

# STATE OF NEW YORK

9503

## IN ASSEMBLY

March 14, 2024

Introduced by M. of A. PRETLOW -- read once and referred to the Committee on Local Governments

AN ACT in relation to enacting the "county of Westchester public works investment act"; and providing for the repeal of such provisions upon the expiration thereof

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

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "county of Westchester public works investment act".

3 § 2. For the purposes of this act:

4 (a) "Authorized entity" shall mean the county of Westchester, or any  
5 department, division, agency, office or subdivision thereof.

6 (b) "Best value" shall mean the basis for awarding contracts for  
7 services to a proposer that optimizes quality, cost and efficiency,  
8 price and performance criteria, which may include, but is not limited  
9 to:

10 (1) The quality of the proposer's performance on previous projects;

11 (2) The timeliness of the proposer's performance on previous projects;

12 (3) The level of customer satisfaction with the proposer's performance  
13 on previous projects;

14 (4) The proposer's record of performing previous projects on budget  
15 and ability to minimize cost overruns;

16 (5) The proposer's ability to limit change orders;

17 (6) The proposer's ability to prepare appropriate project plans;

18 (7) The proposer's technical capacities;

19 (8) The individual qualifications of the proposer's key personnel;

20 (9) The proposer's ability to assess and manage risk and minimize risk  
21 impact;

22 (10) The proposer's financial capability;

23 (11) The proposer's ability to comply with applicable requirements,  
24 including the provisions of articles 145, 147 and 148 of the education  
25 law;

26 (12) The proposer's past record of compliance with federal, state and  
27 local laws, rules, licensing requirements, where applicable, and execu-

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

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1 tive orders, including but not limited to compliance with the labor law  
2 and other applicable labor and prevailing wage laws, article 15-A of the  
3 executive law, and any other applicable laws concerning minority- and  
4 women-owned business enterprise participation;

5 (13) The proposer's record of complying with existing labor standards,  
6 maintaining harmonious labor relations, and protecting the health and  
7 safety of workers and payment of wages above any locally-defined living  
8 wage; and

9 (14) A quantitative factor to be used in evaluation of bids or offers  
10 for awarding of contracts for bidders or offerers that are certified as  
11 minority- or women-owned business enterprises pursuant to article 15-A  
12 of the executive law. Where the authorized entity identifies a quantita-  
13 tive factor pursuant to this paragraph, the authorized entity must spec-  
14 ify that businesses certified as minority- or women-owned business  
15 enterprises pursuant to article 15-A of the executive law are eligible  
16 to qualify for such factor. Such basis shall reflect, wherever possible,  
17 objective and quantifiable analysis.

18 (c) "Cost plus" shall mean compensating a contractor for the cost to  
19 complete a contract by reimbursing actual costs for labor, equipment and  
20 materials plus an additional amount for overhead and profit.

21 (d) "Design-build contract" shall mean a contract for the design and  
22 construction of a public work with a single entity, which may be a team  
23 comprised of separate entities.

24 (e) "Project labor agreement" shall have the meaning set forth in  
25 subdivision 1 of section 222 of the labor law. A project labor agreement  
26 shall require participation in apprentice training programs in accord-  
27 ance with paragraph (e) of subdivision 2 of such section.

28 § 3. Any contract for a public work undertaken pursuant to a project  
29 labor agreement in accordance with section 222 of the labor law may be a  
30 design-build contract in accordance with this act.

31 § 4. Notwithstanding any general, special or local law, rule or regu-  
32 lation to the contrary, including but not limited to section 7210 of the  
33 education law, article 5-A of the general municipal law and article 8 of  
34 the public housing law, and in conformity with the requirements of this  
35 act, for any public work that has an estimated cost of not less than  
36 \$10,000,000 and is undertaken pursuant to a project labor agreement in  
37 accordance with section 222 of the labor law, an authorized entity  
38 charged with awarding a contract for public work may use the alternative  
39 delivery method referred to as design-build contracts; provided that any  
40 authorized entity may use the alternative delivery method referred to as  
41 design-build contracts for any public work that has an estimated cost of  
42 not less than \$1,200,000 if such public work is otherwise in conformity  
43 with the requirements of this act and primarily consists of: pedestrian  
44 ramps and similar infrastructure to improve access to sidewalks for  
45 people with disabilities; renovation and construction of cultural insti-  
46 tutions located on publicly owned real property and of public libraries;  
47 or security infrastructure, including bollards, planters and other phys-  
48 ical structures, designed to protect life and property from acts of  
49 terror or mass violence.

50 (a) A contractor selected by such an authorized entity to enter into a  
51 design-build contract shall be selected through a two-step method, as  
52 follows:

53 (1) Step one. Generation of a list of responding entities that have  
54 demonstrated the general capability to perform the design-build  
55 contract. Such list shall consist of a specified number of responding  
56 entities, as determined by an authorized entity, and shall be generated

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 authorized entity shall evaluate and  
15 rate all responding entities to the request for qualifications. Based  
16 upon such ratings, the authorized entity shall list the responding enti-  
17 ties that shall receive a request for proposals in accordance with para-  
18 graph 2 of this subdivision. To the extent consistent with applicable  
19 federal law, the authorized entity shall consider, when awarding any  
20 contract pursuant to this section, the participation of responding enti-  
21 ties that are certified as minority- or women-owned business enterprises  
22 pursuant to article 15-A of the executive law. In addition, nothing in  
23 this section shall be deemed to supersede any pre-qualification guide-  
24 lines or requirements otherwise authorized by law for an authorized  
25 entity.

26 (2) Step two. Selection of the proposal which is the best value to the  
27 authorized entity. The authorized entity shall issue a request for  
28 proposals to the responding entities listed pursuant to paragraph 1 of  
29 this subdivision. If such a responding entity consists of a team of  
30 separate entities, the entities that comprise such a team must remain  
31 unchanged from the responding entity as listed pursuant to paragraph 1  
32 of this subdivision unless otherwise approved by the authorized entity.  
33 The request for proposals shall set forth the public work's scope of  
34 work, and other requirements, as determined by the authorized entity,  
35 which may include separate goals for work under the contract to be  
36 performed by businesses certified as minority- or women-owned business  
37 enterprises pursuant to article 15-A of the executive law. The request  
38 for proposals shall also specify the criteria to be used to evaluate the  
39 responses and the relative weight of each of such criteria. Such crite-  
40 ria shall include the proposal's cost, the quality of the proposal's  
41 solution, the qualifications and experience of the proposer, and other  
42 factors deemed pertinent by the authorized entity, which may include,  
43 but shall not be limited to, the proposal's manner and schedule of  
44 project implementation, the proposer's ability to complete the work in a  
45 timely and satisfactory manner, maintenance costs of the completed  
46 public work, maintenance of traffic approach, and community impact. Any  
47 contract awarded pursuant to this act shall be awarded to a responsive  
48 and responsible proposer, which, in consideration of these and other  
49 specified criteria deemed pertinent, offers the best value, as deter-  
50 mined by the authorized entity. The request for proposals shall include  
51 a statement that proposers shall designate in writing those portions of  
52 the proposal that contain trade secrets or other proprietary information  
53 that are to remain confidential; that the material designated as confi-  
54 dential shall be readily separable from the proposal. Nothing in this  
55 subdivision shall be construed to prohibit the authorized entity from  
56 negotiating final contract terms and conditions including cost. All

1 proposals submitted shall be scored according to the criteria listed in  
2 the request for proposals.

3 (b) An authorized entity awarding a design-build contract to a  
4 contractor offering the best value may but shall not be required to use  
5 the following types of contracts:

6 (1) A cost-plus not to exceed guaranteed maximum price form of  
7 contract in which the authorized entity shall be entitled to monitor and  
8 audit all costs. In establishing the schedule and process for determin-  
9 ing a guaranteed maximum price, the contract between the authorized  
10 entity and the contractor shall:

11 (i) Describe the scope of the work and the cost of performing such  
12 work,

13 (ii) Include a detailed line item cost breakdown,

14 (iii) Include a list of all drawings, specifications and other infor-  
15 mation on which the guaranteed maximum price is based,

16 (iv) Include the dates of substantial and final completion on which  
17 the guaranteed maximum price is based, and

18 (v) Include a schedule of unit prices; or

19 (2) A lump sum contract in which the contractor agrees to accept a set  
20 dollar amount for a contract which comprises a single bid without  
21 providing a cost breakdown for all costs such as for equipment, labor,  
22 materials, as well as such contractor's profit for completing all items  
23 of work comprising the public work.

24 § 5. Any contract entered into pursuant to this act shall include a  
25 clause requiring that any professional services regulated by articles  
26 145, 147 and 148 of the education law shall be performed and stamped and  
27 sealed, where appropriate, by a professional licensed in accordance with  
28 the appropriate article.

29 § 6. Construction with respect to each contract entered into by an  
30 authorized entity pursuant to this act shall be deemed a "public work"  
31 to be performed in accordance with the provisions of article 8 of the  
32 labor law, as well as subject to sections 200, 240, 241 and 242 of such  
33 law and enforcement of prevailing wage requirements pursuant to applica-  
34 ble law or, for projects or public works receiving federal aid, applica-  
35 ble federal requirements for prevailing wage. Any contract entered into  
36 pursuant to this act shall include a clause requiring the selected  
37 design builder to obligate every tier of contractor working on the  
38 public work to comply with the project labor agreement referenced in  
39 section three of this act, and shall include project labor agreement  
40 compliance monitoring and enforcement provisions consistent with the  
41 applicable project labor agreement.

42 § 7. Each contract entered into by an authorized entity pursuant to  
43 this act shall comply with the objectives and goals relating to the  
44 performance of design and construction services by minority- and women-  
45 owned business enterprises, or, for projects or public works receiving  
46 federal aid, applicable federal requirements for disadvantaged business  
47 enterprises or minority- and women-owned business enterprises.

48 § 8. Public works undertaken by an authorized entity pursuant to this  
49 act shall be subject to the requirements of article 8 of the environ-  
50 mental conservation law, and, where applicable, the requirements of the  
51 National Environmental Policy Act.

52 § 9. (a) Notwithstanding any provision of law to the contrary, all  
53 rights or benefits, including terms and conditions of employment, and  
54 protection of civil service and collective bargaining status of all  
55 employees of authorized entities solely in connection with public work

1 undertaken by an authorized entity pursuant to this act, shall be  
2 preserved and protected.

3 (b) Nothing in this act shall result in the: (1) displacement of any  
4 currently employed worker or loss of position, including partial  
5 displacement such as a reduction in the hours of non-overtime work,  
6 wages or employment benefits, or result in the impairment of existing  
7 collective bargaining agreements; and (2) transfer of existing duties  
8 and functions related to maintenance and operations currently performed  
9 by existing employees of authorized entities to a contractor.

10 (c) Employees of authorized entities using design-build contracts  
11 serving in positions in newly created titles shall be assigned to the  
12 appropriate bargaining unit. Nothing contained in this act shall be  
13 construed to affect (1) the existing rights of employees of such enti-  
14 ties pursuant to an existing collective bargaining agreement, (2) the  
15 existing representational relationships among employee organizations  
16 representing employees of such entities, or (3) the bargaining relation-  
17 ships between such entities and such employee organizations.

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

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

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

37 § 12. A report shall be submitted no later than June 30, 2025 and  
38 annually thereafter, to the county executive and the chair of the board  
39 of legislators for an authorized entity containing information regarding  
40 each design-build contract procured by such authorized entity pursuant  
41 to this act. Such report shall include a description of each such  
42 design-build contract, information regarding the procurement process for  
43 each such design-build contract including the list of responding enti-  
44 ties that demonstrated the general capability to perform the design-  
45 build contract pursuant to paragraph 1 of subdivision (a) of section  
46 four of this act, the total cost of each design-build contract, an  
47 explanation of the estimated savings resulting from the design-build  
48 method, and the participation rate of and total dollar value of monies  
49 paid to minority- and women-owned business enterprises under such  
50 design-build contract.

51 § 13. This act shall take effect immediately and shall expire and be  
52 deemed repealed 3 years after such date, provided that, public works  
53 with requests for qualifications issued prior to such repeal shall be  
54 permitted to continue under this act notwithstanding such repeal.