

# 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:

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.

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;

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

22 (7) The proposer's technical capacities;

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

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

26 (10) The proposer's financial capability;

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

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

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

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

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

19 Such basis shall reflect, wherever possible, objective and quantifi-  
20 able analysis.

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

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

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

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

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

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

45 (1) Step one. Generation of a list of responding entities that have  
46 demonstrated the general capability to perform the design-build  
47 contract. Such list shall consist of a specified number of responding  
48 entities, as determined by an authorized entity, and shall be generated  
49 based upon the authorized entity's review of responses to a publicly  
50 advertised request for qualifications. The authorized entity's request  
51 for qualifications shall include a general description of the public  
52 work, the maximum number of responding entities to be included on the  
53 list, the selection criteria to be used and the relative weight of each  
54 criteria in generating the list. Such selection criteria shall include  
55 the qualifications and experience of the design and construction team,  
56 organization, demonstrated responsibility, ability of the team or of a

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

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

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

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

9 (i) Describe the scope of the work and the cost of performing such  
10 work,

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

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

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

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

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

22 § 5. Any contract entered into pursuant to this act shall include a  
23 clause requiring that any professional services regulated by articles  
24 145, 147 and 148 of the education law shall be performed and stamped and  
25 sealed, where appropriate, by a professional licensed in accordance with  
26 the appropriate article.

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

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

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

51 § 9. (a) Notwithstanding any provision of law to the contrary, all  
52 rights or benefits, including terms and conditions of employment, and  
53 protection of civil service and collective bargaining status of all  
54 employees of authorized entities solely in connection with the public  
55 works identified in subdivision (a) of section two of this act, shall be  
56 preserved and protected.

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

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

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

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

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

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

42 § 10-179 School safety measures. The police commissioner of the city  
43 shall assign a police officer at least one hour prior to the commence-  
44 ment of instructional hours at every school, public and/or private,  
45 within the city of New York. Such police officer shall remain on site at  
46 such school during instructional hours and for a minimum one hour post  
47 instructional hours unless, in the discretion of the mayor of the city  
48 or the police commissioner of the city, a state of emergency exists  
49 requiring redeployment of a police officer during the required hours set  
50 forth in this section.

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