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:

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

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

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

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

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

1. Contracts of an authority for demolition, excavation, construction, 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.

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in such form and contain such combination of work or trades and such terms and provisions as may be deemed advisable by the authority. All such contracts, except contracts for the purchase of materials or supplies, in excess of fifty thousand dollars shall be made on sealed bids, in compliance with a public notice advertised at least once, not less than twenty days before the date set for the receipt of bids, in the official publication of the municipality, or if none exists, in a newspaper circulating in the municipality**; provided, however, that such notice requirement shall not apply in cases where an alternative project delivery contract is authorized and utilized pursuant to subdivision six of this section, and such utilization is in compliance with the conditions and requirements set forth in subdivision seven of this section or any other applicable provision of law**. With respect to contracts for the purchase of materials or supplies in excess of twenty-five thousand dollars, the period of advertisement shall be not less than ten days before the date set for the receipt of bids. If the authority shall deem it to its best interest or necessary or desirable to effectuate the purposes of this chapter or the economy and efficiency in construction and operation of a project, the authority by majority vote of its members may either reject all bids or readvertise for bids or by unanimous vote of its members may accept a bid other than the lowest bid. In any such contract there may be inserted in the discretion of the authority, a provision that additional work may be done or materials and supplies furnished or that work or materials may be omitted for the purpose of completing such contract in accordance with any changes, omissions or additions in the specifications of any such contract. Each contract shall provide that in the case of default by the contractor the authority may adopt on behalf of the authority all subcontracts made by such contractor and all such subcontractors shall be bound by such adoption if made, and the authority may relet, with or without public advertisement, the work specified in the original contract, exclusive of so much thereof as shall be provided in any subcontracts so adopted. An authority may make rules and regulations governing the qualifications of bidders, the submission of combined bids by two or more contractors, the award and execution of the contract, security, if any, for execution and performance of the contract, and any other matters relating to the contract. The bidding may be restricted to those who shall have qualified prior to the receipt of bids according to standards fixed by the authority, provided that notice or notices for the submission of qualifications shall be published in the official publication of the municipality, or if none exists, in a newspaper circulating in the municipality, at least once, not less than ten days prior to the date fixed for the filing of qualifications. Nothing in this section shall be construed to limit the power of the authority to carry out a project or any part thereof directly by the officers, agencies and employees of the authority, or by any government, or to purchase or acquire materials or supplies through the purchasing officer, department or agency of a government.

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

one of this paragraph unless otherwise approved by the authority. The request for proposals shall set forth the public work's scope of work, and other requirements, as determined by the authority, which may include 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 as minority or women-owned business enterprises pursuant to local law, or goals established pursuant to section three of the federal housing and urban development act of nineteen hundred sixty-eight, as amended, or any successor provision, if applicable. 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, and 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, such that the material designated as confidential shall be readily separable from the proposal. Such criteria shall include:

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

(2) the qualifications and experience of the proposer;

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

(4) other factors deemed advisable by the authority, 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.

(B) The authority may engage in negotiations or other discussions with all qualified vendors that have expressed interest; provided that the authority 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 the authority determines for a particular contract or for a particular type of contract that it is in the authority's best interest to negotiate or enter into discussions with fewer proposers, the authority may make such a determination in writing. If the authority enters into such negotiations, the authority shall allow all proposers to revise their proposals upon the conclusion of such negotiations, and the authority shall evaluate such revised proposals using the criteria specified in the request for proposals.

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

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

(E) 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 authority's website following the date upon which such contract shall be implemented.

(c) The authority, in awarding an alternative project delivery contract to a contractor offering the best value pursuant to subparagraph (ii) of paragraph (b) of this subdivision, may use the following 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.

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

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

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

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

(g) 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 the authority in connection with the use of an alternative project delivery contract pursuant to this section shall be preserved and protected.

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

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

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

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

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

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

(2) the existing representational relationships among employee organizations representing employees of such authority; or

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

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

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

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

(B) the contractors' obligations to perform the work in strict accordance with the applicable alternative project delivery contract; or

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

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

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

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

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

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