

STATE OF NEW YORK

4192

2017-2018 Regular Sessions

IN SENATE

February 6, 2017

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

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 § 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

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

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1 provided for in section one hundred sixty-three-c of the state finance
2 law.

3 § 3. The state finance law is amended by adding a new section 163-c to
4 read as follows:

5 § 163-c. Alternative project delivery methods. 1. For purposes of this
6 section:

7 a. "Alternative project delivery methodology" shall mean any
8 construction project delivery methodology whereby the procurement for
9 the construction services is other than the traditional design-bid-build
10 process.

11 b. "State contracting agency" or "agency" shall mean the office of
12 general services and/or the department of transportation.

13 c. "Evaluation team" shall mean a team of not less than five persons
14 knowledgeable in the construction industry, to be formed by a state
15 contracting authority to evaluate the qualifications and proposals
16 submitted for that project.

17 2. Notwithstanding the provisions of section one hundred sixty-three
18 of this article, section thirty-eight of the highway law, or any gener-
19 al, special or local law that may require an agency to award contracts
20 to the lowest responsible bidder after advertising for sealed bids, a
21 state contracting agency may procure construction services through an
22 alternative project delivery methodology for any project having a cost
23 of twenty-five million dollars or more, provided that the state
24 contracting agency determines that such alternative project delivery
25 methodology, rather than the traditional design-bid-build process, will
26 provide best value to the state. Prior to utilizing an alternative
27 project delivery methodology, the agency shall make a written determi-
28 nation identifying the reasons for using an alternative project delivery
29 methodology, and the methodology selected. Such reasons may include, but
30 need not be limited to, benefits relating to the project schedule, cost
31 of the project, and project feasibility.

32 3. A state contracting agency that elects to use an alternative
33 project delivery methodology shall award a contract for such services by
34 completing a two step process: a. Step one. The agency shall generate a
35 list of entities that have demonstrated the general capability to
36 provide the alternative project delivery services chosen for the
37 project. Such list shall be generated based on the agency's evaluation
38 team's review of responses to a publicly advertised request for quali-
39 fications. The agency's request for qualifications shall include a
40 general description of the project, the maximum number of entities to be
41 included on the list, and the selection criteria to be used in determin-
42 ing which entities are eligible to receive requests for proposals pursu-
43 ant to paragraph b of this subdivision. The selection criteria shall
44 include a description of the relative weight to be assigned to each
45 criteria. In determining whether an entity qualifies for inclusion on
46 such list, the evaluation team shall consider the experience, expertise
47 and past performance of the entity, the entity's ability to undertake
48 the project, the financial capability, responsibility and reliability of
49 the entity, and such other qualifications as the agency deems appropri-
50 ate. The evaluation team shall also consider skilled labor force avail-
51 ability, whether proposed key personnel have sufficient experience and
52 training to competently manage and complete the design and construction
53 of the project, and other non-price related factors. In addition, the
54 agency shall consider the entity's workers' compensation experience
55 history and worker safety programs. The evaluation team shall evaluate
56 and rate all entities responding to the request for qualifications.

1 Based upon such ratings, the evaluation team shall list the entities
2 that shall receive a request for proposals in accordance with paragraph
3 b of this subdivision.

4 b. Step two. The agency shall issue a request for proposals to the
5 entities listed pursuant to paragraph a of this subdivision. If such an
6 entity consists of a team of separate entities, the entities that
7 comprise such a team must remain unchanged from the entity as listed
8 pursuant to paragraph a of this subdivision, unless approved by the
9 agency. The request for proposals shall set forth the project's scope of
10 work, and other requirements as determined by the agency. The request
11 for proposals shall specify the selection criteria to be used to evalu-
12 ate the responses and the relative weight to be assigned to each crite-
13 riion. The responses shall then be evaluated based upon the weighted
14 criteria and selection procedures identified in the request for
15 proposals. Such criteria shall include the proposal's cost, the quality
16 of the proposal's solution, the qualifications and experience of the
17 design and construction team, and other factors deemed pertinent by the
18 agency, which may include, but shall not be limited to, the proposal's
19 project implementation, ability to complete the work in a timely, cost-
20 effective and satisfactory manner, the size, type, and desired design
21 character of the project, performance specifications covering the quali-
22 ty of materials, equipment, workmanship, preliminary plans, and any
23 other information that the agency deems pertinent to the construction of
24 the project. Any contract awarded pursuant to this section shall be
25 awarded to the responsive and responsible entity that submits the
26 proposal, which offers the best value to the state, as determined by the
27 evaluation team in accordance with the established selection criteria.

28 4. Within ninety days following the selection, the agency shall
29 provide a report of the findings of the evaluation team. The report
30 shall be available to the public for review.

31 5. Any contract entered into pursuant to this section shall require
32 that any professional services regulated by articles one hundred forty-
33 five, one hundred forty-seven and one hundred forty-eight of the educa-
34 tion law shall be performed by a professional licensed in accordance
35 with such articles.

36 6. Any project undertaken pursuant to this section shall be deemed a
37 public work to be performed in accordance with the provisions of article
38 eight of the labor law and subject to enforcement of prevailing wage
39 requirements by the department of labor.

40 7. Each contract entered into by the agency pursuant to this section
41 shall comply with the objectives and goals of minority and women-owned
42 business enterprises pursuant to article fifteen-A of the executive law
43 and, for projects receiving federal aid, shall comply with applicable
44 federal requirements for disadvantaged business enterprises.

45 § 4. The public authorities law is amended by adding a new section
46 2880-b to read as follows:

47 § 2880-b. Alternative project delivery methods. 1. For the purposes of
48 this section:

49 a. "Alternative project delivery methodology" shall mean any
50 construction project delivery methodology whereby the procurement for
51 the construction services is other than the traditional design-bid-build
52 process.

53 b. "State contracting authority" or "authority" shall mean the dormi-
54 tory authority, the New York state thruway authority, the New York city
55 school construction authority, and the metropolitan commuter transporta-
56 tion authority.

1 c. "Evaluation team" shall mean a team of not less than five persons
2 knowledgeable in the construction industry, to be formed by a state
3 contracting authority to evaluate the qualifications and proposals
4 submitted for that project.

5 2. Notwithstanding any other provisions of this title or the
6 provisions of any general, special or local law that may require an
7 authority to award contracts to the lowest responsible bidder after
8 advertising for sealed bids, a state contracting authority may procure
9 construction services through an alternative project delivery methodol-
10 ogy for any project having a cost of twenty-five million dollars or
11 more, provided that the state contracting authority determines that such
12 alternative project delivery methodology, rather than the traditional
13 design-bid-build process, will provide best value to the state. Prior to
14 utilizing an alternative project delivery methodology, the authority
15 shall make a written determination identifying the reasons for using an
16 alternative project delivery methodology, and the methodology selected.
17 Such reasons may include, but need not be limited to, benefits relating
18 to the project schedule, cost of the project, and project feasibility.

19 3. A state contracting authority that elects to use an alternative
20 project delivery methodology shall award a contract for such services by
21 completing a two step process: a. Step one. The authority shall generate
22 a list of entities that have demonstrated the general capability to
23 provide the alternative project delivery services chosen for the
24 project. Such list shall be generated based on the authority's evalu-
25 ation team's review of responses to a publicly advertised request for
26 qualifications. The authority's request for qualifications shall include
27 a general description of the project, the maximum number of entities to
28 be included on the list, and the selection criteria to be used in deter-
29 mining which entities are eligible to receive requests for proposals
30 pursuant to paragraph b of this subdivision. The selection criteria
31 shall include a description of the relative weight to be assigned to
32 each criteria. In determining whether an entity qualifies for inclusion
33 on such list, the evaluation team shall consider the experience, exper-
34 tise and past performance of the entity, the entity's ability to under-
35 take the project, the financial capability, responsibility and reliabil-
36 ity of the entity, and such other qualifications as the authority deems
37 appropriate. The evaluation team shall also consider skilled labor force
38 availability, whether proposed key personnel have sufficient experience
39 and training to competently manage and complete the design and
40 construction of the project, and other non-price related factors. In
41 addition, the authority shall consider the entity's workers' compen-
42 sation experience history and worker safety programs. The evaluation
43 team shall evaluate and rate all entities responding to the request for
44 qualifications. Based upon such ratings, the evaluation team shall list
45 the entities that shall receive a request for proposals in accordance
46 with paragraph b of this subdivision.

47 b. Step two. The authority shall issue a request for proposals to the
48 entities listed pursuant to paragraph a of this subdivision. If such an
49 entity consists of a team of separate entities, the entities that
50 comprise such a team must remain unchanged from the entity as listed
51 pursuant to paragraph a of this subdivision, unless approved by the
52 authority. The request for proposals shall set forth the project's scope
53 of work, and other requirements as determined by the authority. The
54 request for proposals shall specify the selection criteria to be used to
55 evaluate the responses and the relative weight to be assigned to each
56 criterion. The responses shall then be evaluated based upon the weighted

1 criteria and selection procedures identified in the request for
2 proposals. Such criteria shall include the proposal's cost, the quality
3 of the proposal's solution, the qualifications and experience of the
4 design and construction team, and other factors deemed pertinent by the
5 authority, which may include, but shall not be limited to, the
6 proposal's project implementation, ability to complete the work in a
7 timely, cost-effective and satisfactory manner, the size, type, and
8 desired design character of the project, performance specifications
9 covering the quality of materials, equipment, workmanship, preliminary
10 plans, and any other information that the authority deems pertinent to
11 the construction of the project. Any contract awarded pursuant to this
12 section shall be awarded to the responsive and responsible entity that
13 submits the proposal, which offers the best value to the state, as
14 determined by the evaluation team in accordance with the established
15 selection criteria.

16 4. Within ninety days following the selection, the state contracting
17 authority shall provide a report of the findings of the evaluation team.
18 The report shall be available to the public for review.

19 5. Any contract entered into pursuant to this section shall require
20 that any professional services regulated by articles one hundred forty-
21 five, one hundred forty-seven and one hundred forty-eight of the educa-
22 tion law shall be performed by a professional licensed in accordance
23 with such articles.

24 6. Any project undertaken pursuant to this section shall be deemed a
25 public work to be performed in accordance with the provisions of article
26 eight of the labor law and subject to enforcement of prevailing wage
27 requirements by the department of labor.

28 7. Each contract entered into by the authority pursuant to this
29 section shall comply with the objectives and goals of minority and
30 women-owned business enterprises pursuant to article fifteen-A of the
31 executive law and, for projects receiving federal aid, shall comply with
32 applicable federal requirements for disadvantaged business enterprises.

33 § 5. The education law is amended by adding a new section 376-b to
34 read as follows:

35 § 376-b. Alternative project delivery methods. 1. For purposes of this
36 section:

37 a. "Alternative project delivery methodology" shall mean any
38 construction project delivery methodology whereby the procurement for
39 the construction services is other than the traditional design-bid-build
40 process.

41 b. "Evaluation team" shall mean a team of not less than five persons
42 knowledgeable in the construction industry, to be formed by a state
43 contracting authority to evaluate the qualifications and proposals
44 submitted for that project.

45 2. Notwithstanding the provisions of section three hundred seventy-six
46 of this article, or the provisions of any general, special or local law
47 that may require an agency to award contracts to the lowest responsible
48 bidder after advertising for sealed bids, the fund may procure
49 construction services through an alternative project delivery methodol-
50 ogy for any project having a cost of twenty-five million dollars or
51 more, provided that the fund determines that such alternative project
52 delivery methodology, rather than the traditional design-bid-build proc-
53 ess, will provide best value to the state. Prior to utilizing an alter-
54 native project delivery methodology, the fund shall make a written
55 determination identifying the reasons for using an alternative project
56 delivery methodology, and the methodology selected. Such reasons may

1 include, but need not be limited to, benefits relating to the project
2 schedule, cost of the project, and project feasibility.

3 3. If the fund elects to use an alternative project delivery methodol-
4 ogy, the fund shall award a contract for such services by completing a
5 two step process: a. Step one. The fund shall generate a list of enti-
6 ties that have demonstrated the general capability to provide the alter-
7 native project delivery services chosen for the project. Such list shall
8 be generated based on the fund's evaluation team's review of responses
9 to a publicly advertised request for qualifications. The fund's request
10 for qualifications shall include a general description of the project,
11 the maximum number of entities to be included on the list, and the
12 selection criteria to be used in determining which entities are eligible
13 to receive requests for proposals pursuant to paragraph b of this subdivi-
14 vision. The selection criteria shall include a description of the rela-
15 tive weight to be assigned to each criteria. In determining whether an
16 entity qualifies for inclusion on such list, the evaluation team shall
17 consider the experience, expertise and past performance of the entity,
18 the entity's ability to undertake the project, the financial capability,
19 responsibility and reliability of the entity, and such other qualifica-
20 tions as the fund deems appropriate. The evaluation team shall also
21 consider skilled labor force availability, whether proposed key person-
22 nel have sufficient experience and training to competently manage and
23 complete the design and construction of the project, and other non-price
24 related factors. In addition, the fund shall consider the entity's work-
25 ers' compensation experience history and worker safety programs. The
26 evaluation team shall evaluate and rate all entities responding to the
27 request for qualifications. Based upon such ratings, the evaluation team
28 shall list the entities that shall receive a request for proposals in
29 accordance with paragraph b of this subdivision.

30 b. Step two. The fund shall issue a request for proposals to the enti-
31 ties listed pursuant to paragraph a of this subdivision. If such an
32 entity consists of a team of separate entities, the entities that
33 comprise such a team must remain unchanged from the entity as listed
34 pursuant to paragraph a of this subdivision, unless approved by the
35 fund. The request for proposals shall set forth the project's scope of
36 work, and other requirements as determined by the fund. The request for
37 proposals shall specify the selection criteria to be used to evaluate
38 the responses and the relative weight to be assigned to each criterion.
39 The responses shall then be evaluated based upon the weighted criteria
40 and selection procedures identified in the request for proposals. Such
41 criteria shall include the proposal's cost, the quality of the
42 proposal's solution, the qualifications and experience of the design and
43 construction team, and other factors deemed pertinent by the fund, which
44 may include, but shall not be limited to, the proposal's project imple-
45 mentation, ability to complete the work in a timely, cost-effective and
46 satisfactory manner, the size, type, and desired design character of the
47 project, performance specifications covering the quality of materials,
48 equipment, workmanship, preliminary plans, and any other information
49 that the fund deems pertinent to the construction of the project. Any
50 contract awarded pursuant to this section shall be awarded to the
51 responsive and responsible entity that submits the proposal, which
52 offers the best value to the state, as determined by the evaluation team
53 in accordance with the established selection criteria.

54 4. Within ninety days following the selection, the fund shall provide
55 a report of the findings of the evaluation team. The report shall be
56 available to the public for review.

1 5. Any contract entered into pursuant to this section shall require
2 that any professional services regulated by articles one hundred forty-
3 five, one hundred forty-seven and one hundred forty-eight of this chap-
4 ter shall be performed by a professional licensed in accordance with
5 such articles.

6 6. Any project undertaken pursuant to this section shall be deemed a
7 public work to be performed in accordance with the provisions of article
8 eight of the labor law and subject to enforcement of prevailing wage
9 requirements by the department of labor.

10 7. Each contract entered into by the fund pursuant to this section
11 shall comply with the objectives and goals of minority and women-owned
12 business enterprises pursuant to article fifteen-A of the executive law
13 and, for projects receiving federal aid, shall comply with applicable
14 federal requirements for disadvantaged business enterprises.

15 § 6. The education law is amended by adding a new section 6284 to read
16 as follows:

17 § 6284. Alternative project delivery methods. 1. For purposes of this
18 section:

19 a. "Alternative project delivery methodology" shall mean any
20 construction project delivery methodology whereby the procurement for
21 the construction services is other than the traditional design-bid-build
22 process.

23 b. "Evaluation team" shall mean a team of not less than five persons
24 knowledgeable in the construction industry, to be formed by the fund to
25 evaluate the qualifications and proposals submitted for that project.

26 2. Notwithstanding the provisions of any general, special or local law
27 that may require an agency to award contracts to the lowest responsible
28 bidder after advertising for sealed bids, the fund may procure
29 construction services through an alternative project delivery methodol-
30 ogy for any project having a cost of twenty-five million dollars or
31 more, provided that the fund determines that such alternative project
32 delivery methodology, rather than the traditional design-bid-build proc-
33 ess, will provide best value to the state. Prior to utilizing an alter-
34 native project delivery methodology, the fund shall make a written
35 determination identifying the reasons for using an alternative project
36 delivery methodology, and the methodology selected. Such reasons may
37 include, but need not be limited to, benefits relating to the project
38 schedule, cost of the project, and project feasibility.

39 3. If the fund elects to use an alternative project delivery methodol-
40 ogy, the fund shall award a contract for such services by completing a
41 two step process: a. Step one. The fund shall generate a list of enti-
42 ties that have demonstrated the general capability to provide the alter-
43 native project delivery services chosen for the project. Such list shall
44 be generated based on the fund's evaluation team's review of responses
45 to a publicly advertised request for qualifications. The fund's request
46 for qualifications shall include a general description of the project,
47 the maximum number of entities to be included on the list, and the
48 selection criteria to be used in determining which entities are eligible
49 to receive requests for proposals pursuant to paragraph b of this subdivi-
50 sion. The selection criteria shall include a description of the rela-
51 tive weight to be assigned to each criteria. In determining whether an
52 entity qualifies for inclusion on such list, the evaluation team shall
53 consider the experience, expertise and past performance of the entity,
54 the entity's ability to undertake the project, the financial capability,
55 responsibility and reliability of the entity, and such other qualifica-
56 tions as the fund deems appropriate. The evaluation team shall also

1 consider skilled labor force availability, whether proposed key person-
2 nel have sufficient experience and training to competently manage and
3 complete the design and construction of the project, and other non-price
4 related factors. In addition, the fund shall consider the entity's work-
5 ers' compensation experience history and worker safety programs. The
6 evaluation team shall evaluate and rate all entities responding to the
7 request for qualifications. Based upon such ratings, the evaluation team
8 shall list the entities that shall receive a request for proposals in
9 accordance with paragraph b of this subdivision.

10 b. Step two. The fund shall issue a request for proposals to the enti-
11 ties listed pursuant to paragraph a of this subdivision. If such an
12 entity consists of a team of separate entities, the entities that
13 comprise such a team must remain unchanged from the entity as listed
14 pursuant to paragraph a of this subdivision, unless approved by the
15 fund. The request for proposals shall set forth the project's scope of
16 work, and other requirements as determined by the fund. The request for
17 proposals shall specify the selection criteria to be used to evaluate
18 the responses and the relative weight to be assigned to each criterion.
19 The responses shall then be evaluated based upon the weighted criteria
20 and selection procedures identified in the request for proposals. Such
21 criteria shall include the proposal's cost, the quality of the
22 proposal's solution, the qualifications and experience of the design and
23 construction team, and other factors deemed pertinent by the fund, which
24 may include, but shall not be limited to, the proposal's project imple-
25 mentation, ability to complete the work in a timely, cost-effective and
26 satisfactory manner, the size, type, and desired design character of the
27 project, performance specifications covering the quality of materials,
28 equipment, workmanship, preliminary plans, and any other information
29 that the fund deems pertinent to the construction of the project. Any
30 contract awarded pursuant to this section shall be awarded to the
31 responsive and responsible entity that submits the proposal, which
32 offers the best value to the state, as determined by the evaluation team
33 in accordance with the established selection criteria.

34 4. Within ninety days following the selection, the fund shall provide
35 a report of the findings of the evaluation team. The report shall be
36 available to the public for review.

37 5. Any contract entered into pursuant to this section shall require
38 that any professional services regulated by articles one hundred forty-
39 five, one hundred forty-seven and one hundred forty-eight of this chap-
40 ter shall be performed by a professional licensed in accordance with
41 such articles.

42 6. Any project undertaken pursuant to this section shall be deemed a
43 public work to be performed in accordance with the provisions of article
44 eight of the labor law and subject to enforcement of prevailing wage
45 requirements by the department of labor.

46 7. Each contract entered into by the fund pursuant to this section
47 shall comply with the objectives and goals of minority and women-owned
48 business enterprises pursuant to article fifteen-A of the executive law
49 and, for projects receiving federal aid, shall comply with applicable
50 federal requirements for disadvantaged business enterprises.

51 § 7. This act shall take effect immediately.