

# 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:

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

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

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

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

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

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

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