

STATE OF NEW YORK

1761--A

2023-2024 Regular Sessions

IN SENATE

January 13, 2023

Introduced by Sens. COMRIE, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Cities 1 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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. Subdivision (a) of section 4 of chapter 749 of the laws of 2019,
11 authorizing, for certain public works undertaken pursuant to project
12 labor agreements, use of the alternative delivery method known as
13 design-build contracts, is amended to read as follows:

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

17 (1) Step one. Generation of a list of responding entities that have
18 demonstrated the general capability to perform the design-build
19 contract. Unless the authorized entity is utilizing a one-step method,
20 the authorized entity shall generate a list of responding entities that

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

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1 have demonstrated the general capability to perform the design-build
2 contract. Such list shall consist of a specified number of responding
3 entities, as determined by an authorized entity, and shall be generated
4 based upon the authorized entity's review of responses to a publicly
5 advertised request for qualifications. The authorized entity's request
6 for qualifications shall include a general description of the public
7 work, the maximum number of responding entities to be included on the
8 list, the selection criteria to be used and the relative weight of each
9 criteria in generating the list. Such selection criteria shall include
10 the qualifications and experience of the design and construction team,
11 organization, demonstrated responsibility, ability of the team or of a
12 member or members of the team to comply with applicable requirements,
13 including the provisions of articles 145, 147 and 148 of the education
14 law, past record of compliance with the labor law, and such other quali-
15 fications the authorized entity deems appropriate, which may include but
16 are not limited to project understanding, financial capability and
17 record of past performance. ~~[The]~~ Unless the authorized entity is
18 utilizing a one-step method, the authorized entity shall evaluate and
19 rate all responding entities to the request for qualifications. Based
20 upon such ratings, the authorized entity shall list the responding enti-
21 ties that shall receive a request for proposals in accordance with para-
22 graph two of this subdivision. If the authorized entity is utilizing a
23 one-step method, the authorized entity shall evaluate and rate all
24 statements of qualification submitted in response to the request for
25 qualifications and shall award the design-build contract to the best
26 qualified contractor with a commitment to thirty percent of city-wide
27 contracts awarded to minority and women-owned businesses. Notwithstand-
28 ing any contrary provision of law, any authorizing entity awarding a
29 design-build contract to a contractor determined to be the best quali-
30 fied contractor in accordance with this paragraph may elect either to
31 enter into a single contract with two phases or separate contracts for
32 each of the two phases. To the extent consistent with applicable federal
33 law, the authorized entity shall consider, when awarding any contract
34 pursuant to this section, the participation of (i) responding entities
35 that are certified as minority- or women-owned business enterprises
36 pursuant to article 15-A of the executive law, or certified pursuant to
37 local law as minority- or women-owned business enterprises, or, where
38 the New York city school construction authority acts as the authorized
39 entity, certified pursuant to section 1743 of the public authorities
40 law; and (ii) small business concerns identified pursuant to subdivision
41 (b) of section 139-g of the state finance law. In addition, nothing in
42 this section shall be deemed to supersede any pre-qualification guide-
43 lines or requirements otherwise authorized by law for an authorized
44 entity.

45 (2) Step two. Selection of the proposal which is the best value to the
46 authorized entity. The authorized entity shall issue a request for
47 proposals to the responding entities listed pursuant to paragraph one of
48 this subdivision. If such a responding entity consists of a team of
49 separate entities, the entities that comprise such a team must remain
50 unchanged from the responding entity as listed pursuant to paragraph one
51 of this subdivision unless otherwise approved by the authorized entity.
52 The request for proposals shall set forth the public work's scope of
53 work, and other requirements, as determined by the authorized entity,
54 which may include separate goals for work under the contract to be
55 performed by businesses certified as minority- or women-owned business
56 enterprises pursuant to article 15-A of the executive law or section

1 1743 of the public authorities law, or certified pursuant to local law
2 as minority- or women-owned business enterprises. The request for
3 proposals shall also specify the criteria to be used to evaluate the
4 responses and the relative weight of each of such criteria. Such crite-
5 ria shall include the proposal's cost, the quality of the proposal's
6 solution, the qualifications and experience of the proposer, and other
7 factors deemed pertinent by the authorized entity, which may include,
8 but shall not be limited to, the proposal's manner and schedule of
9 project implementation, the proposer's ability to complete the work in a
10 timely and satisfactory manner, maintenance costs of the completed
11 public work, maintenance of traffic approach, and community impact.

12 (3) Any contract awarded pursuant to this act shall be awarded to a
13 responsive and responsible proposer, which, in consideration of these
14 and other specified criteria deemed pertinent, offers the best value, or
15 in the case of a contract awarded utilizing a one-step method, is the
16 best-qualified contractor, as determined by the authorized entity in
17 accordance with this section. The request for proposals, or the request
18 for qualifications if the contract is awarded utilizing a one-step meth-
19 od, shall include a statement that proposers shall designate in writing
20 those portions of the proposal that contain trade secrets or other
21 proprietary information that are to remain confidential; that the mate-
22 rial designated as confidential shall be readily separable from the
23 proposal. Nothing in this subdivision shall be construed to prohibit the
24 authorized entity from negotiating final contract terms and conditions
25 including cost. All proposals or responses submitted shall be scored
26 according to the criteria listed in the request for proposals, or the
27 request for qualifications if the contract is awarded utilizing a one-
28 step method, and such final scores shall be published on the authorized
29 entity's website after registration of such contract or the date upon
30 which such contract may be implemented, if registration requirements do
31 not apply.

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