

# STATE OF NEW YORK

10467

## IN ASSEMBLY

May 26, 2022

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Braunstein)  
-- read once and referred to the Committee on Cities

AN ACT to amend chapter 749 of the laws of 2019 authorizing, for certain public works undertaken pursuant to project labor agreements, use of the alternative delivery method known as design-build contracts, in relation to requiring qualification-based criteria for awarding certain contracts for services

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

1 Section 1. Section 2 of chapter 749 of the laws of 2019, authorizing,  
2 for certain public works undertaken pursuant to project labor agree-  
3 ments, use of the alternative delivery method known as design-build  
4 contracts, is amended by adding a new subdivision (f) to read as  
5 follows:

6 (f) "Qualifications-based" shall mean the basis for awarding a  
7 contract for services to an entity that submits a statement of quali-  
8 fications in response to a request for qualifications when an authorized  
9 entity utilizes a one-step method.

10 § 2. Subdivision (a) of section 4 of chapter 749 of the laws of 2019,  
11 authorizing, for certain public works undertaken pursuant to project  
12 labor agreements, use of the alternative delivery method known as  
13 design-build contracts, is amended to read as follows:

14 (a) A contractor selected by such an authorized entity to enter into a  
15 design-build contract shall be selected through a one-step or two-step  
16 method, as follows:

17 (1) Step one. Generation of a list of responding entities that have  
18 demonstrated the general capability to perform the design-build  
19 contract. Unless the authorized entity is utilizing a one-step method,  
20 the authorized entity shall generate a list of responding entities that  
21 have demonstrated the general capability to perform the design-build  
22 contract. Such list shall consist of a specified number of responding  
23 entities, as determined by an authorized entity, and shall be generated  
24 based upon the authorized entity's review of responses to a publicly  
25 advertised request for qualifications. The authorized entity's request

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

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1 for qualifications shall include a general description of the public  
2 work, the maximum number of responding entities to be included on the  
3 list, the selection criteria to be used and the relative weight of each  
4 criteria in generating the list. Such selection criteria shall include  
5 the qualifications and experience of the design and construction team,  
6 organization, demonstrated responsibility, ability of the team or of a  
7 member or members of the team to comply with applicable requirements,  
8 including the provisions of articles 145, 147 and 148 of the education  
9 law, past record of compliance with the labor law, and such other quali-  
10 fications the authorized entity deems appropriate, which may include but  
11 are not limited to project understanding, financial capability and  
12 record of past performance. [~~The~~ Unless the authorized entity is  
13 utilizing a one-step method, the authorized entity shall evaluate and  
14 rate all responding entities to the request for qualifications. Based  
15 upon such ratings, the authorized entity shall list the responding enti-  
16 ties that shall receive a request for proposals in accordance with para-  
17 graph two of this subdivision. If the authorized entity is utilizing a  
18 one-step method, the authorized entity shall evaluate and rate all  
19 statements of qualification submitted in response to the request for  
20 qualifications and shall award the design-build contract to the best  
21 qualified contractor. Notwithstanding any contrary provision of law, any  
22 authorizing entity awarding a design-build contract to a contractor  
23 determined to be the best qualified contractor in accordance with this  
24 paragraph may elect either to enter into a single contract with two  
25 phases or separate contracts for each of the two phases. To the extent  
26 consistent with applicable federal law, the authorized entity shall  
27 consider, when awarding any contract pursuant to this section, the  
28 participation of (i) responding entities that are certified as minority-  
29 or women-owned business enterprises pursuant to article 15-A of the  
30 executive law, or certified pursuant to local law as minority- or  
31 women-owned business enterprises, or, where the New York city school  
32 construction authority acts as the authorized entity, certified pursuant  
33 to section 1743 of the public authorities law; and (ii) small business  
34 concerns identified pursuant to subdivision (b) of section 139-g of the  
35 state finance law. In addition, nothing in this section shall be deemed  
36 to supersede any pre-qualification guidelines or requirements otherwise  
37 authorized by law for an authorized entity.

38 (2) Step two. Selection of the proposal which is the best value to the  
39 authorized entity. The authorized entity shall issue a request for  
40 proposals to the responding entities listed pursuant to paragraph one of  
41 this subdivision. If such a responding entity consists of a team of  
42 separate entities, the entities that comprise such a team must remain  
43 unchanged from the responding entity as listed pursuant to paragraph one  
44 of this subdivision unless otherwise approved by the authorized entity.  
45 The request for proposals shall set forth the public work's scope of  
46 work, and other requirements, as determined by the authorized entity,  
47 which may include separate goals for work under the contract to be  
48 performed by businesses certified as minority- or women-owned business  
49 enterprises pursuant to article 15-A of the executive law or section  
50 1743 of the public authorities law, or certified pursuant to local law  
51 as minority- or women-owned business enterprises. The request for  
52 proposals shall also specify the criteria to be used to evaluate the  
53 responses and the relative weight of each of such criteria. Such crite-  
54 ria shall include the proposal's cost, the quality of the proposal's  
55 solution, the qualifications and experience of the proposer, and other  
56 factors deemed pertinent by the authorized entity, which may include,

1 but shall not be limited to, the proposal's manner and schedule of  
2 project implementation, the proposer's ability to complete the work in a  
3 timely and satisfactory manner, maintenance costs of the completed  
4 public work, maintenance of traffic approach, and community impact.

5 (3) Any contract awarded pursuant to this act shall be awarded to a  
6 responsive and responsible proposer, which, in consideration of these  
7 and other specified criteria deemed pertinent, offers the best value, or  
8 in the case of a contract awarded utilizing a one-step method, is the  
9 best-qualified contractor, as determined by the authorized entity in  
10 accordance with this section. The request for proposals, or the request  
11 for qualifications if the contract is awarded utilizing a one-step meth-  
12 od, shall include a statement that proposers shall designate in writing  
13 those portions of the proposal that contain trade secrets or other  
14 proprietary information that are to remain confidential; that the mate-  
15 rial designated as confidential shall be readily separable from the  
16 proposal. Nothing in this subdivision shall be construed to prohibit the  
17 authorized entity from negotiating final contract terms and conditions  
18 including cost. All proposals or responses submitted shall be scored  
19 according to the criteria listed in the request for proposals, or the  
20 request for qualifications if the contract is awarded utilizing a one-  
21 step method, and such final scores shall be published on the authorized  
22 entity's website after registration of such contract or the date upon  
23 which such contract may be implemented, if registration requirements do  
24 not apply.

25 § 3. This act shall take effect immediately; provided, however that  
26 the amendments to chapter 749 of the laws of 2019 made by sections one  
27 and two of this act shall not affect the repeal of such chapter and  
28 shall be deemed repealed therewith.