STATE OF NEW YORK

6428--A

2025-2026 Regular Sessions

IN ASSEMBLY

March 4, 2025

Introduced by M. of A. SHIMSKY, LEVENBERG -- read once and referred to the Committee on Local Governments -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

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

1. (a) "Authorized entity" shall mean the Westchester county department of public works and the Westchester county department of transportation.

(b) If otherwise applicable, authorized projects undertaken by the authorized entity shall be subject to section 101 of the general municipal law; provided, however, that an authorized entity may fulfill its obligations under section 101 of the general municipal law by requiring the contractor to prepare separate specifications in accordance with section 101 of the general municipal law, as the case may be.

2. "Authorized project" shall mean, in conformity with the requirements of this act, any installation, construction, demolition, reconstruction, excavation, rehabilitation, repair, and renovation in connection with the following:

(a) a public building known as the "Westchester County Labs and Research Building", located at 10 Dana Road in the hamlet of Valhalla in the town of Mount Pleasant, Westchester county, SBL No. 116.16-1-1 14;

(b) a public maintenance facility known as the "Westchester County Department of Public Works Maintenance Facility", located at Hammond

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

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House Road behind 65 Hammond House Road in the hamlet of Valhalla in the town of Mount Pleasant, Westchester county, SBL No. 116.12-1-14;

(c) a public building known as the "Westchester County Emergency Services Building", located at 4 Dana Road in the hamlet of Valhalla in the town of Mount Pleasant, Westchester county, SBL No. 116.16-1-1;

(d) a public building known as the "Westchester County Public Safety Building", located at 1 Saw Mill River Road in the hamlet of Hawthorne in the town of Mount Pleasant, Westchester county, SBL No. 106.18-1-2;

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

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

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

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

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

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

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

(7) The proposer's technical capacities;

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

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

(10) The proposer's financial capability;

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

(12) The proposer's past record of compliance with federal, state and local laws, rules, licensing requirements, where applicable, and executive orders, including but not limited to compliance with the labor law and other applicable labor and prevailing wage laws, article 15-A of the executive law, and any other applicable laws concerning minority- and women-owned business enterprise participation;

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

(14) A quantitative factor to be used in evaluation of bids or offers for awarding of contracts for bidders or offerers that are certified as minority- or women-owned business enterprises pursuant to article 15-A of the executive law. Where the authorized entity identifies a quantitative factor pursuant to this paragraph, the authorized entity must specify that businesses certified as minority- or women-owned business enterprises pursuant to article 15-A of the executive law, as well as those certified as minority- or women-owned business enterprises pursuant to local law are eligible to qualify for such factor. Nothing in this paragraph shall be construed as a requirement that such businesses be concurrently certified as minority- or women-owned business enterprises under article 15-A of the executive law to qualify for such quantitative factors. Such basis shall reflect, wherever possible, objective and quantifiable analysis.

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

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

6. "Project labor agreement" shall have the meaning set forth in subdivision 1 of section 222 of the labor law. A project labor agreement shall require participation in apprentice training 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 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 an authorized project in accordance with this act.

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

(1) 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 2 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.

(2) 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 paragraph 1 of this subdivision. 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 paragraph 1 of this subdivision 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 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 authorized entity, 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. Any contract awarded pursuant to this act 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 authorized entity. 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 subdivision 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.

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

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

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

(ii) Include a detailed line item cost breakdown,

(iii) Include a list of all drawings, specifications and other information on which the guaranteed maximum price is based,

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

(v) Include a schedule of unit prices; or

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

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

§ 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 applica-

ble 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 to obligate every tier of 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.

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

§ 8. Any authorized project undertaken by an authorized entity pursuant to this act shall be subject to the requirements of article 8 of the environmental conservation law, and, where applicable, the requirements of the National Environmental Policy Act.

§ 9. (a) Notwithstanding any provision of law to the contrary, all rights or benefits, including terms and conditions of employment, and protection of civil service and collective bargaining status of all employees of authorized entities solely in connection with public works undertaken by an authorized entity pursuant to this act, shall be preserved and protected.

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

(c) Employees of authorized entities using design-build 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 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 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 contracts or the contractors' or any subcontractors' obligations or liabilities under any law.

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

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

§ 12. A report shall be submitted no later than June 30, 2026 and annually thereafter, to the governor, the temporary president of the senate, the speaker of the assembly, the county executive and the chair of the board of legislators for an authorized entity containing information regarding each design-build contract procured by such authorized entity pursuant to this act. Such report shall include a description of each such design-build contract, information regarding the procurement process for each such design-build contract including the list of responding entities that demonstrated the general capability to perform the design-build contract pursuant to paragraph 1 of subdivision (a) of section four of this act, the total cost of each design-build contract, an explanation of the estimated savings resulting from the design-build method, and the participation rate of and total dollar value of monies paid to minority- and women-owned business enterprises under such design-build contract.

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