

STATE OF NEW YORK

6672

2025-2026 Regular Sessions

IN SENATE

March 19, 2025

Introduced by Sen. CLEARE -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT to amend the public housing law, in relation to contracting for certain construction projects by public housing authorities

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

1 Section 1. Paragraph (d) of subdivision 1 of section 402 of the public
2 housing law, as amended by chapter 916 of the laws of 1958, is amended
3 to read as follows:

4 (d) undertake administration of personnel in consonance with the size
5 and scope of the authority's functions. [~~It is further found and
6 declared that private enterprise should be encouraged to the greatest
7 extent possible to enter the field of housing in which the authority now
8 operates so that the authority may be able to concentrate its activities
9 at the earliest possible moment on providing housing exclusively for the
10 lower income families.~~]

11 § 2. Section 3 of the public housing law is amended by adding a new
12 subdivision 28 to read as follows:

13 28. The term "alternative project delivery contract" means any project
14 delivery method authorized by article eight of this chapter, including
15 construction manager build, construction manager at risk, and design-
16 build, pursuant to which one or more contracts for the provision of
17 design or construction management and construction services are awarded
18 pursuant to an open and competitive method of procurement, as specified
19 in subdivision six of section one hundred fifty-one of this chapter.

20 § 3. Subdivision 1 of section 151 of the public housing law, as
21 amended by chapter 185 of the laws of 1997, is amended and a new subdi-
22 vision 7 is added to read as follows:

23 1. Contracts of an authority for demolition, excavation, construction,
24 alteration, renovation or for purchase of materials or supplies shall be

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

LBD02495-01-5

1 in such form and contain such combination of work or trades and such
2 terms and provisions as may be deemed advisable by the authority. All
3 such contracts, except contracts for the purchase of materials or
4 supplies, in excess of fifty thousand dollars shall be made on sealed
5 bids, in compliance with a public notice advertised at least once, not
6 less than twenty days before the date set for the receipt of bids, in
7 the official publication of the municipality, or if none exists, in a
8 newspaper circulating in the municipality; provided, however, that such
9 notice requirement shall not apply in cases where an alternative project
10 delivery contract is authorized and utilized pursuant to subdivision six
11 of this section, and such utilization is in compliance with the condi-
12 tions and requirements set forth in subdivision seven of this section or
13 any other applicable provision of law. With respect to contracts for the
14 purchase of materials or supplies in excess of twenty-five thousand
15 dollars, the period of advertisement shall be not less than ten days
16 before the date set for the receipt of bids. If the authority shall deem
17 it to its best interest or necessary or desirable to effectuate the
18 purposes of this chapter or the economy and efficiency in construction
19 and operation of a project, the authority by majority vote of its
20 members may either reject all bids or readvertise for bids or by unani-
21 mous vote of its members may accept a bid other than the lowest bid. In
22 any such contract there may be inserted in the discretion of the author-
23 ity, a provision that additional work may be done or materials and
24 supplies furnished or that work or materials may be omitted for the
25 purpose of completing such contract in accordance with any changes,
26 omissions or additions in the specifications of any such contract. Each
27 contract shall provide that in the case of default by the contractor the
28 authority may adopt on behalf of the authority all subcontracts made by
29 such contractor and all such subcontractors shall be bound by such
30 adoption if made, and the authority may relet, with or without public
31 advertisement, the work specified in the original contract, exclusive of
32 so much thereof as shall be provided in any subcontracts so adopted. An
33 authority may make rules and regulations governing the qualifications of
34 bidders, the submission of combined bids by two or more contractors, the
35 award and execution of the contract, security, if any, for execution and
36 performance of the contract, and any other matters relating to the
37 contract. The bidding may be restricted to those who shall have quali-
38 fied prior to the receipt of bids according to standards fixed by the
39 authority, provided that notice or notices for the submission of quali-
40 fications shall be published in the official publication of the munici-
41 pality, or if none exists, in a newspaper circulating in the munici-
42 pality, at least once, not less than ten days prior to the date fixed
43 for the filing of qualifications. Nothing in this section shall be
44 construed to limit the power of the authority to carry out a project or
45 any part thereof directly by the officers, agencies and employees of the
46 authority, or by any government, or to purchase or acquire materials or
47 supplies through the purchasing officer, department or agency of a
48 government.

49 7. (a) Notwithstanding any provision of law to the contrary, including
50 but not limited to section seventy-two hundred ten of the education law,
51 and in compliance with the requirements of this article, the authority
52 may use an alternative project delivery contract for any public work
53 undertaken pursuant to a project labor agreement, provided that the
54 authority shall advertise a request for qualification in accordance with
55 this section.

1 (b) A contractor selected by the authority to enter into an alterna-
2 tive project delivery contract shall be selected through the following
3 two-step method:

4 (i) (A) The first step shall be the generation of a list of responding
5 entities that have demonstrated the general capability to perform the
6 alternative project delivery contract. Such list shall consist of a
7 specified number of responding entities, as determined by the authority,
8 and shall be generated based upon the authority's review of responses to
9 a publicly advertised request for qualifications. Such request for qual-
10 ifications shall include a general description of the public work, the
11 maximum number of responding entities to be included on such list, the
12 selection criteria to be used, and the relative weight of each criterion
13 in generating such list. Such selection criteria shall include:

14 (1) the qualifications and experience of the entity or team of enti-
15 ties;

16 (2) demonstrated responsibility of the entity or team of entities;

17 (3) the ability of the entity, or team of entities, or of a member or
18 members of such entity or team of entities, to comply with applicable
19 requirements, including the provisions of articles one hundred forty-
20 five, one hundred forty-seven, and one hundred forty-eight of the educa-
21 tion law;

22 (4) the entity's or team of entities' past record of compliance with
23 the labor law;

24 (5) such other qualifications as the authority deems appropriate,
25 which may include but shall not be limited to the project understanding,
26 financial capability, and record of past performance of the entity or
27 team of entities; and

28 (6) prior projects completed by the contractor that demonstrate poten-
29 tial for betterment or enhancement beyond the initial scope shall
30 receive high evaluation scores, promoting innovation, value, and contin-
31 uous improvement.

32 (B) The authority shall evaluate and rate all responding entities to
33 the request for qualifications. Based upon such ratings, the authority
34 shall list the responding entities that shall receive a request for
35 proposals in accordance with subparagraph (ii) of this paragraph. To the
36 extent consistent with applicable federal law, the authority, when
37 awarding any contract pursuant to this section, shall consider:

38 (1) responding entities that are certified as minority or women-owned
39 business enterprises pursuant to article fifteen-A of the executive law,
40 or certified as minority or women-owned business enterprises pursuant to
41 local law;

42 (2) small business concerns identified pursuant to subdivision (b) of
43 section one hundred thirty-nine-g of the state finance law; and

44 (3) business concerns that provide economic opportunities for low and
45 very low-income persons pursuant to section three of the federal housing
46 and urban development act of nineteen hundred sixty-eight, as amended,
47 or any successor provision.

48 (C) Nothing in this subparagraph shall be deemed to supersede any
49 prequalification policies adopted by the authority pursuant to subdivi-
50 sion one of this section.

51 (ii) (A) The second step shall be the selection of the proposal which
52 is the best value to the authority. The authority shall issue a request
53 for proposals to the responding entities listed pursuant to subparagraph
54 (i) of this paragraph. If such a responding entity consists of a team of
55 separate entities, the entities that comprise such a team shall not
56 change from such responding entity as listed pursuant to subparagraph

1 one of this paragraph unless otherwise approved by the authority. The
2 request for proposals shall set forth the public work's scope of work,
3 and other requirements, as determined by the authority, which may
4 include goals for work under the contract to be performed by businesses
5 certified as minority or women-owned business enterprises pursuant to
6 article fifteen-A of the executive law, or as minority or women-owned
7 business enterprises pursuant to local law, or goals established pursu-
8 ant to section three of the federal housing and urban development act of
9 nineteen hundred sixty-eight, as amended, or any successor provision, if
10 applicable. The request for proposals shall also specify the criteria
11 to be used to evaluate the responses and the relative weight of each of
12 such criteria, and include a statement that proposers shall designate in
13 writing those portions of the proposal that contain trade secrets or
14 other proprietary information that are to remain confidential, such that
15 the material designated as confidential shall be readily separable from
16 the proposal. Such criteria shall include:

17 (1) the quality of the proposal's solution;

18 (2) the qualifications and experience of the proposer;

19 (3) the proposal's cost, which may include factors that may be consid-
20 ered individually or in the aggregate, such as the proposed cost of
21 design phase work, the proposed cost of construction phase work, or cost
22 factors relating to construction phase work, as applicable; and

23 (4) other factors deemed advisable by the authority, which may
24 include, but shall not be limited to, the proposal's manner and schedule
25 of project implementation, the proposer's ability to complete the work
26 in a timely and satisfactory manner, maintenance costs of the completed
27 public work, maintenance of traffic approach, and community impact.

28 (B) The authority may engage in negotiations or other discussions with
29 all qualified vendors that have expressed interest; provided that the
30 authority maintains a written record of the conduct of negotiations or
31 discussions and the basis for every determination to continue or suspend
32 negotiations; and provided, further, that if the authority determines
33 for a particular contract or for a particular type of contract that it
34 is in the authority's best interest to negotiate or enter into
35 discussions with fewer proposers, the authority may make such a determi-
36 nation in writing. If the authority enters into such negotiations, the
37 authority shall allow all proposers to revise their proposals upon the
38 conclusion of such negotiations, and the authority shall evaluate such
39 revised proposals using the criteria specified in the request for
40 proposals.

41 (C) Any contract awarded pursuant to this section shall be awarded to
42 a responsive and responsible proposer, which, in consideration of the
43 factors set forth in this subparagraph, and other specified criteria as
44 the authority deems appropriate, offers the best value, as determined by
45 the authority.

46 (D) Nothing in this subdivision shall be construed to prohibit the
47 authority from negotiating final contract terms and conditions including
48 cost.

49 (E) All proposals submitted shall be scored according to the criteria
50 listed in the request for proposals and such final scores shall be
51 published on the authority's website following the date upon which such
52 contract shall be implemented.

53 (c) The authority, in awarding an alternative project delivery
54 contract to a contractor offering the best value pursuant to subpara-
55 graph (ii) of paragraph (b) of this subdivision, may use the following
56 types of contracts:

1 (i) (A) A cost-plus not to exceed guaranteed maximum price form of
2 contract in which the authority shall be entitled to monitor and audit
3 all costs. In establishing the schedule and process for determining a
4 guaranteed maximum price, the contract between the authority and the
5 contractor shall include terms specifying the price for the design phase
6 of the work, the scope of the work, and any applicable cost factors
7 relating to construction phase work that were included in the contrac-
8 tor's proposal. A fair and reasonable guaranteed maximum price for the
9 construction phase of the work, or portions of the construction phase of
10 the work, may be agreed to as one or more amendments to such contract
11 based on developments in the design of the project that occur after such
12 contract is executed. Each guaranteed maximum price amendment shall
13 describe the scope of the portion of the construction phase work subject
14 to the amendment, the cost of performing such work, and the maximum
15 costs of any contingencies related to such work, include a detailed line
16 item cost breakdown, include a list of all drawings, specifications and
17 other information on which the guaranteed maximum price is based,
18 include the dates of substantial and final completion on which the guar-
19 anteed maximum price is based, as applicable, and include a schedule of
20 unit prices. The authority shall maintain a written record of each such
21 guaranteed maximum price amendment, which shall include a summary of the
22 negotiation process and a description of the relevant developments in
23 the design of the project, independent cost estimates prepared by or on
24 behalf of the authority, as required pursuant to a policy established by
25 the authority, the contractor's actual cost schedules and unit prices,
26 and any other factors considered by the authority. If the authority and
27 the contractor cannot agree upon a guaranteed maximum price for one or
28 more portions of construction phase work, the authority may direct the
29 contractor to assign all or a portion of the duties and rights under
30 such alternative project delivery contract to another responsive and
31 responsible proposer that the authority determined offered the best
32 value of the remaining proposers pursuant to subparagraph (ii) of para-
33 graph (b) of this subdivision and that agrees to accept such assignment.
34 Such contracts may include guaranteed maximum price agreements, allowing
35 for upfront estimates and maintaining the flexibility to adjust the
36 scope and costs as the project evolves and new opportunities for better-
37 ment arise.

38 (B) Nothing in this subparagraph shall be deemed to prohibit the use
39 of any contract terms or procedures pursuant to any other provision of
40 law, including but not limited to the provisions of this article.

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

46 (iii) Incentive payments identified in the text of the contract for
47 performance objectives.

48 (iv) A combination of elements of the contract types listed in this
49 paragraph.

50 (d) All alternative project delivery contracts entered into pursuant
51 to this subdivision shall include a clause requiring that any profes-
52 sional services regulated by articles one hundred forty-five, one
53 hundred forty-seven, and one hundred forty-eight of the education law
54 shall be performed and stamped and sealed, where appropriate, by a
55 professional licensed in accordance with applicable law.

1 (e) The submission of a proposal or responses or the execution of an
2 alternative project delivery contract pursuant to this subdivision shall
3 not be construed to be a violation of section sixty-five hundred twelve
4 of the education law.

5 (f) Each alternative project delivery contract entered into by the
6 authority pursuant to this article shall comply with the objectives and
7 goals relating to the performance of design and construction services by
8 minority and women-owned business enterprises pursuant to:

9 (i) section 6-129 of the administrative code of the city of New York;
10 or

11 (ii) for projects or public works receiving federal aid, applicable
12 federal requirements for disadvantaged business enterprises or minority
13 and women-owned business enterprises and section three of the federal
14 housing and urban development act of nineteen hundred sixty-eight, as
15 amended, or any successor provision, if applicable.

16 (g) Notwithstanding any provision of law to the contrary, all rights
17 or benefits, including terms and conditions of employment, and
18 protection of civil service and collective bargaining status of all
19 employees of the authority in connection with the use of an alternative
20 project delivery contract pursuant to this section shall be preserved
21 and protected.

22 (h) The use of alternative project delivery contracts pursuant to this
23 section shall not result in:

24 (i) the displacement of any currently employed worker of an authority
25 or loss of position, including partial displacement such as a reduction
26 in the hours of non-overtime work, wages, or employment benefits, or
27 which result in the impairment of existing collective bargaining agree-
28 ments to which such authority is a party; or

29 (ii) the transfer to a contractor of existing duties and/or functions
30 related to maintenance and operations currently performed by existing
31 employees of such authority.

32 (i) (A) Employees of an authority serving in positions in newly
33 created titles shall be assigned to the appropriate bargaining unit.

34 (B) Nothing contained in this subdivision shall be construed to
35 affect:

36 (1) the existing rights of employees of such authority pursuant to an
37 existing collective bargaining agreement;

38 (2) the existing representational relationships among employee organ-
39 izations representing employees of such authority; or

40 (3) the bargaining relationships between such authority and such
41 employee organizations.

42 (j) (i) Public employees of an authority shall review and determine
43 whether the work performed by contractors is acceptable and has been
44 performed in accordance with the applicable alternative project delivery
45 contracts. If such public employees determine that the work performed by
46 such contractors is acceptable, such public employees shall accept such
47 contractors' substantial or final completion of the public works, as
48 applicable.

49 (ii) Nothing in this paragraph shall be construed to modify or limit:

50 (A) the contractors' obligations under alternative project delivery
51 contracts to issue their own initial certifications of substantial
52 completion and final completion;

53 (B) the contractors' obligations to perform the work in strict accord-
54 ance with the applicable alternative project delivery contract; or

55 (C) the contractors' or any subcontractors' obligations or liabilities
56 under any law, rule, or regulation.

1 § 4. The public housing law is amended by adding a new section 160 to
2 read as follows:

3 § 160. Annual financial reporting requirements. 1. All municipal hous-
4 ing authorities created pursuant to article thirteen of this chapter
5 shall prepare and submit to the commissioner an annual financial report.
6 Such report shall include, but not be limited to, a comprehensive
7 accounting of all funds received by the authority during the calendar
8 year, specifying the sources of such funds, including federal, state,
9 and local contributions. This initial report shall be submitted by April
10 thirtieth of next year and annually thereafter.

11 2. The report shall include a detailed breakdown of the expenditures
12 from each source of funds, categorized by program, project, or activity,
13 and shall specify the amount of funds remaining from each source at the
14 end of the fiscal year. In cases where relevant funding or budget data
15 from the city fiscal year impacts the authority's financial reporting,
16 such authority shall submit a revised report by July, thirty-first each
17 year, incorporating any additional financial data.

18 3. The commissioner shall compile these financial reports and ensure
19 that they are made publicly available on a publicly accessible website
20 annually, either by directly posting the data on a public website
21 managed by the commissioner or, at the discretion of the commissioner,
22 allowing individual municipal housing authorities to post the required
23 financial and budgetary information on such authorities own publicly
24 accessible websites. Such postings must be completed by August, thirty-
25 first annually, in a format and manner that the commissioner deems
26 acceptable. The commissioner shall establish and enforce strict stand-
27 ards to ensure that such postings meet requirements for transparency,
28 accessibility, and comparability, ensuring that the public has full and
29 clear access to the financial information of all municipal housing
30 authorities.

31 § 5. This act shall take effect on the sixtieth day after it shall
32 have become a law.