

# STATE OF NEW YORK

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8239

2017-2018 Regular Sessions

## IN ASSEMBLY

June 2, 2017

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Introduced by M. of A. BENEDETTO -- read once and referred to the  
Committee on Cities

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 Assem-  
bly, 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) "Transformational infrastructure and revitalization project" or  
6 "project" shall mean the Brooklyn-Queens Expressway, Atlantic Avenue to  
7 Sands Street or Rodman's Neck firearms and training facility.

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

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

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

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

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

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

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

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

23 (7) The proposer's technical capacities;

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

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

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

3 (10) The proposer's financial capability;

4 (11) The proposer's ability to comply with applicable requirements,  
5 including the provisions of articles 145, 147 and 148 of the education  
6 law;

7 (12) The proposer's past record of compliance with federal, state and  
8 local laws, rules, licensing requirements, where applicable, and execu-  
9 tive orders, including but not limited to compliance with the labor law  
10 and other applicable labor and prevailing wage laws, article 15-A of the  
11 executive law, and any other applicable laws concerning minority- and  
12 women-owned business enterprise participation;

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

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

22 Such basis shall reflect, wherever possible, objective and quantifi-  
23 able analysis.

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

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

30 (f) "Project labor agreement" shall have the meaning set forth in  
31 subdivision 1 of section 222 of the labor law. A project labor agreement  
32 shall require participation in apprentice training programs in accord-  
33 ance with paragraph (e) of subdivision 2 of such section.

34 (g) "Public work" shall mean a public work in the city of New York  
35 that is a transformational infrastructure and revitalization project.

36 § 3. Any contract for a public work undertaken pursuant to a project  
37 labor agreement in accordance with section 222 of the labor law may be a  
38 design-build contract in accordance with this act.

39 § 4. Notwithstanding any general, special or local law, rule or regu-  
40 lation to the contrary, including but not limited to article 5-A of the  
41 general municipal law and section 8 of the New York city health and  
42 hospitals corporation act, and in conformity with the requirements of  
43 this act, for any public work that has an estimated total cost of not  
44 less than ten million dollars and is undertaken pursuant to a project  
45 labor agreement in accordance with section 222 of the labor law, an  
46 authorized entity charged with awarding a contract for public work may  
47 use the alternative delivery method referred to as design-build  
48 contracts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 § 7. Each contract entered into by an authorized entity pursuant to  
46 this act shall comply with the objectives and goals with regard to  
47 minority- and women-owned business enterprises pursuant to, as applica-  
48 ble, section 6-129 of the administrative code of the city of New York  
49 and subdivision 6 of section 8 of the New York city health and hospitals  
50 corporation act, or, for projects or public works receiving federal aid,  
51 applicable federal requirements for disadvantaged business enterprises  
52 or minority- and women-owned business enterprises.

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

1     § 9. (a) Notwithstanding any provision of law to the contrary, all  
2 rights or benefits, including terms and conditions of employment, and  
3 protection of civil service and collective bargaining status of all  
4 employees of authorized entities solely in connection with the public  
5 works identified in subdivision (g) of section two of this act, shall be  
6 preserved and protected.

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

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

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

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

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