

# STATE OF NEW YORK

1026

2023-2024 Regular Sessions

## IN ASSEMBLY

January 13, 2023

Introduced by M. of A. JOYNER -- 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. The opening paragraph and paragraph 1 of subdivision (a) of  
11 section 4 of chapter 749 of the laws of 2019, authorizing, for certain  
12 public works undertaken pursuant to project labor agreements, use of the  
13 alternative delivery method known as design-build contracts, are amended  
14 to read as follows:

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

18 (1) Step one. Generation of a list of responding entities that have  
19 demonstrated the general capability to perform the design-build  
20 contract. Such list shall consist of a specified number of responding  
21 entities, as determined by an authorized entity, and shall be generated  
22 based upon the authorized entity's review of responses to a publicly

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

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1 advertised request for qualifications. The authorized entity's request  
2 for qualifications shall include a general description of the public  
3 work, the maximum number of responding entities to be included on the  
4 list, the selection criteria to be used and the relative weight of each  
5 criteria in generating the list. Such selection criteria shall include  
6 the qualifications and experience of the design and construction team,  
7 organization, demonstrated responsibility, ability of the team or of a  
8 member or members of the team to comply with applicable requirements,  
9 including the provisions of articles 145, 147 and 148 of the education  
10 law, past record of compliance with the labor law, and such other quali-  
11 fications the authorized entity deems appropriate, which may include but  
12 are not limited to project understanding, financial capability and  
13 record of past performance. 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. To the extent consistent with applicable  
18 federal law, the authorized entity shall consider, when awarding any  
19 contract pursuant to this section, the participation of (i) responding  
20 entities that are certified as minority- or women-owned business enter-  
21 prises pursuant to article 15-A of the executive law, or certified  
22 pursuant to local law as minority- or women-owned business enterprises,  
23 or, where the New York city school construction authority acts as the  
24 authorized entity, certified pursuant to section 1743 of the public  
25 authorities law; and (ii) small business concerns identified pursuant to  
26 subdivision (b) of section 139-g of the state finance law. In addition,  
27 nothing in this section shall be deemed to supersede any pre-qualifica-  
28 tion guidelines or requirements otherwise authorized by law for an  
29 authorized entity. If the authorized entity is utilizing a one-step  
30 selection, such selection shall be made on criteria set forth in the  
31 request for qualifications and award shall be made to the best-qualified  
32 contractor. The parties may enter into one contract with two phases or a  
33 separate contract for each of the two phases of work.

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