

STATE OF NEW YORK

9849

IN SENATE

June 4, 2024

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

AN ACT to amend the New York city public works investment act, in relation to authorizing the use of certain alternative project delivery methods

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

1 Section 1. Subdivision (a) of section 2 of chapter 749 of the laws of
2 2019, constituting the New York city public works investment act, as
3 amended by section 4 of part AA of chapter 58 of the laws of 2022, is
4 relettered subdivision (a-1) and a new subdivision (a) is added to read
5 as follows:

6 (a) "Alternative project delivery contract" shall mean any project
7 delivery method authorized by this act, including design-build and
8 construction manager build, pursuant to which one or more contracts for
9 the provision of design and construction services, or construction
10 management and construction services, are awarded through an open and
11 competitive method of procurement.

12 § 2. Section 3 and section 6 of chapter 749 of the laws of 2019,
13 constituting the New York city public works investment act, are amended
14 to read as follows:

15 § 3. Any contract for a public work undertaken pursuant to a project
16 labor agreement in accordance with section 222 of the labor law may be
17 [~~a design-build~~] an alternative project delivery contract in accordance
18 with this act.

19 § 6. Construction with respect to each contract entered into by an
20 authorized entity pursuant to this act shall be deemed a "public work"
21 to be performed in accordance with the provisions of article 8 of the
22 labor law, as well as subject to sections 200, 240, 241 and 242 of such
23 law and enforcement of prevailing wage requirements pursuant to applica-
24 ble law or, for projects or public works receiving federal aid, applica-
25 ble federal requirements for prevailing wage. Any contract entered into
26 pursuant to this act shall include a clause requiring the selected
27 design builder or construction manager builder to obligate every tier of

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

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

5 § 3. Subdivisions (c) and (d) of section 9 of chapter 749 of the laws
6 of 2019, constituting the New York city public works investment act, are
7 amended to read as follows:

8 (c) Employees of authorized entities using [~~design-build~~] alternative
9 project delivery contracts serving in positions in newly created titles
10 shall be assigned to the appropriate bargaining unit. Nothing contained
11 in this act shall be construed to affect (1) the existing rights of
12 employees of such entities pursuant to an existing collective bargaining
13 agreement, (2) the existing representational relationships among employ-
14 ee organizations representing employees of such entities, or (3) the
15 bargaining relationships between such entities and such employee organ-
16 izations.

17 (d) Without limiting contractors' obligations under [~~design-build~~]
18 alternative project delivery contracts to issue their own initial
19 certifications of substantial completion and final completion, public
20 employees of authorized entities shall review and determine whether the
21 work performed by contractors is acceptable and has been performed in
22 accordance with the applicable [~~design-build~~] alternative project deliv-
23 ery contracts, and if such public employees so determine, such public
24 employees shall accept contractors' substantial or final completion of
25 the public works as applicable. Performance by authorized entities of
26 any review described in this subdivision shall not be construed to modi-
27 fy or limit contractors' obligations to perform the work in strict
28 accordance with the applicable [~~design-build~~] alternative project deliv-
29 ery contracts or the contractors' or any subcontractors' obligations or
30 liabilities under any law.

31 § 4. Chapter 749 of the laws of 2019, constituting the New York city
32 public works investment act, is amended by adding a new section 13-a to
33 read as follows:

34 § 13-a. (a) For purposes of this section:

35 (1) "Construction manager build" shall mean a project delivery method
36 whereby a construction manager:

37 (i) serves as part of a team in conjunction with the owner in the
38 design phase of the project;

39 (ii) under the oversight of the owner, acts as the single source of
40 responsibility to bid, select and hold construction contracts on behalf
41 of the owner during the construction phase; and

42 (iii) manages the construction project on behalf of the owner.

43 (2) "Department" shall mean the New York city department of design and
44 construction.

45 (b) This section may only be applied to:

46 (1) Design-build contracts solicited by the department that have an
47 estimated cost of not less than ten million dollars, are undertaken
48 pursuant to a project labor agreement in accordance with section 222 of
49 the labor law and in connection with a project that is primarily related
50 to:

51 (i) water or sewer infrastructure, and primarily consists of the
52 replacement of existing, or installation of new, water mains or sewers
53 or the installation of assets to manage stormwater flow, or a combina-
54 tion of the foregoing; or

1 (ii) coastal resiliency, and primarily consists of flood walls,
2 deployable gates, the relocation or protection of existing infrastruc-
3 ture from flooding, or a combination of the foregoing; or

4 (2) Construction manager build contracts solicited by the department
5 that have an estimated cost of not less than five million dollars, are
6 undertaken pursuant to a project labor agreement in accordance with
7 section 222 of the labor law and in connection with a project for the
8 construction or renovation of a cultural institution located on publicly
9 owned real property on behalf of the New York city department of
10 cultural affairs or a public library in the city of New York.

11 (c) Notwithstanding any general, special, or local law, rule, or regu-
12 lation to the contrary, a contractor selected by the department to enter
13 into a construction manager build contract pursuant to this section
14 shall be selected through the two-step method described in subdivision
15 (a) of section four of this act. The department may use the types of
16 contracts identified in subdivision (b) of section four of this act for
17 contracts procured using the construction manager build delivery method.

18 (d) Where the department determines in writing that it is in the best
19 interest of the public to solicit proposals using the design-build
20 contract delivery method in connection with a project that meets the
21 criteria set forth in paragraph one of subdivision (b) of this section,
22 without generating a list pursuant to the process set forth in paragraph
23 one of subdivision (a) of section four of this act, the department shall
24 release, evaluate and score a request for proposals pursuant to the
25 procedure set forth in subdivision (e) of this section. To the extent
26 consistent with applicable federal law, the department shall consider,
27 when soliciting proposals and awarding any contract pursuant to this
28 section, the participation of (i) entities that are certified as minority-
29 or women-owned business enterprises pursuant to article fifteen-A of
30 the executive law, or certified pursuant to local law as minority- or
31 women-owned business enterprises, and (ii) small business concerns iden-
32 tified pursuant to subdivision (b) of section one hundred thirty-nine-g
33 of the state finance law. In addition, nothing in this section shall be
34 deemed to supersede any pre-qualification guidelines or requirements
35 otherwise authorized by law for the department.

36 (e) The request for proposals shall set forth the public work's scope
37 of work, and other requirements, as determined by the department, which
38 may include separate goals for work under the contract to be performed
39 by businesses certified as minority- or women-owned business enterprises
40 pursuant to article fifteen-A of the executive law or certified pursuant
41 to local law as minority- or women-owned business enterprises. The
42 request for proposals shall also specify the criteria to be used to
43 evaluate the responses and the relative weight of each of such criteria.
44 Such criteria shall include the proposal's cost, the quality of the
45 proposal's solution, the qualifications and experience of the proposer,
46 and other factors deemed pertinent by the department, which may include,
47 but shall not be limited to, the proposal's manner and schedule of
48 project implementation, the proposer's ability to complete the work in a
49 timely and satisfactory manner, maintenance costs of the completed
50 public work, maintenance of traffic approach, and community impact. A
51 contract awarded pursuant to this section shall be awarded to a respon-
52 sive and responsible proposer, which, in consideration of these and
53 other specified criteria deemed pertinent, offers the best value, as
54 determined by the department. The department may engage in negotiations
55 or other discussions with all qualified proposers that have expressed
56 interest in response to the request for proposals released pursuant to

1 subdivision (d) of this section, provided that such department maintains
2 a written record of the conduct of negotiations or discussions and the
3 basis for every determination to continue or suspend negotiations, and,
4 provided, further, that if such department determines for a particular
5 contract or for a particular type of contract that it is in the best
6 interest of the public to negotiate or enter into discussions with fewer
7 proposers, it shall make such a determination in writing. If such
8 department enters into such negotiations, such department shall allow
9 all proposers to revise their proposals upon conclusion of negotiations,
10 and shall evaluate any such revised proposals using the criteria
11 included in the request for proposals. The request for proposals shall
12 include a statement that proposers shall designate in writing those
13 portions of the proposal that contain trade secrets or other proprietary
14 information that are to remain confidential; that the material desig-
15 nated as confidential shall be readily separable from the proposal.
16 Nothing in this section shall be construed to prohibit the authorized
17 entity from negotiating final contract terms and conditions including
18 cost. All proposals submitted shall be scored according to the criteria
19 listed in the request for proposals and such final scores shall be
20 published on the authorized entity's website after registration of such
21 contract or the date upon which such contract may be implemented, if
22 registration requirements do not apply.

23 (f) The reporting requirement set forth in section thirteen of this
24 act shall apply to contracts procured pursuant to this section, provided
25 that the requirement that such report include a list of responding enti-
26 ties shall not apply to any contract where no such list was generated.
27 Such report shall include a description of the scope of work for each
28 project, whether the project used the design-build or construction
29 manager build method as described in subdivision (b) of this section,
30 the percentage of alternative project delivery contracts that used the
31 methods described in subdivision (b) of this section, the type of
32 contract described in subdivision (b) of section four of this act that
33 was used to procure the project, information regarding the total
34 contract price upon contract award, the total contract price upon final
35 completion of the project, the department's initial projected estimate
36 of the cost of the project and the participation rate of and total
37 dollar value of monies paid to minority- and women-owned business enter-
38 prises and small business concerns under alternative project delivery
39 contracts.

40 § 5. Section 14 of chapter 749 of the laws of 2019, constituting the
41 New York city public works investment act, as amended by section 4 of
42 part AA of chapter 58 of the laws of 2022, is amended to read as
43 follows:

44 § 14. This act shall take effect immediately and shall expire and be
45 deemed repealed eight years after such date, provided that, public works
46 with requests for qualifications or requests for proposals issued prior
47 to such repeal shall be permitted to continue under this act notwith-
48 standing such repeal.

49 § 6. This act shall take effect immediately; provided, however, that
50 this act shall not apply to any public work for which a request for
51 proposals was issued prior to the date on which this act takes effect;
52 and provided further, however, that the amendments to chapter 749 of the
53 laws of 2019 made by sections one through four of this act shall not
54 affect the expiration and repeal of such chapter and shall be deemed
55 repealed therewith.