STATE OF NEW YORK

9314--A

IN SENATE

May 13, 2022

Introduced by Sens. COMRIE, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Cities 1 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

Section 1. Section 2 of 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, is amended by adding a new subdivision (f) to read as follows:

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

§ 2. Subdivision (a) of section 4 of 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, is amended to read as follows:

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

(1) Step one. Generation of a list of responding entities that have demonstrated the general capability to perform the design-build contract. **Unless the authorized entity is utilizing a one-step method, the authorized entity shall generate a list of responding entities that have demonstrated the general capability to perform the design-build contract.** Such list shall consist of a specified number of responding entities, as determined by an authorized entity, and shall be generated

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

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based upon the authorized entity's review of responses to a publicly advertised request for qualifications. The authorized entity's request for qualifications shall include a general description of the public work, the maximum number of responding entities to be included on the list, the selection criteria to be used and the relative weight of each criteria 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, and such other qualifications the authorized entity deems appropriate, which may include but are not limited to project understanding, financial capability and record of past performance. [~~The~~] **Unless the authorized entity is utilizing a one-step method, the** authorized entity shall evaluate and rate all responding entities to the request for qualifications. Based upon such ratings, the authorized entity shall list the responding entities that shall receive a request for proposals in accordance with paragraph two of this subdivision. **If the authorized entity is utilizing a one-step method, the authorized entity shall evaluate and rate all statements of qualification submitted in response to the request for qualifications and shall award the design-build contract to the best qualified contractor. Notwithstanding any contrary provision of law, any authorizing entity awarding a design-build contract to a contractor determined to be the best qualified contractor in accordance with this paragraph may elect either to enter into a single contract with two phases or separate contracts for each of the two phases.** To the extent consistent with applicable federal law, the authorized entity shall consider, when awarding any contract pursuant to this section, the participation of (i) responding entities that are certified as minority- or women-owned business enterprises pursuant to article 15-A of the executive law, or certified pursuant to local law as minority- or women-owned business enterprises, or, where the New York city school construction authority acts as the authorized entity, certified pursuant to section 1743 of the public authorities law; and (ii) small business concerns identified pursuant to subdivision (b) of section 139-g of the state finance law. In addition, nothing in this section shall be deemed to supersede any pre-qualification guidelines or requirements otherwise authorized by law for an authorized entity.

(2) Step two. Selection of the proposal which is the best value to the authorized entity. The authorized entity shall issue a request for proposals to the responding entities listed pursuant to paragraph one of this subdivision. If such a responding entity consists of a team of separate entities, the entities that comprise such a team must remain unchanged from the responding entity as listed pursuant to paragraph one of this subdivision unless otherwise approved by the authorized entity. 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 pursuant to article 15-A of the executive law or section 1743 of the public authorities law, or certified pursuant to local law as minority- or women-owned business enterprises. The request for proposals shall also specify the criteria to be used to evaluate the responses and the relative weight of each of such criteria. Such criteria shall include the proposal's cost, the quality of the proposal's

solution, the qualifications and experience of the proposer, and other factors deemed pertinent by the authorized entity, which may include, but shall not be limited to, the proposal's manner and schedule of project implementation, the proposer's ability to complete the work in a timely and satisfactory manner, maintenance costs of the completed public work, maintenance of traffic approach, and community impact.

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

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