTICLES ONE HUNDRED FORTY-FIVE, ONE HUNDRED FORTY-SEVEN, AND ONE HUNDRED FORTY-EIGHT OF THE EDUCATION LAW SHALL BE PERFORMED BY A PROFESSIONAL LICENSED IN ACCORDANCE WITH SUCH ARTICLES.

S 4. No later than four years after the effective date of this act, the commissioner of transportation and the chairman of the thruway authority shall prepare a report to the governor, the chairs of the senate and assembly transportation committees, and the ranking minority members of the senate and assembly transportation committees evaluating the use of the design-build process for highway projects. Such report shall be prepared in consultation with the construction and design consultant communities and may subsequently be supplemented in the same manner, as deemed appropriate by the commissioner of transportation and the chairman of the thruway authority.

S 5. This act shall take effect on the one hundred eightieth day after it shall have become a law.