

STATE OF NEW YORK

6293

2019-2020 Regular Sessions

IN SENATE

June 3, 2019

Introduced by Sens. COMRIE, JACKSON -- read twice and ordered printed,
and when printed to be committed to the Committee on Rules

AN ACT to amend chapter 59 of the laws of 2018, constituting the New
York city BQE Design-Build act, in relation to public work authori-
zation and the effectiveness thereof and repealing certain provisions
of such chapter relating thereto

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

- 1 Section 1. Section 1 of part QQQ of chapter 59 of the laws of 2018,
2 constituting the New York city BQE Design-Build act, is amended to read
3 as follows:
4 Section 1. This act shall be known and may be cited as the "New York
5 city [~~BQE~~] Design-Build act".
6 § 2. Section 2 of part QQQ of chapter 59 of the laws of 2018, consti-
7 tuting the New York city BQE Design-Build act, is amended to read as
8 follows:
9 § 2. For the purposes of this act:
10 (a) "Authorized entity" shall mean the New York city department of
11 design and construction, [~~and~~] the New York city department of transpor-
12 tation, the New York city department of environmental protection, the
13 New York city school construction authority, the New York city depart-
14 ment of parks and recreation, the New York city health and hospitals
15 corporation, and New York city housing authority.
16 (b) "Best value" shall mean the basis for awarding contracts for
17 services to a proposer that optimizes quality, cost and efficiency,
18 price and performance criteria, which may include, but is not limited
19 to:
20 (1) The quality of the proposer's performance on previous projects;
21 (2) The timeliness of the proposer's performance on previous projects;
22 (3) The level of customer satisfaction with the proposer's performance
23 on previous projects;

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

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

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

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

5 (7) The proposer's technical capacities;

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

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

9 (10) The proposer's financial capability;

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

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

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

23 (14) A quantitative factor to be used in evaluation of bids or offers
24 for awarding of contracts for bidders or offerers that are certified as
25 minority- or women-owned business enterprises pursuant to article 15-A
26 of the executive law, and certified pursuant to local law as minority-
27 or women-owned business enterprises. Where an agency identifies a quan-
28 titative factor pursuant to this paragraph, the agency must specify that
29 businesses certified as minority- or women-owned business enterprises
30 pursuant to article 15-A of the executive law as well as those certified
31 as minority- or women-owned business enterprises or pursuant to section
32 1304 of the New York City charter are eligible to qualify for such
33 factor. Nothing in this paragraph shall be construed as a requirement
34 that such businesses be concurrently certified as minority- or women-
35 owned business enterprises under both article 15-A of the executive law
36 and section 1304 of the New York City charter to qualify for such quan-
37 titative factors. In addition, where the New York city school
38 construction authority acts as the authorized entity, businesses certi-
39 fied as minority- or women-owned business enterprises pursuant to
40 section 1743 of the public authorities law shall be eligible to qualify
41 for such factor. Such basis shall reflect, wherever possible, objective
42 and quantifiable analysis.

43 (c) "Cost plus" shall mean compensating a contractor for the cost to
44 complete a contract by reimbursing actual costs for labor, equipment and
45 materials plus an additional amount for overhead and profit.

46 (d) "Design-build contract" shall mean a contract for the design and
47 construction of a public work with a single entity, which may be a team
48 comprised of separate entities.

49 (e) "Project labor agreement" shall have the meaning set forth in
50 subdivision 1 of section 222 of the labor law. A project labor agreement
51 shall require participation in apprentice training programs in accord-
52 ance with paragraph (e) of subdivision 2 of such section.

53 [~~(f) "Public work" shall mean a public work in the city of New York~~
54 ~~related to the following, and shall refer to this public work, Brooklyn~~
55 ~~Queens Expressway, from the vicinity of Atlantic avenue to the vicinity~~
56 ~~of Sands street in Kings county.]~~

1 § 3. Section 4 of part QQQ of chapter 59 of the laws of 2018, consti-
2 tuting the New York city BQE Design-Build act, is amended to read as
3 follows:

4 § 4. Notwithstanding any general, special or local law, rule or regu-
5 lation to the contrary, including but not limited to article 5-A of the
6 general municipal law, sections 1734 and 1735 of the public authorities
7 law, article 8 of the public housing law, section 7210 of the education
8 law, and section 8 of the New York city health and hospitals corporation
9 act, and in conformity with the requirements of this act, for any public
10 work that has an estimated cost of not less than ten million dollars and
11 is undertaken pursuant to a project labor agreement in accordance with
12 section 222 of the labor law, an authorized entity charged with awarding
13 a contract for public work may use the alternative delivery method
14 referred to as design-build contracts. Provided, however, that the New
15 York city department of parks and recreation is authorized to use the
16 alternative delivery method referred to as design-build contracts for
17 any public work and the New York city department of design and
18 construction is authorized to use design-build contracts for any munici-
19 pally owned homeland security bollard, library, museum, or pedestrian
20 ramp project that has an estimated cost of not less than one million two
21 hundred thousand dollars if such public work is otherwise in conformity
22 with the requirements of this act.

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

26 (1) Step one. Generation of a list of responding entities that have
27 demonstrated the general capability to perform the design-build
28 contract. Such list shall consist of a specified number of responding
29 entities, as determined by an authorized entity, and shall be generated
30 based upon the authorized entity's review of responses to a publicly
31 advertised request for qualifications. The authorized entity's request
32 for qualifications shall include a general description of the public
33 work, the maximum number of responding entities to be included on the
34 list, the selection criteria to be used and the relative weight of each
35 criteria in generating the list. Such selection criteria shall include
36 the qualifications and experience of the design and construction team,
37 organization, demonstrated responsibility, ability of the team or of a
38 member or members of the team to comply with applicable requirements,
39 including the provisions of articles 145, 147, and 148 of the education
40 law, past record of compliance with the labor law, and such other quali-
41 fications the authorized entity deems appropriate, which may include but
42 are not limited to project understanding, financial capability and
43 record of past performance. The authorized entity shall evaluate and
44 rate all responding entities to the request for qualifications. Based
45 upon such ratings, the authorized entity shall list the responding enti-
46 ties that shall receive a request for proposals in accordance with para-
47 graph two of this subdivision. To the extent consistent with applicable
48 federal law, the authorized entity shall consider, when awarding any
49 contract pursuant to this section, the participation of: (i) responding
50 entities that are certified as minority- or women-owned business enter-
51 prises pursuant to article 15-A of the executive law, or certified
52 pursuant to local law as minority- or women-owned business enterprises;
53 and (ii) small business concerns identified pursuant to subdivision (b)
54 of section 139-g of the state finance law.

55 (2) Step two. Selection of the proposal which is the best value to the
56 authorized entity. The authorized entity shall issue a request for

1 proposals to the responding entities listed pursuant to paragraph one of
2 this subdivision. If such a responding entity consists of a team of
3 separate entities, the entities that comprise such a team must remain
4 unchanged from the responding entity as listed pursuant to paragraph one
5 of this subdivision unless otherwise approved by the authorized entity.
6 The request for proposals shall set forth the public work's scope of
7 work, and other requirements, as determined by the authorized entity,
8 which may include separate goals for work under the contract to be
9 performed by businesses certified as minority- or women-owned business
10 enterprises pursuant to article 15-A of the executive law or section
11 1743 of the public authorities law, or certified pursuant to local law
12 as minority- or women-owned business enterprises. The request for
13 proposals shall also specify the criteria to be used to evaluate the
14 responses and the relative weight of each of such criteria. Such crite-
15 ria shall include the proposal's cost, the quality of the proposal's
16 solution, the qualifications and experience of the proposer, and other
17 factors deemed pertinent by the authorized entity, which may include,
18 but shall not be limited to, the proposal's manner and schedule of
19 project implementation, the proposer's ability to complete the work in a
20 timely and satisfactory manner, maintenance costs of the completed
21 public work, maintenance of traffic approach, and community impact. Any
22 contract awarded pursuant to this act shall be awarded to a responsive
23 and responsible proposer, which, in consideration of these and other
24 specified criteria deemed pertinent, offers the best value, as deter-
25 mined by the authorized entity. The request for proposals shall include
26 a statement that proposers shall designate in writing those portions of
27 the proposal that contain trade secrets or other proprietary information
28 that are to remain confidential; that the material designated as confi-
29 dential shall be readily separable from the proposal. Nothing in this
30 subdivision shall be construed to prohibit the authorized entity from
31 negotiating final contract terms and conditions including cost. All
32 proposals submitted shall be scored according to the criteria listed in
33 the request for proposals and such final scores shall be published on
34 the authorized entity's website.

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

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

43 (i) Describe the scope of the work and the cost of performing such
44 work,

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

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

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

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

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

1 § 4. Section 7 of part QQQ of chapter 59 of the laws of 2018, consti-
2 tuting the New York city BQE Design-Build act, is amended to read as
3 follows:

4 § 7. Each contract entered into by an authorized entity pursuant to
5 this act shall comply with the objectives and goals with regard to
6 minority- and women-owned business enterprises pursuant to, as applica-
7 ble, section 6-129 of the administrative code of the city of New York,
8 subdivision 6 of section 8 of the New York city health and hospitals
9 corporation act, section 1743 of the public authorities law or, for
10 projects or public works receiving federal aid, applicable federal
11 requirements for disadvantaged business enterprises or minority- and
12 women-owned business enterprises.

13 § 5. Section 9 of part QQQ of chapter 59 of the laws of 2018, consti-
14 tuting the New York city BQE Design-Build act, is amended by adding a
15 new subdivision (d) to read as follows:

16 (d) Provided further that any design-build contract and project
17 authorized pursuant to this act shall require quality assurance activ-
18 ities, including but not limited to construction inspection functions,
19 to be performed by city employees or city workforce engineers through
20 the project completion or final acceptance phase.

21 § 6. Section 12 of part QQQ of chapter 59 of the laws of 2018, consti-
22 tuting the New York city BQE Design-Build act, is REPEALED and a new
23 section 12 is added to read as follows:

24 § 12. The authority conferred by this act shall not impact or impair
25 the authorization granted to any public work covered by the New York
26 city BQE Design-Build act, the New York city housing authority modern-
27 ization investment act or the New York city Rikers Island jail complex
28 replacement act shall continue to be governed by the provisions of such
29 act while such provisions are in effect.

30 § 7. Part QQQ of chapter 59 of the laws of 2018, constituting the New
31 York city BQE Design-Build act, is amended by adding a new section 12-a
32 to read as follows:

33 § 12-a. A report shall be submitted no later than June 30, 2020 and
34 annually thereafter, to the governor, the temporary president of the
35 senate and the speaker of the assembly by the city of New York contain-
36 ing information on each authorized city entity that has entered into a
37 design-build or best value contract pursuant to this act, which shall
38 include, but not be limited to, a description of each project, procure-
39 ment information including the short list of qualified bidders, the
40 total cost of each project, the estimated cost and schedule savings of
41 each project, an explanation of how the savings were determined, and the
42 participation rate and total dollar value of expenditures on minority-
43 and women-owned business enterprises for each contract.

44 § 8. Section 13 of part QQQ of chapter 59 of the laws of 2018, consti-
45 tuting the New York city BQE Design-Build act, is amended to read as
46 follows:

47 § 13. This act shall take effect immediately and shall expire and be
48 deemed repealed [~~2 years after such date~~] July 1, 2022, provided that,
49 public works with requests for qualifications issued prior to such
50 repeal shall be permitted to continue under this act notwithstanding
51 such repeal.

52 § 9. This act shall take effect immediately; provided, however that
53 the amendments to the "New York city BQE Design-Build act" made by
54 sections one, two, three, four, five, six, seven and eight of this act
55 shall not affect the repeal of such act and shall be deemed repealed
56 therewith.