

STATE OF NEW YORK

5548

2017-2018 Regular Sessions

IN SENATE

April 10, 2017

Introduced by Sens. GOLDEN, LANZA, SQUADRON -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation

AN ACT in relation to enacting the "transformational infrastructure and revitalization project act"; 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:

- 1 Section 1. This act shall be known and may be cited as the "transformational infrastructure and revitalization project act".
- 2
- 3 § 2. Definitions. For the purposes of this act, the following terms
- 4 shall have the following meanings:
- 5 1. "Transformational infrastructure and revitalization project" or
- 6 "project" shall mean the Brooklyn-Queens Expressway.
- 7 2. "Authorized entity" shall mean the New York city department of
- 8 transportation.
- 9 3. "Best value" shall mean the basis for awarding contracts for
- 10 services to the bidder that optimize quality, cost and efficiency, price
- 11 and performance criteria, which may include, but is not limited to:
- 12 (a) The quality of the contractor's performance on previous projects;
- 13 (b) The timeliness of the contractor's performance on previous
- 14 projects;
- 15 (c) The level of customer satisfaction with the contractor's performance on previous projects;
- 16
- 17 (d) The contractor's record of performing previous projects on budget
- 18 and ability to minimize cost overruns;
- 19 (e) The contractor's ability to limit change orders;
- 20 (f) The contractor's ability to prepare appropriate project plans;
- 21 (g) The contractor's technical capacities;
- 22 (h) The individual qualifications of the contractor's key personnel;

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

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1 (i) The contractor's ability to assess and manage risk and minimize
2 risk impact; and

3 (j) The contractor's past record of encouraging women and minority-
4 owned business enterprise participation and compliance with article 15-A
5 of the executive law.

6 Such basis shall reflect, wherever possible, objective and quantifi-
7 able analysis.

8 4. "Design-build contract" shall mean, in conformity with the require-
9 ments of this act, a contract for the design and construction of the
10 project with a single entity, which may be a team comprised of separate
11 entities.

12 5. "Procurement record" shall mean documentation of the decisions made
13 and the approach taken in the procurement process.

14 6. "Project labor agreement" shall mean a pre-hire collective bargain-
15 ing agreement between a contractor and a bona fide building and
16 construction trade labor organization establishing the labor organiza-
17 tion as the collective bargaining representative for all persons who
18 will perform work on the project, and which provides that only contrac-
19 tors and subcontractors who sign a pre-negotiated agreement with the
20 labor organization can perform project work.

21 § 3. Notwithstanding section 103 of the general municipal law or
22 section 135 of the state finance law or the provisions of any other law
23 to the contrary, in conformity with the requirements of this act, and
24 only when a project labor agreement is performed, the authorized entity
25 may utilize the alternative delivery method referred to as a design-
26 build contract for the project. The authorized entity shall ensure that
27 its procurement record reflects the design-build contract process
28 authorized by this act if utilized and applicable.

29 § 4. An entity selected by the authorized entity to enter into a
30 design-build contract for the project shall be selected through a two-
31 step method, as follows:

32 1. Step one. Generation of a list of entities that have demonstrated
33 the general capability to perform a design-build contract for the
34 project. Such list shall consist of a specified number of entities, as
35 determined by the authorized entity, and shall be generated based upon
36 the authorized entity's review of responses to a publicly advertised
37 request for qualifications for the project. The authorized entity's
38 request for qualifications for the project shall include a general
39 description of the project, the maximum number of entities to be
40 included on the list, and the selection criteria to be used in generat-
41 ing the list. Such selection criteria shall include the qualifications
42 and experience of the design and construction team, organization, demon-
43 strated responsibility, ability of the team or of a member or members of
44 the team to comply with applicable requirements, including the
45 provisions of articles 145, 147 and 148 of the education law, past
46 record of compliance with the labor law including prevailing wage
47 requirements under state and federal law; the past record of compliance
48 with existing labor standards and maintaining harmonious labor
49 relations; the record of protecting the health and safety of workers on
50 public works projects and job sites as demonstrated by the experience
51 modification rate for each of the last three years; the prospective
52 bidder's ability to undertake the particular type and complexity of
53 work; the financial capability, responsibility and reliability of the
54 prospective bidder for such type and complexity of work; the prospective
55 bidder's compliance with equal employment opportunity requirements and
56 anti-discrimination laws, and demonstrated commitment to working with

1 minority and women-owned businesses through joint ventures or subcon-
2 tractor relationships; whether or not the prospective bidder or a person
3 or entity with an interest of at least ten per centum in the prospective
4 bidder, is debarred for having disregarded obligations to employees
5 under the Davis-Bacon Act pursuant to 40 U.S.C. 3144 and 29 C.F.R. 5.12
6 and such other qualifications the authorized entity deems appropriate
7 which may include but are not limited to project understanding, finan-
8 cial capability and record of past performance. The authorized entity
9 shall evaluate and rate all entities responding to the request for qual-
10 ifications. Based upon such ratings, the authorized entity shall list
11 the entities that shall receive a request for proposals in accordance
12 with subdivision 2 of this section. To the extent consistent with appli-
13 cable federal law, the authorized entity shall consider, when awarding
14 any contract pursuant to this section, the participation of: (a) firms
15 certified pursuant to article 15-A of the executive law as minority or
16 women-owned businesses and the ability of other businesses under consid-
17 eration to work with minority and women-owned businesses so as to
18 promote and assist participation by such businesses; and (b) small busi-
19 ness concerns identified pursuant to subdivision (b) of section 139-g of
20 the state finance law.

21 2. Step two. Selection of the proposal which is the best value to the
22 authorized entity. The authorized entity shall issue a request for
23 proposals for the project to the entities listed pursuant to subdivision
24 1 of this section. If such an entity consists of a team of separate
25 entities, the entities that comprise such a team must remain unchanged
26 from the entity as listed pursuant to subdivision 1 of this section
27 unless otherwise approved by the authorized entity. The request for
28 proposals for the project shall set forth the project's scope of work,
29 and other requirements, as determined by the authorized entity includ-
30 ing, but not limited to, requiring either (a) a lump sum price or (b) a
31 fee for any preliminary professional services together with a specific
32 methodology for determining a cost-plus not to exceed guaranteed maximum
33 price for the balance of work that will be completed pursuant to the
34 design-build contract following the completion of any preliminary
35 professional services related to the project as long as any construction
36 work on the project is awarded by the contractor on a competitive basis
37 which is approved by the authorized entity. The request for proposals
38 shall specify the criteria to be used to evaluate the responses and the
39 relative weight of each such criteria. Such criteria shall include the
40 proposal's cost, the quality of the proposal's solution, the qualifica-
41 tions and experience of the design-build entity, and other factors
42 deemed pertinent by the authorized entity, which may include, but shall
43 not be limited to, the proposal's project implementation, ability to
44 complete the work in a timely and satisfactory manner, maintenance costs
45 of the completed project, maintenance of traffic approach, and community
46 impact. Any contract awarded pursuant to this act shall be awarded to a
47 responsive and responsible entity that submits the proposal, which, in
48 consideration of these and other specified criteria deemed pertinent to
49 the project, offers the best value to the authorized entity, as deter-
50 mined by the authorized entity. Nothing in this act shall be construed
51 to prohibit the authorized entity from negotiating final contract terms
52 and conditions including cost.

53 3. The design-build contract may be awarded to the contractor offering
54 the best value:

55 (a) Utilizing a cost-plus not to exceed guaranteed maximum price form
56 of contract in which the authorized entity shall be entitled to monitor

1 and audit all project costs. In establishing the schedule and process
2 for determining a guaranteed maximum price, the contract between the
3 authorized entity and the contractor shall:

4 (i) describe the scope of the work and the cost of performing such
5 work;

6 (ii) include a detailed line item cost breakdown;

7 (iii) include a list of all drawings, specifications and other infor-
8 mation on which the guaranteed maximum price is based;

9 (iv) include the dates for substantial and final completion on which
10 the guaranteed maximum price is based; and

11 (v) include a schedule of unit prices;

12 (b) Utilizing a lump sum contract in which the contractor agrees to
13 accept a set dollar amount for a contract which comprises a single bid
14 without providing a cost breakdown for all costs such as for equipment,
15 labor, materials, as well as such contractor's profit for completing all
16 items of work comprising the project; or

17 (c) The design-build contract may include both lump sum and cost-plus
18 not to exceed guaranteed maximum price, and also may provide for profes-
19 sional services on a fee-for-service basis.

20 4. Notwithstanding the foregoing provisions of this section, an entity
21 selected by the authorized entity to enter into a design-build contract
22 for this project shall determine, before awarding any contracts author-
23 ized by this act, whether the bidder, or a person or entity with an
24 interest of at least ten per centum in the bidder, is included in the
25 published list of debarred contractors pursuant to 40 U.S.C. 3144 and 29
26 C.F.R. 5.12, for having disregarded obligations to employees under the
27 Davis-Bacon Act, and the bidder's inclusion on such list must be taken
28 into consideration in deciding whether the bidder is awarded any
29 contract.

30 § 5. Any contract entered into pursuant to this act shall include a
31 clause requiring that any professional services regulated by articles
32 145, 147 and 148 of the education law shall be performed and stamped and
33 sealed, where appropriate, by a professional licensed in accordance with
34 such articles.

35 § 6. The construction, demolition, reconstruction, excavation, reha-
36 bilitation, repair, renovation of the project undertaken by the author-
37 ized entity pursuant to this act shall be deemed a "public work" to be
38 performed in accordance with the provisions of article 8 of the labor
39 law, as well as subject to sections 200, 240, 241 and 242 of the labor
40 law and enforcement of prevailing wage requirements by the New York
41 state department of labor.

42 § 7. A project labor agreement shall be included as a requirement in
43 the request for proposals for the project, provided that, based upon a
44 study done by or for the authorized entity, the authorized entity deter-
45 mines that its interests are best met by requiring a project labor
46 agreement. The authorized entity shall conduct such a study and the
47 project labor agreement shall be performed consistent with the
48 provisions of section 222 of the labor law. If a project labor agreement
49 is performed on the project the authorized entity may utilize a design-
50 build contract for the project and section 135 of the state finance law
51 shall not apply to the project. If a project labor agreement is not
52 performed on the project the authorized entity shall not utilize a
53 design-build contract for the project and sections 101 and 103 of the
54 general municipal law and section 135 of the state finance law shall
55 apply to the project.

1 § 8. Each contract entered into by the authorized entity pursuant to
2 this act shall comply, whenever practical, with the objectives and goals
3 of minority and women-owned business enterprises pursuant to article
4 15-A of the executive law or, if the project receives federal aid, shall
5 comply with applicable federal requirements for disadvantaged business
6 enterprises.

7 § 9. The project undertaken by the authorized entity pursuant to this
8 act shall be subject to the requirements of article 8 of the environ-
9 mental conservation law, and, where applicable, the requirements of the
10 national environmental policy act.

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

14 § 11. Nothing contained in this act shall limit the right or obli-
15 gation of the authorized entity to comply with the provisions of any
16 existing contract, including any existing contract with or for the bene-
17 fit of the holders of the obligations of the authorized entity, or to
18 award contracts as otherwise provided by law.

19 § 12. This act shall take effect immediately and shall expire and be
20 deemed repealed three years after such date, provided that, projects
21 with requests for qualifications issued prior to such repeal shall be
22 permitted to continue under this act notwithstanding such repeal.