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

10709

I N  A S S E M B L Y

June 13, 2016

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Benedetto) -- read once and referred to the Committee on Cities

AN ACT to authorize, for certain public works undertaken pursuant to project labor agreements, use of the alternative delivery method known as design-build contracts; and providing for the repeal of such provisions upon expiration thereof

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

Section 1. This act shall be known and may be cited as the "New York city public works investment act".

S 2. For the purposes of this act:

(a) "Authorized entity" shall mean the New York city department of design and construction, the New York city department of environmental protection and the New York city department of transportation.

(b) "Best value" shall mean the basis for awarding contracts for services to a proposer that optimizes quality, cost and efficiency, price and performance criteria, which may include, but is not limited to:

(1) The quality of the proposer's performance on previous projects;

(2) The timeliness of the proposer's performance on previous projects;

(3) The level of customer satisfaction with the proposer's performance on previous projects;

(4) The proposer's record of performing previous projects on budget and ability to minimize cost overruns;

(5) The proposer's ability to limit change orders;

(6) The proposer's ability to prepare appropriate project plans;

(7) The proposer's technical capacities;

(8) The individual qualifications of the proposer's key personnel;

(9) The proposer's ability to assess and manage risk and minimize risk impact;

(10) The proposer's financial capability;

(11) The proposer's past record of compliance with article 15-A of the executive law or any other applicable laws concerning minority and women-owned business enterprise participation;

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

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(12) The proposer's past record of compliance with all other federal, state and local laws, rules, licensing requirements, where applicable, and executive orders, including but not limited to compliance with the labor law and other applicable labor and prevailing wage laws; and

(13) The proposer's ability to comply with applicable requirements, including the provisions of articles 145, 147 and 148 of the education law.

Such basis shall reflect, wherever possible, objective and quantifiable analysis.

(c) "Cost plus" shall mean compensating a contractor for the cost to complete a contract by reimbursing actual costs for labor, equipment and materials plus an additional amount for overhead and profit.

(d) "Design-build contract" shall mean a contract for the design and construction of a public work with a single entity, which may be a team comprised of separate entities.

(e) "Project labor agreement" shall have the meaning set forth in subdivision 1 of section 222 of the labor law. A project labor agreement shall require participation in apprentice training programs in accordance with paragraph (e) of subdivision 2 of such section.

S 3. Any contract for a public work undertaken pursuant to a project labor agreement in accordance with section 222 of the labor law may be a design-build contract to the extent authorized by this act.

S 4. Notwithstanding any general, special or local law, rule or regulation to the contrary, including but not limited to article 5-A of the general municipal law, and in conformity with the requirements of this act, for any public work that has an estimated total cost of not less than ten million dollars and is undertaken pursuant to a project labor agreement in accordance with section 222 of the labor law, an authorized entity charged with awarding a contract for public work may use the alternative delivery method referred to as design-build contracts, provided that such method may be used for no more than twenty-five projects for all authorized entities, and provided further that such method may be used only for public works related to physical infrastructure, including, but not limited to, highways, bridges, dams, flood control projects, canals, and parks, including, but not limited to, to repair damage caused by natural disaster, to correct health and safety defects, to comply with federal and state laws, standards, and regulations, to extend the useful life of or replace highways, bridges, dams, flood control projects, canals, and parks or to improve or add to highways, bridges, dams, flood control projects, canals, and parks.

(a) A contractor selected by such authorized entity to enter into a design-build contract shall be selected through the submission of a proposal which provides the best value. Such authorized entity shall issue a request for proposals which shall set forth the scope of work, and other requirements, as determined by the authorized entity. The request for proposals shall specify the criteria to be used to evaluate the responses and the relative weight of each of such criteria. Such criteria shall include the proposal's cost, the quality of the proposal's solution, the qualifications and experience of the proposer, and other factors deemed pertinent by the authorized entity, which may include, but shall not be limited to, the proposal's manner and schedule of project implementation, the proposer's ability to complete the work in a timely and satisfactory manner, maintenance costs of the completed public work, maintenance of traffic approach, and community impact. Any contract awarded pursuant to this act shall be awarded to a responsive and responsible entity that submits the proposal, which, in consider-

ation of these and other specified criteria deemed pertinent, offers the best value, as determined by the authorized entity. Nothing in this act shall be construed to prohibit the authorized entity from negotiating final contract terms and conditions including cost.

(b) An authorized entity awarding a design-build contract to a contractor offering the best value may but shall not be required to use the following types of contracts:

(1) A cost-plus not to exceed guaranteed maximum price form of contract in which the authorized entity shall be entitled to monitor and audit all costs. In establishing the schedule and process for determining a guaranteed maximum price, the contract between the authorized entity and the contractor shall:

(i) Describe the scope of the work and the cost of performing such work,

(ii) Include a detailed line item cost breakdown,

(iii) Include a list of all drawings, specifications and other information on which the guaranteed maximum price is based,

(iv) Include the dates of substantial and final completion on which the guaranteed maximum price is based, and

(v) Include a schedule of unit prices; or

(2) A lump sum contract in which the contractor agrees to accept a set dollar amount for a contract which comprises a single bid without providing a cost breakdown for all costs such as for equipment, labor, materials, as well as such contractor's profit for completing all items of work comprising the public work.

S 5. Any contract entered into pursuant to this act shall include a clause requiring that any professional services regulated by articles 145, 147 and 148 of the education law shall be performed and stamped and sealed, where appropriate, by a professional licensed in accordance with such articles.

S 6. Construction with respect to each contract entered into by an authorized entity pursuant to this act shall be deemed a "public work" to be performed in accordance with the provisions of article 8 of the labor law, as well as subject to sections 200, 240, 241 and 242 of the labor law and enforcement of prevailing wage requirements pursuant to applicable law or, for projects or public works receiving federal aid, applicable federal requirements for prevailing wage. Any contract entered into pursuant to this act shall include a clause requiring the selected design builder to obligate every tier of contractor working on the project to comply with the project labor agreement referenced in section three of this act, and shall include project labor agreement compliance monitoring and enforcement provisions consistent with the applicable project labor agreement.

S 7. Each contract entered into by an authorized entity pursuant to this act shall comply with the objectives and goals with regard to minority and women-owned business enterprises pursuant to section 6-129 of the administrative code of the city of New York, or, for projects or public works receiving federal aid, applicable federal requirements for disadvantaged business enterprises or minority and women-owned business enterprises.

S 8. Public works undertaken by an authorized entity pursuant to this act shall be subject to the requirements of article 8 of the environmental conservation law, and, where applicable, the requirements of the national environmental policy act.

S 9. (a) Notwithstanding any provision of law to the contrary, all rights or benefits, including terms and conditions of employment, and

protection of civil service and collective bargaining status of all employees of authorized entities, shall not be impaired or reduced because of the use of a design-build contract pursuant to this act.

(b) Nothing in this act shall result in the displacement of any current employee of an authorized entity using design-build contracts who is represented by a "certified employee organization" as defined by section 12-303 of the New York city administrative code, or loss of position of such employee (including partial displacement such as a reduction in the hours of non-overtime work, wages or employment benefits), or result in the impairment of existing collective bargaining agreements.

(c) Employees of authorized entities using design-build contracts serving in positions in newly created titles shall be assigned to the appropriate bargaining unit. Nothing contained herein shall be construed to affect (1) the existing rights of employees of such entities pursuant to an existing collective bargaining agreement, (2) the existing representational relationships among employee organizations representing employees of such entities or (3) the bargaining relationships between such entities and such employee organizations.

S 10. The submission of a proposal or responses or the execution of a design-build contract pursuant to this act shall not be construed to be a violation of section 6512 of the education law.

S 11. Nothing contained in this act shall limit the right or obligation of any authorized entity to comply with the provisions of any existing contract or to award contracts as otherwise provided by law.

S 12. This act shall take effect immediately and shall expire and be deemed repealed 5 years after such date; provided that, public works with requests for proposals or requests for qualifications issued prior to such repeal shall be permitted to continue pursuant to this act notwithstanding such repeal.