STATE OF NEW YORK

7867

IN SENATE

March 5, 2018

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

AN ACT in relation to enacting the "transformational infrastructure and revitalization project act"; to amend the administrative code of the city of New York, in relation to school safety measures; 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 "transformational infrastructure and revitalization project act".

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

(a) "Public work" shall mean the Brooklyn-Queens Expressway, Atlantic Avenue to Sands Street.

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

(c) "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;

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

LBD14840-04-8

(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 for qualifications shall include a general description of the public work, the maximum number of responding entities to be included on the list, the selection criteria to be used and the relative weight of each criteria in generating the list. Such selection criteria shall include the qualifications and experience of the design and construction team, organization, 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 145, 147 and 148 of the education law, past record of compliance with the labor law, and such other qualifications the authorized entity deems appropriate, which may include but are not limited to project understanding, financial capability and record of past performance. The authorized entity shall evaluate and rate all responding entities to the request for qualifications. Based upon such ratings, the authorized entity shall list the responding entities that shall receive a request for proposals in accordance with paragraph two of this subdivision. To the extent consistent with applicable federal law, the authorized entity shall consider, when awarding any contract pursuant to this section, the participation of (i) responding entities 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; and (ii) small business concerns identified pursuant to subdivision (b) of section 139-g of the state finance law; and

(2) Step two. Selection of the proposal which is the best value to the authorized entity. The authorized entity shall issue a request for proposals to the responding entities listed pursuant to paragraph one of this subdivision. If such a responding entity consists of a team of separate entities, the entities that comprise such a team must remain unchanged from the responding entity as listed pursuant to paragraph one of this subdivision unless otherwise approved by the authorized entity. The request for proposals shall set forth the public work's scope of work, and other requirements, as determined by the authorized entity, which may include separate goals for work under the contract to be performed by businesses 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. The request for proposals shall also 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 proposer, which, in consideration of these and other specified criteria deemed pertinent, offers the best value, as determined by the authorized entity. The request for proposals shall include a statement that proposers shall designate in writing those portions of the proposal that contain trade secrets or other proprietary information that are to remain confidential; that the material designated as confidential shall be readily separable from the proposal. Nothing in this subdivision shall be construed to prohibit the authorized entity from negotiating final contract terms and conditions including cost. All proposals submitted shall be scored according to the criteria listed in the request for proposals and such final scores shall be published on the authorized entity's website.

(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.

§ 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 the appropriate article.

§ 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 such 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 public work 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.

§ 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, as applicable, 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.

§ 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.

§ 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 solely in connection with the public works identified in subdivision (a) of section two of this act, shall be preserved and protected.

(b) Nothing in this act shall result in the: (1) displacement of any currently employed worker or loss of position (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; and (2) transfer of existing duties and functions related to maintenance and operations currently performed by existing employees of authorized entities to a contractor.

(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 in this act 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.

§ 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.

§ 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.

§ 12. All savings realized by the city of New York through the use of a design build contract for the public work shall be deposited daily with such responsible banks, banking houses or trust companies, as may be designated by the comptroller, to the credit of the comptroller in trust for the metropolitan transportation authority. An account may be established in one or more of such depositories. Such deposits will be kept separate and apart from all other money in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Funds deposited pursuant to this section shall be paid on a quarterly basis to the metropolitan transit authority to be expended on costs incurred in the execution of the metropolitan transit authority capital plan beginning on the first day of the first quarter immediately following the execution of a design-build contract for the Brooklyn-Queens Expressway, Atlantic Avenue to Sands Street. For purposes of this section, the term "savings" shall mean the projected amount that would have been expended on the public work without the use of a design build contract less the amount that was expended on the public work using a design build contract.

§ 13. The administrative code of the city of New York is amended by adding a new section 10-179 to read as follows:

§ 10-179 School safety measures. The police commissioner of the city shall assign a police officer at least one hour prior to the commencement of instructional hours at every school, public and/or private, within the city of New York. Such police officer shall remain on site at such school during instructional hours and for a minimum one hour post instructional hours unless, in the discretion of the mayor of the city or the police commissioner of the city, a state of emergency exists requiring redeployment of a police officer during the required hours set forth in this section.

§ 14. This act shall take effect immediately; provided that sections one through twelve of this act shall expire and be deemed repealed 4 years after such date; provided, however that, public works with requests for qualifications issued prior to such repeal shall be permitted to continue under this act notwithstanding such repeal.