

# STATE OF NEW YORK

3965

2025-2026 Regular Sessions

## IN ASSEMBLY

January 30, 2025

Introduced by M. of A. ROSENTHAL -- read once and referred to the Committee on Housing

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  
25 in such form and contain such combination of work or trades and such

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

LBD02495-01-5

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

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

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

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

(1) the qualifications and experience of the entity or team of entities;

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

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

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

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

(6) prior projects completed by the contractor that demonstrate potential for betterment or enhancement beyond the initial scope shall receive high evaluation scores, promoting innovation, value, and continuous improvement.

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

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

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

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

(C) Nothing in this subparagraph shall be deemed to supersede any prequalification policies adopted by the authority pursuant to subdivision one of this section.

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

(i) (A) A cost-plus not to exceed guaranteed maximum price form of contract in which the authority 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 authority and the contractor shall include terms specifying the price for the design phase of the work, the scope of the work, and any applicable cost factors relating to construction phase work that were included in the contractor's proposal. A fair and reasonable guaranteed maximum price for the construction phase of the work, or portions of the construction phase of the work, may be agreed to as one or more amendments to such contract based on developments in the design of the project that occur after such contract is executed. Each guaranteed maximum price amendment shall describe the scope of the portion of the construction phase work subject to the amendment, the cost of performing such work, and the maximum costs of any contingencies related to such work, include a detailed line item cost breakdown, include a list of all drawings, specifications and other information on which the guaranteed maximum price is based, include the dates of substantial and final completion on which the guaranteed maximum price is based, as applicable, and include a schedule of unit prices. The authority shall maintain a written record of each such guaranteed maximum price amendment, which shall include a summary of the negotiation process and a description of the relevant developments in the design of the project, independent cost estimates prepared by or on behalf of the authority, as required pursuant to a policy established by the authority, the contractor's actual cost schedules and unit prices, and any other factors considered by the authority. If the authority and the contractor cannot agree upon a guaranteed maximum price for one or more portions of construction phase work, the authority may direct the contractor to assign all or a portion of the duties and rights under such alternative project delivery contract to another responsive and responsible proposer that the authority determined offered the best value of the remaining proposers pursuant to subparagraph (ii) of paragraph (b) of this subdivision and that agrees to accept such assignment. Such contracts may include guaranteed maximum price agreements, allowing for upfront estimates and maintaining the flexibility to adjust the scope and costs as the project evolves and new opportunities for betterment arise.

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

(ii) 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, and such contractor's profit for completing all items of work required under such contract.

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

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

(d) All alternative project delivery contracts entered into pursuant to this subdivision shall include a clause requiring that any professional services regulated by articles one hundred forty-five, one hundred forty-seven, and one hundred forty-eight of the education law shall be performed and stamped and sealed, where appropriate, by a 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.