

STATE OF NEW YORK

8531

IN SENATE

March 9, 2022

Introduced by Sen. GAUGHRAN -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

AN ACT in relation to establishing the "20 Station Drive, Wyandanch Design-Build Act"; 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 "20 Station
2 Drive, Wyandanch Design-Build Act".
- 3 § 2. For the purposes of this act:
- 4 (a) "Authorized entity" shall mean the Town of Babylon and the Town of
5 Babylon L.D. Corp. II.
- 6 (b) "Best value" shall mean the basis for awarding contracts for
7 services to a proposer that optimizes quality, cost and efficiency,
8 price and performance criteria, which may include, but is not limited
9 to:
- 10 (1) The quality of the proposer's performance on previous projects;
11 (2) The timeliness of the proposer's performance on previous projects;
12 (3) The level of customer satisfaction with the proposer's performance
13 on previous projects;
14 (4) The proposer's record of performing previous projects on budget
15 and ability to minimize cost overruns;
16 (5) The proposer's ability to limit change orders;
17 (6) The proposer's ability to prepare appropriate project plans;
18 (7) The proposer's technical capacities;
19 (8) The individual qualifications of the proposer's key personnel;
20 (9) The proposer's ability to assess and manage risk and minimize risk
21 impact;
22 (10) The proposer's financial capability;
23 (11) The proposer's ability to comply with applicable requirements,
24 including the provisions of articles 145, 147 and 148 of the education
25 law;
26 (12) The proposer's past record of compliance with federal, state and
27 local laws, rules, licensing requirements, where applicable, and execu-

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

LBD14810-03-2

1 tive orders, including but not limited to compliance with the labor law
2 and other applicable labor and prevailing wage laws, article 15-A of the
3 executive law, and any other applicable laws concerning minority- and
4 women-owned business enterprise participation;

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

9 (14) A quantitative factor to be used in evaluation of bids or offers
10 for awarding of contracts for bidders or offerers that are certified as
11 minority- or women-owned business enterprises pursuant to article 15-A
12 of the executive law, and certified pursuant to local law as minority-
13 or women-owned business enterprises. Where an agency identifies a quan-
14 titative factor pursuant to this paragraph, the agency must specify that
15 businesses certified as minority- or women-owned business enterprises
16 pursuant to article 15-A of the executive law as well as those certified
17 as minority- or women-owned business enterprises are eligible to qualify
18 for such factor. Nothing in this paragraph shall be construed as a
19 requirement that such businesses be concurrently certified as minority-
20 or women-owned business enterprises under article 15-A of the executive
21 law to qualify for such quantitative factors. Such basis shall reflect,
22 wherever possible, objective and quantifiable analysis.

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

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

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

33 (f) "Public work" shall mean a public work in the town of Babylon at
34 20 Station Drive, Wyandanch, New York.

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

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

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

49 (1) Step one. Generation of a list of responding entities that have
50 demonstrated the general capability to perform the design-build
51 contract. Such list shall consist of a specified number of responding
52 entities, as determined by an authorized entity, and shall be generated
53 based upon the authorized entity's review of responses to a publicly
54 advertised request for qualifications. The authorized entity's request
55 for qualifications shall include a general description of the public
56 work, the maximum number of responding entities to be included on the

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

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

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 and, for projects or
43 public works receiving federal aid, applicable federal requirements for
44 disadvantaged business enterprises or minority- and women-owned business
45 enterprises.

46 § 8. Public works undertaken by an authorized entity pursuant to this
47 act shall be subject to the requirements of article 8 of the environ-
48 mental conservation law, and, where applicable, the requirements of the
49 national environmental policy act.

50 § 9. (a) Notwithstanding any provision of law to the contrary, all
51 rights or benefits, including terms and conditions of employment, and
52 protection of civil service and collective bargaining status of all
53 employees of authorized entities solely in connection with the public
54 works identified in subdivision (f) of section two of this act, shall be
55 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. This act shall take effect immediately and shall expire and be
23 deemed repealed two years after such date; provided, however, that,
24 public works with requests for qualifications issued prior to such
25 repeal shall be permitted to continue under this act notwithstanding
26 such repeal.