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:

Section 1. Legislative finding and intent. The federal government and numerous states regularly engage in what is termed "alternative project delivery" options for the procurement and construction of both building and transportation projects. These methods, which include design-build, construction manager at-risk, public/private partnerships and integrated project delivery have become proven methods for the efficient and effective delivery of public construction projects. Such methodologies have often produced high-quality projects at lower costs and at greatly improved timeframes.

Although design-bid-build should remain the primary method to deliver most public construction projects, the legislature declares that the department of transportation, the office of general services, the dormitory authority, the thruway authority, the state university construction fund, the city university construction fund, the New York city school construction authority and the metropolitan transportation authority should be permitted to engage in such "alternative project delivery" methods, subject to certain limitations and protections.

§ 2. Section 38 of the highway law is amended by adding a new subdivision 10 to read as follows:

10. Notwithstanding any other provision of this section or the provisions of section one hundred sixty-three of the state finance law, the department may procure services to construct or improve a state 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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provided for in section one hundred sixty-three-c of the state finance law.

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

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

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

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

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

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

3. A state contracting agency that elects to use an alternative project delivery methodology shall award a contract for such services by completing a two step process: a. Step one. The agency shall generate a list of entities that have demonstrated the general capability to provide the alternative project delivery services chosen for the project. Such list shall be generated based on the agency's evaluation team's review of responses to a publicly advertised request for qualifications. The agency's request for qualifications shall include a general description of the project, the maximum number of entities to be included on the list, and the selection criteria to be used in determining which entities are eligible to receive requests for proposals pursuant to paragraph b of this subdivision. The selection criteria shall include a description of the relative weight to be assigned to each criteria. In determining whether an entity qualifies for inclusion on such list, the evaluation team shall consider the experience, expertise and past performance of the entity, the entity's ability to undertake the project, the financial capability, responsibility and reliability of the entity, and such other qualifications as the agency deems appropriate. The evaluation team shall also consider skilled labor force availability, whether proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project, and other non-price related factors. In addition, the agency shall consider the entity's workers' compensation experience history and worker safety programs. The evaluation team shall evaluate and rate all entities responding to the request for qualifications.

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

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

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

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

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

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

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

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

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

b. "State contracting authority" or "authority" shall mean the dormitory authority, the New York state thruway authority, the New York city school construction authority, and the metropolitan commuter transportation authority.

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

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

3. A state contracting authority that elects to use an alternative project delivery methodology shall award a contract for such services by completing a two step process: a. Step one. The authority shall generate a list of entities that have demonstrated the general capability to provide the alternative project delivery services chosen for the project. Such list shall be generated based on the authority's evaluation team's review of responses to a publicly advertised request for qualifications. The authority's request for qualifications shall include a general description of the project, the maximum number of entities to be included on the list, and the selection criteria to be used in determining which entities are eligible to receive requests for proposals pursuant to paragraph b of this subdivision. The selection criteria shall include a description of the relative weight to be assigned to each criteria. In determining whether an entity qualifies for inclusion on such list, the evaluation team shall consider the experience, expertise and past performance of the entity, the entity's ability to undertake the project, the financial capability, responsibility and reliability of the entity, and such other qualifications as the authority deems appropriate. The evaluation team shall also consider skilled labor force availability, whether proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project, and other non-price related factors. In addition, the authority shall consider the entity's workers' compensation experience history and worker safety programs. The evaluation team shall evaluate and rate all entities responding to the request for qualifications. Based upon such ratings, the evaluation team shall list the entities that shall receive a request for proposals in accordance with paragraph b of this subdivision.

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

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

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

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

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

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

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

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

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

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

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

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

3. If the fund elects to use an alternative project delivery methodology, the fund shall award a contract for such services by completing a two step process: a. Step one. The fund shall generate a list of entities that have demonstrated the general capability to provide the alternative project delivery services chosen for the project. Such list shall be generated based on the fund's evaluation team's review of responses to a publicly advertised request for qualifications. The fund's request for qualifications shall include a general description of the project, the maximum number of entities to be included on the list, and the selection criteria to be used in determining which entities are eligible to receive requests for proposals pursuant to paragraph b of this subdivision. The selection criteria shall include a description of the relative weight to be assigned to each criteria. In determining whether an entity qualifies for inclusion on such list, the evaluation team shall consider the experience, expertise and past performance of the entity, the entity's ability to undertake the project, the financial capability, responsibility and reliability of the entity, and such other qualifications as the fund deems appropriate. The evaluation team shall also consider skilled labor force availability, whether proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project, and other non-price related factors. In addition, the fund shall consider the entity's workers' compensation experience history and worker safety programs. The evaluation team shall evaluate and rate all entities responding to the request for qualifications. Based upon such ratings, the evaluation team shall list the entities that shall receive a request for proposals in accordance with paragraph b of this subdivision.

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

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

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

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

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

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

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

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

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

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

3. If the fund elects to use an alternative project delivery methodology, the fund shall award a contract for such services by completing a two step process: a. Step one. The fund shall generate a list of entities that have demonstrated the general capability to provide the alternative project delivery services chosen for the project. Such list shall be generated based on the fund's evaluation team's review of responses to a publicly advertised request for qualifications. The fund's request for qualifications shall include a general description of the project, the maximum number of entities to be included on the list, and the selection criteria to be used in determining which entities are eligible to receive requests for proposals pursuant to paragraph b of this subdivision. The selection criteria shall include a description of the relative weight to be assigned to each criteria. In determining whether an entity qualifies for inclusion on such list, the evaluation team shall consider the experience, expertise and past performance of the entity, the entity's ability to undertake the project, the financial capability, responsibility and reliability of the entity, and such other qualifications as the fund deems appropriate. The evaluation team shall also

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

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

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

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

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

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

§ 7. This act shall take effect immediately.