# 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:**

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

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

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

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

§ 6. Construction with respect to each contract entered into by an authorized entity pursuant to this act shall be deemed a "public work" to be performed in accordance with the provisions of article 8 of the labor law, as well as subject to sections 200, 240, 241 and 242 of such law and enforcement of prevailing wage requirements pursuant to applicable law or, for projects or public works receiving federal aid, applicable federal requirements for prevailing wage. Any contract entered into pursuant to this act shall include a clause requiring the selected 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.

LBD15832-02-4

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

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

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

(d) Without limiting contractors' obligations under [~~design-build~~] **alternative project delivery** contracts to issue their own initial certifications of substantial completion and final completion, public employees of authorized entities shall review and determine whether the work performed by contractors is acceptable and has been performed in accordance with the applicable [~~design-build~~] **alternative project delivery** contracts, and if such public employees so determine, such public employees shall accept contractors' substantial or final completion of the public works as applicable. Performance by authorized entities of any review described in this subdivision shall not be construed to modify or limit contractors' obligations to perform the work in strict accordance with the applicable [~~design-build~~] **alternative project delivery** contracts or the contractors' or any subcontractors' obligations or liabilities under any law.

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

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

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

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

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

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

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

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

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

**(i) water or sewer infrastructure, and primarily consists of the replacement of existing, or installation of new, water mains or sewers or the installation of assets to manage stormwater flow, or a combination of the foregoing; or**

(ii) coastal resiliency, and primarily consists of flood walls, deployable gates, the relocation or protection of existing infrastructure from flooding, or a combination of the foregoing; or

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

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

(d) Where the department determines in writing that it is in the best interest of the public to solicit proposals using the design-build contract delivery method in connection with a project that meets the criteria set forth in paragraph one of subdivision (b) of this section, without generating a list pursuant to the process set forth in paragraph one of subdivision (a) of section four of this act, the department shall release, evaluate and score a request for proposals pursuant to the procedure set forth in subdivision (e) of this section. To the extent consistent with applicable federal law, the department shall consider, when soliciting proposals and awarding any contract pursuant to this section, the participation of (i) entities that are certified as minority- or women-owned business enterprises pursuant to article fifteen-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 one hundred thirty-nine-g of the state finance law. In addition, nothing in this section shall be deemed to supersede any pre-qualification guidelines or requirements otherwise authorized by law for the department.

(e) The request for proposals shall set forth the public work's scope of work, and other requirements, as determined by the department, 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 fifteen-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 evaluate the responses and the relative weight of each of such criteria. Such criteria shall include the proposal's cost, the quality of the proposal's solution, the qualifications and experience of the proposer, and other factors deemed pertinent by the department, which may include, but shall not be limited to, the proposal's manner and schedule of project implementation, the proposer's ability to complete the work in a timely and satisfactory manner, maintenance costs of the completed public work, maintenance of traffic approach, and community impact. A contract awarded pursuant to this section shall be awarded to a responsive and responsible proposer, which, in consideration of these and other specified criteria deemed pertinent, offers the best value, as determined by the department. The department may engage in negotiations or other discussions with all qualified proposers that have expressed interest in response to the request for proposals released pursuant to

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

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

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

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

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