STATE OF NEW YORK

9362

IN SENATE

May 20, 2022

Introduced by Sen. COMRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, in relation to authorizing the dormitory authority to utilize a prequalification list when seeking to bid or enter into a contract for public work

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

Section 1. Section 1678 of the public authorities law is amended by adding a new subdivision 33 to read as follows:

33. (a) Notwithstanding any law, rule or regulation to the contrary, when awarding a contract for public work, the authority may establish guidelines governing the qualifications of bidders seeking to bid or enter into such contracts. If the authority maintains an appropriate list of qualified bidders, the bidding shall be restricted to those who have qualified prior to the receipt of bids according to standards fixed by the authority. In determining whether a prospective bidder qualifies for inclusion on a list of prequalified bidders, the authority shall consider the experience and record of performance of the prospective bidder in the particular type of work, as well as: (i) the prospective bidder's ability to undertake the particular type and complexity of work; (ii) the financial capability, responsibility and reliability of the prospective bidder for such type and complexity of work; (iii) the record of the prospective bidder in complying with existing labor standards and maintaining harmonious labor relations; (iv) 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; and (v) the record of the prospective bidder in protecting the health and safety of workers on public works projects and job sites as demonstrated by the prospective bidder's experience modification rate for each of the last three years.

(b) The authority shall, not less than annually, publish in a newspaper of general circulation or post in the New York State Contract Repor-

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

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ter an advertisement requesting prospective bidders to submit qualification statements. Lists of prequalified bidders may be established on a project-specific basis. Prequalified lists shall include all bidders that qualify; provided, however, that any such list shall have no less than five bidders but shall remain open for all additional qualified bidders. The authority's procedures for prequalifying bidders shall include an appeals process for those denied a place on a prequalified list. Any denial must be based upon substantial evidence, cannot be arbitrary or capacious, and shall be subject to judicial review pursuant to article seventy-eight of the civil practice law and rules. The authority may move forward on the contract award during such appeals.

§ 2. This act shall take effect immediately.