

# STATE OF NEW YORK

---

7368--A

2023-2024 Regular Sessions

## IN ASSEMBLY

May 18, 2023

---

Introduced by M. of A. MAGNARELLI, STIRPE -- read once and referred to the Committee on Corporations, Authorities and Commissions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT enacting the "Syracuse regional airport authority design-build act"; and providing for the repeal of such provisions upon expiration thereof

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

1 Section 1. This act shall be known and may be cited as the "Syracuse  
2 regional airport authority design-build act".

3 § 2. For purposes of this act, the following terms shall have the  
4 following meanings:

5 1. (a) "Authorized entity" shall mean the Syracuse regional airport  
6 authority as established by title thirty-four of article eight of the  
7 public authorities law.

8 (b) If otherwise applicable, authorized projects undertaken by the  
9 authorized entity shall be subject to section 135 of the state finance  
10 law and section 101 of the general municipal law; provided, however,  
11 that an authorized entity may fulfill its obligations under section 135  
12 of the state finance law or section 101 of the general municipal law by  
13 requiring the contractor to prepare separate specifications in accord-  
14 ance with section 135 of the state finance law or section 101 of the  
15 general municipal law, as the case may be.

16 2. "Authorized project" shall mean, in conformity with the require-  
17 ments of this act, any installation, construction, demolition, recon-  
18 struction, excavation, rehabilitation, repair, and renovation in  
19 connection with a landside improvement project, terminal operational  
20 enhancement and aircraft deicing facility located in the towns of Cice-  
21 ro, De Witt and Salina at the Syracuse Hancock International Airport at  
22 1000 Colonel Eileen Collins Boulevard.

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

LBD11514-05-3

1 3. "Best value" shall mean the basis for awarding contracts for  
2 services to the bidder that optimizes quality, cost and efficiency,  
3 price and performance criteria, which may include, but is not limited  
4 to:

5 (a) the quality of the contractor's performance on previous projects;

6 (b) the timeliness of the contractor's performance on previous  
7 projects;

8 (c) the level of customer satisfaction with the contractor's perform-  
9 ance on previous projects;

10 (d) the contractor's record of performing previous projects on budget  
11 and ability to minimize cost overruns;

12 (e) the contractor's ability to limit change orders;

13 (f) the contractor's ability to prepare appropriate project plans;

14 (g) the contractor's technical capacities;

15 (h) the individual qualifications of the contractor's key personnel;

16 (i) the contractor's ability to assess and manage risk and minimize  
17 risk impact;

18 (j) the contractor's financial capability;

19 (k) the contractor's ability to comply with applicable requirements,  
20 including the provisions of articles 145, 147 and 148 of the education  
21 law;

22 (l) the contractor's past record of compliance with federal, state and  
23 local laws, rules, licensing requirements, where applicable, and execu-  
24 tive orders, including but not limited to compliance with the labor law  
25 and other applicable labor and prevailing wage laws, article 15-A of the  
26 executive law, and any other applicable laws concerning minority- and  
27 women-owned business enterprise participation;

28 (m) the contractor's record of complying with existing labor stand-  
29 ards, maintaining harmonious labor relations, and protecting the health  
30 and safety of workers and payment of wages above any locally-defined  
31 living wage; and

32 (n) a quantitative factor to be used in evaluation of bids or offers  
33 for awarding of contracts for bidders or offerers that are certified as  
34 minority- or women-owned business enterprises pursuant to article 15-A  
35 of the executive law, and certified pursuant to local law as minority-  
36 or women-owned business enterprises. Where the authorized entity identi-  
37 fies a quantitative factor pursuant to this paragraph, the authorized  
38 entity must specify that businesses certified as minority- or women-  
39 owned business enterprises pursuant to article 15-A of the executive law  
40 as well as those certified as minority- or women-owned business enter-  
41 prises pursuant to local law are eligible to qualify for such factor.  
42 Nothing in this paragraph shall be construed as a requirement that such  
43 businesses be concurrently certified as minority- or women-owned busi-  
44 ness enterprises under article 15-A of the executive law to qualify for  
45 such quantitative factors. Such basis shall reflect, wherever possible,  
46 objective and quantifiable analysis.

47 4. "Cost plus" shall mean compensating a contractor for the cost to  
48 complete a contract by reimbursing actual costs for labor, equipment and  
49 materials plus an additional amount for overhead and profit.

50 5. "Design-build contract" shall mean a contract for the design and  
51 construction of the authorized project with a single entity, which may  
52 be a team comprised of separate entities.

53 6. "Project labor agreement" shall have the same meaning as such term  
54 is defined pursuant to subdivision 1 of section 222 of the labor law. A  
55 project labor agreement shall require participation in apprentice train-

ing programs in accordance with paragraph (e) of subdivision 2 of such section.

§ 3. Notwithstanding any general, special or local law, rule or regulation to the contrary, including but not limited to article 5-A of the general municipal law and section 136-a of the state finance law, in conformity with the requirements of this act, and only when a project labor agreement is performed in accordance with section 222 of the labor law, an authorized entity may use the alternative delivery method referred to as a design-build contract for the authorized project in accordance with this act.

§ 4. 1. A contractor selected by the authorized entity to enter into a design-build contract shall be selected through a two-step method, as follows:

(a) Step one. Generation of 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 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 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. 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; and (ii) small business concerns identified pursuant to subdivision (b) of section 139-g of the state finance law.

(b) 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 subdivision one of this section. 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 subdivision one of this section 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 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

1 evaluate the responses and the relative weight of each of such criteria.  
2 Such criteria shall include the proposal's cost, the quality of the  
3 proposal's solution, the qualifications and experience of the proposer,  
4 and other factors deemed pertinent by the authorized entity, which may  
5 include, but shall not be limited to, the proposal's manner and schedule  
6 of project implementation, the contractor's ability to complete the work  
7 in a timely and satisfactory manner, maintenance costs of the completed  
8 public work, maintenance of traffic approach, and community impact. Any  
9 contract awarded pursuant to this act shall be awarded to a responsive  
10 and responsible proposer, which, in consideration of these and other  
11 specified criteria deemed pertinent, offers the best value, as deter-  
12 mined by the authorized entity. The request for proposals shall include  
13 a statement that proposers shall designate in writing those portions of  
14 the proposal that contain trade secrets or other proprietary information  
15 that are to remain confidential; that the material designated as confi-  
16 dential shall be readily separable from the proposal. Nothing in this  
17 subdivision shall be construed to prohibit the authorized entity from  
18 negotiating final contract terms and conditions including cost. All  
19 proposals submitted shall be scored according to the criteria listed in  
20 the request for proposals and such final scores shall be published on  
21 the authorized entity's website.

22 2. The authorized entity awarding a design-build contract to a  
23 contractor offering the best value may but shall not be required to use  
24 the following types of contracts:

25 (a) a cost-plus not to exceed guaranteed maximum price form of  
26 contract in which the authorized entity shall be entitled to monitor and  
27 audit all costs. In establishing the schedule and process for determin-  
28 ing a guaranteed maximum price, the contract between the authorized  
29 entity and the contractor shall:

30 (i) describe the scope of the work and the cost of performing such  
31 work;

32 (ii) include a detailed line-item cost breakdown;

33 (iii) include a list of all drawings, specifications and other infor-  
34 mation on which the guaranteed maximum price is based;

35 (iv) include the dates of substantial and final completion on which  
36 the guaranteed maximum price is based; and

37 (v) include a schedule of unit prices; or

38 (b) a lump sum contract in which the contractor agrees to accept a set  
39 dollar amount for a contract which comprises a single bid without  
40 providing a cost breakdown for all costs such as for equipment, labor,  
41 materials, as well as such contractor's profit for completing all items  
42 of work comprising the public work.

43 § 5. Any contract entered into pursuant to this act shall include a  
44 clause requiring that any professional services regulated by articles  
45 145, 147 and 148 of the education law shall be performed and stamped and  
46 sealed, where appropriate, by a professional licensed in accordance with  
47 the appropriate articles of the education law.

48 § 6. Construction with respect to any contract entered into by an  
49 authorized entity pursuant to this act shall be deemed a "public work"  
50 to be performed in accordance with the provisions of article 8 of the  
51 labor law, as well as subject to sections 200, 240, 241 and 242 of such  
52 law and enforcement of prevailing wage requirements pursuant to applica-  
53 ble law or, for projects or public works receiving federal aid, applica-  
54 ble federal requirements for prevailing wage. Any contract entered into  
55 pursuant to this act shall include a clause requiring the selected  
56 contractor to obligate every tier of contractor working on the public

1 work to comply with the project labor agreement referenced in section  
2 four of this act, and shall include project labor agreement compliance  
3 monitoring and enforcement provisions consistent with the applicable  
4 project labor agreement.

5 § 7. Any contract entered into by an authorized entity pursuant to  
6 this act shall comply with the objectives and goals with regard to  
7 minority- and women-owned business enterprises and, for projects or  
8 public works receiving federal aid, applicable federal requirements for  
9 disadvantaged business enterprises or minority- and women-owned business  
10 enterprises.

11 § 8. Any authorized project undertaken by an authorized entity pursu-  
12 ant to this act shall be subject to the requirements of article 8 of the  
13 environmental conservation law, and, where applicable, the requirements  
14 of the national environmental policy act.

15 § 9. 1. Notwithstanding any provision of law to the contrary, all  
16 rights or benefits, including terms and conditions of employment, and  
17 protection of civil service and collective bargaining status of all  
18 employees of authorized entities solely in connection with the public  
19 works identified in subdivision six of section two of this act, shall be  
20 preserved and protected.

21 2. Nothing in this act shall result in the: (a) displacement of any  
22 currently employed worker or loss of position, including partial  
23 displacement such as a reduction in the hours of non-overtime work,  
24 wages or employment benefits, or result in the impairment of existing  
25 collective bargaining agreements, (b) transfer of existing duties and  
26 functions related to maintenance and operations currently performed by  
27 existing employees of authorized entities to a contractor, or (c) trans-  
28 fer of future duties and functions ordinarily performed by employees of  
29 the authorized entities to the contracting entity.

30 3. Employees of authorized entities using design-build contracts serv-  
31 ing in positions in newly created titles shall be assigned to the appro-  
32 priate bargaining unit. Nothing contained in this act shall be construed  
33 to affect: (a) the existing rights of employees of such entities pursu-  
34 ant to an existing collective bargaining agreement, (b) the existing  
35 representational relationships among employee organizations representing  
36 employees of such entities, or (c) the bargaining relationships between  
37 such entities and such employee organizations.

38 § 10. The submission of a proposal or responses or the execution of a  
39 design-build contract pursuant to this act shall not be construed to be  
40 a violation of section 6512 of the education law.

41 § 11. Nothing contained in this act shall limit the right or obli-  
42 gation of any authorized entity to comply with the provisions of any  
43 existing contract or to award contracts as otherwise provided by law.

44 § 12. This act shall take effect immediately and shall expire and be  
45 deemed repealed two years after such date; provided, however, that  
46 public works with requests for qualifications issued prior to such  
47 repeal shall be permitted to continue under this act notwithstanding  
48 such repeal.