

# 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:

- 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, the following terms shall have the  
4 following meanings:
- 5 1. (a) "Authorized entity" shall mean the Westchester county depart-  
6 ment of public works and the Westchester county department of transpor-  
7 tation.  
8 (b) If otherwise applicable, authorized projects undertaken by the  
9 authorized entity shall be subject to section 101 of the general municipi-  
10 pal law; provided, however, that an authorized entity may fulfill its  
11 obligations under section 101 of the general municipal law by requiring  
12 the contractor to prepare separate specifications in accordance with  
13 section 101 of the general municipal law, as the case may be.
- 14 2. "Authorized project" shall mean, in conformity with the require-  
15 ments of this act, any installation, construction, demolition, recon-  
16 struction, excavation, rehabilitation, repair, and renovation in  
17 connection with the following:
- 18 (a) a public building known as the "Westchester County Labs and  
19 Research Building", located at 10 Dana Road in the hamlet of Valhalla in  
20 the town of Mount Pleasant, Westchester county, SBL No. 116.16-1-1 14;  
21 (b) a public maintenance facility known as the "Westchester County  
22 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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1 House Road behind 65 Hammond House Road in the hamlet of Valhalla in the  
2 town of Mount Pleasant, Westchester county, SBL No. 116.12-1-14;

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

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

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

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

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

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

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

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

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

21 (7) The proposer's technical capacities;

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

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

25 (10) The proposer's financial capability;

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

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

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

39 (14) A quantitative factor to be used in evaluation of bids or offers  
40 for awarding of contracts for bidders or offerers that are certified as  
41 minority- or women-owned business enterprises pursuant to article 15-A  
42 of the executive law. Where the authorized entity identifies a quanti-  
43 tative factor pursuant to this paragraph, the authorized entity must  
44 specify that businesses certified as minority- or women-owned business  
45 enterprises pursuant to article 15-A of the executive law, as well as  
46 those certified as minority- or women-owned business enterprises pursu-  
47 ant to local law are eligible to qualify for such factor. Nothing in  
48 this paragraph shall be construed as a requirement that such businesses  
49 be concurrently certified as minority- or women-owned business enter-  
50 prises under article 15-A of the executive law to qualify for such quan-  
51 titative factors. Such basis shall reflect, wherever possible, objective  
52 and quantifiable analysis.

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

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

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

8 § 3. Notwithstanding any general, special or local law, rule or regu-  
9 lation to the contrary, including but not limited to article 5-A of the  
10 general municipal law, and in conformity with the requirements of this  
11 act, and only when a project labor agreement is performed in accordance  
12 with section 222 of the labor law, an authorized entity may use the  
13 alternative delivery method referred to as a design-build contract for  
14 an authorized project in accordance with this act.

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

18 (1) Step one. Generation of a list of responding entities that have  
19 demonstrated the general capability to perform the design-build  
20 contract. Such list shall consist of a specified number of responding  
21 entities, as determined by an authorized entity, and shall be generated  
22 based upon the authorized entity's review of responses to a publicly  
23 advertised request for qualifications. The authorized entity's request  
24 for qualifications shall include a general description of the public  
25 work, the maximum number of responding entities to be included on the  
26 list, the selection criteria to be used and the relative weight of each  
27 criteria in generating the list. Such selection criteria shall include  
28 the qualifications and experience of the design and construction team,  
29 organization, demonstrated responsibility, ability of the team or of a  
30 member or members of the team to comply with applicable requirements,  
31 including the provisions of articles 145, 147 and 148 of the education  
32 law, past record of compliance with the labor law, and such other quali-  
33 fications the authorized entity deems appropriate, which may include but  
34 are not limited to project understanding, financial capability and  
35 record of past performance. The authorized entity shall evaluate and  
36 rate all responding entities to the request for qualifications. Based  
37 upon such ratings, the authorized entity shall list the responding enti-  
38 ties that shall receive a request for proposals in accordance with para-  
39 graph 2 of this subdivision. To the extent consistent with applicable  
40 federal law, the authorized entity shall consider, when awarding any  
41 contract pursuant to this section, the participation of: (i) responding  
42 entities that are certified as minority- or women-owned business enter-  
43 prises pursuant to article 15-A of the executive law, or certified  
44 pursuant to local law as minority- or women-owned business enterprises;  
45 and (ii) small business concerns identified pursuant to subdivision (b)  
46 of section 139-g of the state finance law.

47 (2) Step two. Selection of the proposal which is the best value to the  
48 authorized entity. The authorized entity shall issue a request for  
49 proposals to the responding entities listed pursuant to paragraph 1 of  
50 this subdivision. If such a responding entity consists of a team of  
51 separate entities, the entities that comprise such a team must remain  
52 unchanged from the responding entity as listed pursuant to paragraph 1  
53 of this subdivision unless otherwise approved by the authorized entity.  
54 The request for proposals shall set forth the public work's scope of  
55 work, and other requirements, as determined by the authorized entity,  
56 which may include separate goals for work under the contract to be

1 performed by businesses certified as minority- or women-owned business  
2 enterprises pursuant to article 15-A of the executive law, or certified  
3 pursuant to local law as minority- or women-owned business enterprises.  
4 The request for proposals shall also specify the criteria to be used to  
5 evaluate the responses and the relative weight of each of such criteria.  
6 Such criteria shall include the proposal's cost, the quality of the  
7 proposal's solution, the qualifications and experience of the proposer,  
8 and other factors deemed pertinent by the authorized entity, which may  
9 include, but shall not be limited to, the proposal's manner and schedule  
10 of project implementation, the proposer's ability to complete the work  
11 in a timely and satisfactory manner, maintenance costs of the completed  
12 public work, maintenance of traffic approach, and community impact. Any  
13 contract awarded pursuant to this act shall be awarded to a responsive  
14 and responsible proposer, which, in consideration of these and other  
15 specified criteria deemed pertinent, offers the best value, as deter-  
16 mined by the authorized entity. The request for proposals shall include  
17 a statement that proposers shall designate in writing those portions of  
18 the proposal that contain trade secrets or other proprietary information  
19 that are to remain confidential; that the material designated as confi-  
20 dential shall be readily separable from the proposal. Nothing in this  
21 subdivision shall be construed to prohibit the authorized entity from  
22 negotiating final contract terms and conditions including cost. All  
23 proposals submitted shall be scored according to the criteria listed in  
24 the request for proposals and such final scores shall be published on  
25 the authorized entity's website.

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

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

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

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

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

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

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

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

47 § 5. Any contract entered into pursuant to this act shall include a  
48 clause requiring that any professional services regulated by articles  
49 145, 147 and 148 of the education law shall be performed and stamped and  
50 sealed, where appropriate, by a professional licensed in accordance with  
51 the appropriate articles of the education law.

52 § 6. Construction with respect to each contract entered into by an  
53 authorized entity pursuant to this act shall be deemed a "public work"  
54 to be performed in accordance with the provisions of article 8 of the  
55 labor law, as well as subject to sections 200, 240, 241 and 242 of such  
56 law and enforcement of prevailing wage requirements pursuant to applica-

1 ble law or, for projects or public works receiving federal aid, applica-  
2 ble federal requirements for prevailing wage. Any contract entered into  
3 pursuant to this act shall include a clause requiring the selected  
4 design builder to obligate every tier of contractor working on the  
5 public work to comply with the project labor agreement referenced in  
6 section three of this act, and shall include project labor agreement  
7 compliance monitoring and enforcement provisions consistent with the  
8 applicable project labor agreement.

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

15 § 8. Any authorized project undertaken by an authorized entity pursu-  
16 ant to this act shall be subject to the requirements of article 8 of the  
17 environmental conservation law, and, where applicable, the requirements  
18 of the National Environmental Policy Act.

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

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

34 (c) Employees of authorized entities using design-build contracts  
35 serving in positions in newly created titles shall be assigned to the  
36 appropriate bargaining unit. Nothing contained in this act shall be  
37 construed to affect (1) the existing rights of employees of such enti-  
38 ties pursuant to an existing collective bargaining agreement, (2) the  
39 existing representational relationships among employee organizations  
40 representing employees of such entities, or (3) the bargaining relation-  
41 ships between such entities and such employee organizations.

42 (d) Without limiting contractors' obligations under design-build  
43 contracts to issue their own initial certifications of substantial  
44 completion and final completion, public employees of authorized entities  
45 shall review and determine whether the work performed by contractors is  
46 acceptable and has been performed in accordance with the applicable  
47 design-build contracts, and if such public employees so determine, such  
48 public employees shall accept contractors' substantial or final  
49 completion of the public works as applicable. Performance by authorized  
50 entities of any review described in this subdivision shall not be  
51 construed to modify or limit contractors' obligations to perform the  
52 work in strict accordance with the applicable design-build contracts or  
53 the contractors' or any subcontractors' obligations or liabilities under  
54 any law.

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

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

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

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