

STATE OF NEW YORK

5548--B

2017-2018 Regular Sessions

IN SENATE

April 10, 2017

Introduced by Sens. GOLDEN, LANZA, SQUADRON, HAMILTON -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 "transfor-
2 mational infrastructure and revitalization project act".

3 § 2. Definitions. For the purposes of this act, the following terms
4 shall have the following meanings:

5 (a) "Public work" shall mean the Brooklyn-Queens Expressway, Atlantic
6 Avenue to Sands Street or Rodman's Neck firearms and training facility.

7 (b) "Authorized entity" shall mean the New York city department of
8 design and construction, and the New York city department of transporta-
9 tion.

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

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

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

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

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

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

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

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(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 ability to comply with applicable requirements, including the provisions of articles 145, 147 and 148 of the education law;

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

(13) The proposer's record of complying with existing labor standards, maintaining harmonious labor relations, and protecting the health and safety of workers and payment of wages above any locally-defined living wage; and

(14) A quantitative factor to be used in evaluation of bids or offers for awarding of contracts for bidders or offerers that are certified as minority- or women-owned business enterprises as defined in subdivisions 1, 7, 15 and 20 of section 310 of the executive law, or certified pursuant to local law as minority- or women-owned business enterprises.

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

(d) "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.

(e) "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.

(f) "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.

§ 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 in accordance with this act.

§ 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.

(a) A contractor selected by such authorized entity to enter into a design-build contract shall be selected through a two-step method, as follows:

(1) Step one. Generation of a list of responding entities that have demonstrated the general capability to perform the design-build contract. Such list shall consist of a specified number of responding entities, as determined by an authorized entity, and shall be generated based upon the authorized entity's review of responses to a publicly advertised request for qualifications. The authorized entity's request

1 for qualifications shall include a general description of the public
2 work, the maximum number of responding entities to be included on the
3 list, the selection criteria to be used and the relative weight of each
4 criteria in generating the list. Such selection criteria shall include
5 the qualifications and experience of the design and construction team,
6 organization, demonstrated responsibility, ability of the team or of a
7 member or members of the team to comply with applicable requirements,
8 including the provisions of articles 145, 147 and 148 of the education
9 law, past record of compliance with the labor law, and such other quali-
10 fications the authorized entity deems appropriate, which may include but
11 are not limited to project understanding, financial capability and
12 record of past performance. The authorized entity shall evaluate and
13 rate all responding entities to the request for qualifications. Based
14 upon such ratings, the authorized entity shall list the responding enti-
15 ties that shall receive a request for proposals in accordance with para-
16 graph two of this subdivision. To the extent consistent with applicable
17 federal law, the authorized entity shall consider, when awarding any
18 contract pursuant to this section, the participation of (i) responding
19 entities that are certified as minority- or women-owned business enter-
20 prises as defined in subdivisions 1, 7, 15 and 20 of section 310 of the
21 executive law, or certified pursuant to local law as minority- or
22 women-owned business enterprises; and (ii) small business concerns iden-
23 tified pursuant to subdivision (b) of section 139-g of the state finance
24 law; and

25 (2) Step two. Selection of the proposal which is the best value to the
26 authorized entity. The authorized entity shall issue a request for
27 proposals to the responding entities listed pursuant to paragraph one of
28 this subdivision. If such a responding entity consists of a team of
29 separate entities, the entities that comprise such a team must remain
30 unchanged from the responding entity as listed pursuant to paragraph one
31 of this subdivision unless otherwise approved by the authorized entity.
32 The request for proposals shall set forth the public work's scope of
33 work, and other requirements, as determined by the authorized entity,
34 which may include separate goals for work under the contract to be
35 performed by businesses certified as minority- or women-owned business
36 enterprises as defined in subdivisions 1, 7, 15 and 20 of section 310 of
37 the executive law, or certified pursuant to local law as minority- or
38 women-owned business enterprises. The request for proposals shall also
39 specify the criteria to be used to evaluate the responses and the rela-
40 tive weight of each of such criteria. Such criteria shall include the
41 proposal's cost, the quality of the proposal's solution, the qualifica-
42 tions and experience of the proposer, and other factors deemed pertinent
43 by the authorized entity, which may include, but shall not be limited
44 to, the proposal's manner and schedule of project implementation, the
45 proposer's ability to complete the work in a timely and satisfactory
46 manner, maintenance costs of the completed public work, maintenance of
47 traffic approach, and community impact. Any contract awarded pursuant to
48 this act shall be awarded to a responsive and responsible proposer,
49 which, in consideration of these and other specified criteria deemed
50 pertinent, offers the best value, as determined by the authorized enti-
51 ty. The request for proposals shall include a statement that proposers
52 shall designate in writing those portions of the proposal that contain
53 trade secrets or other proprietary information that are to remain confi-
54 dential; that the material designated as confidential shall be readily
55 separable from the proposal. Nothing in this subdivision shall be
56 construed to prohibit the authorized entity from negotiating final

1 contract terms and conditions including cost. All proposals submitted
2 shall be scored according to the criteria listed in the request for
3 proposals and such final scores shall be published on the authorized
4 entity's website.

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

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

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

15 (ii) Include a detailed line item cost breakdown,

16 (iii) Include a list of all drawings, specifications and other infor-
17 mation on which the guaranteed maximum price is based,

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

20 (v) Include a schedule of unit prices; or

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

26 § 5. Any contract entered into pursuant to this act shall include a
27 clause requiring that any professional services regulated by articles
28 145, 147 and 148 of the education law shall be performed and stamped and
29 sealed, where appropriate, by a professional licensed in accordance with
30 the appropriate article.

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

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

51 § 8. Public works undertaken by an authorized entity pursuant to this
52 act shall be subject to the requirements of article 8 of the environ-
53 mental conservation law, and, where applicable, the requirements of the
54 National Environmental Policy Act.

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

1 protection of civil service and collective bargaining status of all
2 employees of authorized entities solely in connection with the public
3 works identified in subdivision (a) of section two of this act, shall be
4 preserved and protected.

5 (b) Nothing in this act shall result in the: (1) displacement of any
6 currently employed worker or loss of position (including partial
7 displacement such as a reduction in the hours of non-overtime work,
8 wages or employment benefits), or result in the impairment of existing
9 collective bargaining agreements; and (2) transfer of existing duties
10 and functions related to maintenance and operations currently performed
11 by existing employees of authorized entities to a contractor.

12 (c) Employees of authorized entities using design-build contracts
13 serving in positions in newly created titles shall be assigned to the
14 appropriate bargaining unit. Nothing contained in this act shall be
15 construed to affect (1) the existing rights of employees of such enti-
16 ties pursuant to an existing collective bargaining agreement, (2) the
17 existing representational relationships among employee organizations
18 representing employees of such entities, or (3) the bargaining relation-
19 ships between such entities and such employee organizations.

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

23 § 11. Nothing contained in this act shall limit the right or obli-
24 gation of any authorized entity to comply with the provisions of any
25 existing contract or to award contracts as otherwise provided by law.

26 § 12. This act shall take effect immediately and shall expire and be
27 deemed repealed 4 years after such date; provided that, public works
28 with requests for qualifications issued prior to such repeal shall be
29 permitted to continue under this act notwithstanding such repeal.