STATE OF NEW YORK

3397

2021-2022 Regular Sessions

IN SENATE

January 29, 2021

Introduced by Sens. BAILEY, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT establishing the "New York City Housing Authority Facilities Modernization Act"; and providing for the repeal of such provisions upon expiration thereof (Part A); and to amend the public housing law, in relation to reporting on lead-based paint poisoning prevention (Part B)

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

Section 1. This act enacts into law major components of legislation which are necessary to promote and protect the health and safety of New York residents relating to housing. Each component is wholly contained within a Part identified as Parts A through B. The effective date for each particular provision contained within such Part is set forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section three of this act sets forth the general effective date of this act.

PART A

Section 1. This act shall be known and may be cited as the "New York City Housing Authority Facilities Modernization Act".

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

1. "Project" shall mean any installation, construction, demolition, reconstruction, excavation, rehabilitation, renovation, and repair contracted out by the authorized authority pursuant to this act.

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

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2. "Authorized authority" shall mean the New York City Housing Authority.

3. "Best value" shall mean the basis for awarding contracts for services to the bidder that optimize quality, cost and efficiency, price and performance criteria, which may include, but is not limited to:

(a) The quality of the contractor's performance on previous projects;

(b) The timeliness of the contractor's performance on previous projects;

(c) The level of customer satisfaction with the contractor's performance on previous projects;

(d) The contractor's record of performing previous projects on budget and ability to minimize cost overruns;

(e) The contractor's ability to limit change orders;

(f) The contractor's ability to prepare appropriate project plans;

(g) The contractor's technical capacities;

(h) The individual qualifications of the contractor's key personnel;

(i) The contractor's ability to assess and manage risk and minimize risk impact;

(j) The contractor's past record of encouraging minority and women-owned business enterprise participation and compliance with article 15-A of the executive law and any other applicable laws concerning minority and women-owned business enterprise participation.

(k) 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 article 15-A 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.

4. "Design-build contract" shall mean, in conformity with the requirements of this act, a contract for the design and construction of the projects with a single entity, which may be a team comprised of separate entities.

5. "Procurement record" shall mean documentation of the decisions made and the approach taken in the procurement process.

6. "Project labor agreement" shall mean a pre-hire collective bargaining agreement between a contractor and a bona fide building and construction trade labor organization establishing the labor organization as the collective bargaining representative for all persons who will perform work on the project, and which provides that only contractors and subcontractors who sign a pre-negotiated agreement with the labor organization can perform project work.

§ 3. Notwithstanding section 103 of the general municipal law, section 151 of the public housing law, or the provisions of any other law to the contrary, in conformity with the requirements of this act, and only when a project labor agreement is performed, the authorized authority may utilize the alternative delivery method referred to as a design-build contract for the project provided that each such project shall not be less than one million two hundred thousand dollars ($1,200,000). The authorized authority shall ensure that its procurement record reflects the design-build contract process authorized by this act.

§ 4. An entity selected by the authorized authority to enter into a design-build contract for the project shall be selected through a two-step method, as follows:

1. Step one. Generation of a list of entities that have demonstrated the general capability to perform a design-build contract for the

project. Such list shall consist of a specified number of entities, as determined by the authorized authority, and shall be generated based upon the authorized authority's review of responses to a publicly advertised request for qualifications for the project. The authorized authority's request for qualifications for the project 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 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 including prevailing wage requirements under state and federal law; the past record of compliance with existing labor standards and maintaining harmonious labor relations; the record of protecting the health and safety of workers on public works projects and job sites as demonstrated by the experience modification rate for each of the last three years; the prospective bidder's ability to undertake the particular type and complexity of work; the financial capability, responsibility and reliability of the prospective bidder for such type and complexity of work; the prospective bidder's compliance with equal employment opportunity requirements and anti-discrimination laws, and demonstrated commitment to working with minority and women-owned businesses through joint ventures or subcontractor relationships; whether or not the prospective bidder or a person or entity with an interest of at least ten per centum in the prospective bidder, is listed by the federal government as excluded from receiving federal contracts and certain subcontracts, assistance, or benefits pursuant to 48 C.F.R. subpart 9-4; and such other qualifications the authorized authority deems appropriate which may include but are not limited to project understanding, financial capability and record of past performance. The authorized authority shall evaluate and rate all entities responding to the request for qualifications. Based upon such ratings, the authorized authority shall list the entities that shall receive a request for proposals in accordance with subdivision two of this section. To the extent consistent with applicable federal law, the authorized authority shall consider, when awarding any contract pursuant to this section, the participation of: (a) firms certified pursuant to article 15-A of the executive law as minority or women-owned businesses or certified pursuant to local law as minority or women-owned business enterprises and the ability of other businesses under consideration to work with minority and women-owned businesses so as to promote and assist participation by such businesses; and (b) small business concerns identified pursuant to subdivision (b) of section 139-g of the state finance law.

2. Step two. Selection of the proposal which is the best value to the authorized authority. The authorized authority shall issue a request for proposals for the project to the entities listed pursuant to subdivision one of this section. 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 subdivision one of this section unless otherwise approved by the authorized authority. The request for proposals for the project shall set forth the project's scope of work, and other requirements, as determined by the authorized authority. 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 article 15-A of the executive law, or certified pursuant to local law as minority or women-owned business enterprises. The request for proposals shall specify the criteria to be used to evaluate the responses and the relative weight of each such criteria. Such criteria shall include the proposal's cost, the quality of the proposal's solution, the qualifications and experience of the design-build entity, and other factors deemed pertinent by the authorized authority, which may include, but shall not be limited to, the proposal's project implementation, ability to complete the work in a timely and satisfactory manner, maintenance costs of the completed project, maintenance of traffic approach, and community impact. Any contract awarded pursuant to this act shall be awarded to a responsive and responsible entity that submits the proposal, which, in consideration of these and other specified criteria deemed pertinent to the project, offers the best value to the authorized authority, as determined by the authorized authority. Nothing in this act shall be construed to prohibit the authorized authority from negotiating final contract terms and conditions including cost.

3. Notwithstanding the foregoing provisions of this section, when any person or entity is listed by the federal government as excluded from receiving federal contracts and certain subcontracts, assistance or benefits, pursuant to 48 C.F.R. subpart 9-4, such person or entity, and any firm, corporation, partnership or association in which the person or entity owns or controls at least ten per centum, shall be ineligible to submit a bid on or be awarded any contract authorized by this act during such period of exclusion. The department of labor shall notify the person or entity immediately of such ineligibility and such person or entity must be afforded the opportunity to appeal to the department of labor.

§ 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 such articles.

§ 6. The installation, construction, demolition, reconstruction, excavation, rehabilitation, repair, and renovation of the project undertaken by the authorized authority 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 the labor law and enforcement of prevailing wage requirements by the New York state department of labor and, if the project receives federal aid, applicable federal requirements for prevailing wage.

§ 7. A project labor agreement shall be included in the request for proposals for the project, provided that, based upon a study done by or for the authorized authority, the authorized authority determines that its interest in obtaining the best work at the lowest possible price, preventing favoritism, fraud and corruption, and other considerations such as the impact of delay, the possibility of cost savings advantages, and any local history of labor unrest, are best met by requiring a project labor agreement. The authorized authority shall conduct such a study and the project labor agreement shall be performed consistent with the provisions of section 222 of the labor law. If a project labor agreement is not performed on the project (1) the authorized authority shall not utilize a design-build contract for the project; and (2)

sections 101 and 103 of the general municipal law and sections 151 and 151-a of the public housing law shall apply to the project.

§ 8. Each contract entered into by the authorized authority pursuant to this act shall comply, whenever practical, with the objectives and goals of minority and women-owned business enterprises pursuant to article 15-A of the executive law or, if the project receives federal aid, shall comply with applicable federal requirements for disadvantaged business enterprises.

§ 9. The project undertaken by the authorized authority 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.

§ 10. (a) Notwithstanding any provision of law to the contrary, all rights and benefits, including terms and conditions of employment, and protection of civil service and collective bargaining status of all employees of the authorized authority in connection with the project 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 the authorized authority to a contractor.

(c) Employees of the authorized authority that perform work in connection with the project serving in positions in newly created titles shall be assigned to the appropriate bargaining unit.

(d) Nothing contained in this act shall be construed to affect: (1) the existing rights and benefits of employees of the authorized authority pursuant to an existing collective bargaining agreement and the civil service law, including terms and conditions of employment; (2) the existing representational relationships among employee organizations representing employees of the authorized authority; or (3) the bargaining relationships between the authorized authority and such employee organizations.

§ 11. If otherwise applicable, the project undertaken by the authorized authority pursuant to this act shall be governed by the general municipal law and/or the public housing law.

§ 12. 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.

§ 13. Nothing contained in this act shall limit the right or obligation of the authorized authority to comply with the provisions of any existing contract, including any existing contract with or for the benefit of the holders of the obligations of the authorized authority, or to award contracts as otherwise provided by law.

§ 14. This act shall take effect immediately and shall expire and be deemed repealed 4 years after such date, provided that, if the New York city housing authority has issued requests for qualifications for the project prior to such repeal, such project shall be permitted to continue under this act notwithstanding such repeal.

PART B

Section 1. The public housing law is amended by adding a new section 402-f to read as follows:

§ 402-f. Reporting on lead-based paint poisoning prevention. 1. Commencing on November first, two thousand twenty-one and every year thereafter, the chair of the New York city housing authority shall produce a written report outlining federal, state and local laws forming the New York city housing authority's policies and procedures related to lead-based paint poisoning prevention and its implementation of such policies and procedures for the prior fiscal year. Such report shall be submitted to the New York city department of health and mental hygiene and the New York city department of housing preservation and development and shall be published on each department's website alongside other reports pertaining to lead-based paint poisoning prevention so that such report is available for public viewing. Such report shall include an analysis of the lead-based paint poisoning prevention program, a detailed statement of revenue and expenditures and a statistical section designed to provide a detailed explanation of the New York city housing authority's implementation, including but not limited to, the following:

a. the number of complaints related to peeling paint in dwelling units and/or common areas located in buildings constructed on or before nineteen hundred seventy-eight; and

b. the number of supervisory personnel and employees assigned to conduct lead-based paint inspections, disaggregated by the number of employees that have received training and certification in lead paint removal and the type of certification for work relating to lead-based paint poisoning prevention; and

c. the total number of exemptions obtained pursuant to subdivision b of section 27-2056.5 of the administrative code of the city of New York and the number of New York city public housing developments, buildings and units affected by such exemptions; and

d. the number of peeling paint inspections completed by the New York city housing authority as required by applicable federal, state and local laws, disaggregated by the location of peeling paint, such as a common area or dwelling unit; and

e. the number of peeling paint inspections identified as needing corrective action pursuant to applicable federal, state and local laws relating to lead-based paint, disaggregated by the location of peeling paint, such as a common area or dwelling unit; and

f. the number of work orders for peeling paint that were certified as corrected, disaggregated by remediation or abatement; and

g. the number of peeling paint complaints that did not result in an inspection and the reason the inspection was not completed and the number of peeling paint complaints that did not result in the removal of such peeling paint and the reason the peeling paint was not remediated or abated; and

h. the number of civil actions brought against the New York city housing authority alleging injury caused by lead-based paint; and

i. a statistical profile with geographic indexing, such as by community district, assembly district, senate district and/or zip code, of buildings in which peeling paint was identified as needing corrective action, indicating the age of the building and other factors relevant to the presence of lead paint hazards, which may include the prior lead poisoning of a child in a multiple dwelling and emergency repairs; and

j. such other information as requested by the commissioner of the New York city department of health and mental hygiene or the commissioner of the New York city department of housing preservation and development.

2. The New York city housing authority shall maintain a central register of all department orders to correct peeling paint pursuant to appli-

cable federal, state and local laws. Such register shall indicate the date of the complaint, the address of the premises, the date of each inspection and reinspection, and the scope of work undertaken as corrective actions.

3. Commencing on July first, two thousand twenty-one and every July first of each year thereafter, the chair of the New York city housing authority shall submit a draft plan for review and comment to the New York city department of housing preservation and development and the New York city department of health and mental hygiene on the New York city housing authority's policies and procedures related to lead-based paint poisoning prevention and the manner in which the New York city housing authority proposes to implement such policies and procedures.

The final plan shall take into consideration comments offered by the New York city department of health and mental hygiene and the New York city department of housing preservation and development and shall be published by August fifteenth of each year on each department's website, including the New York city housing authority's website, alongside other reports pertaining to lead-based paint poisoning prevention so that such report is available for public viewing.

§ 2. This act shall take effect immediately.

§ 2. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 3. This act shall take effect immediately provided, however, that the applicable effective date of Parts A through B of this act shall be as specifically set forth in the last section of such Parts.