§ 634. Alternative project delivery contracts. 1. Notwithstanding any provision of law to the contrary, including but not limited to section seventy-two hundred ten of the education law, and in conformity with the requirements of this article, for any public work undertaken pursuant to a project labor agreement the trust may use alternative project delivery contracts, provided that the authority to advertise a request for qualification in accordance with this section shall expire five years after the effective date of this section.

(a) A contractor selected by the trust to enter into an alternative project delivery contract may be selected through a two-step method, as follows:

(1) Step one. 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 trust, and shall be generated based upon the trust's review of responses to a publicly advertised request for qualifications. The trust's 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 criteria in generating such list. Such selection criteria shall include the qualifications and experience of the entity or team of entities, organization, demonstrated responsibility, ability of the entity or team of entities or of a member or members of the 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, past record of compliance with the labor law, and such other qualifications the trust deems appropriate, which may include but are not limited to project understanding, financial capability and record of past performance. The trust shall evaluate and rate all responding entities to the request for qualifications. Based upon such ratings, the trust shall list the responding entities that shall receive a request for proposals in accordance with subparagraph two of this paragraph. To the extent consistent with applicable federal law, the trust 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 fifteen-A of the executive law, or certified pursuant to local law as minority or women owned business enterprises, (ii) small business concerns identified pursuant to subdivision (b) of section one hundred thirty-nine-g of the state finance law, and (iii) business concerns that provide economic opportunities for low and very low-income persons in accordance with section three of the federal housing and urban development act of nineteen hundred sixty-eight, as amended, or any successor provision. In addition, nothing in this section shall be deemed to supersede any prequalification policies adopted by the trust pursuant to section six hundred thirty-three of this article.

(2) Step two. The second step shall be the selection of the proposal which is the best value to the trust. The trust shall issue a request for proposals to the responding entities listed pursuant to subparagraph one of this paragraph. If such a responding entity consists of a team of separate entities, the entities that comprise such a team shall remain unchanged from the responding entity as listed pursuant to subparagraph one of this paragraph unless otherwise approved by the trust. The request for proposals shall set forth the public work's scope of work, and other requirements, as determined by the trust, 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 fifteen-A of the executive law, or certified pursuant to local law as minority or women owned business enterprises, 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. Such criteria shall include: the quality of the proposal's solution; the qualifications and experience of the proposer; 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 other factors deemed pertinent by the trust, 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. The trust may engage in negotiations or other discussions with all qualified vendors that have expressed interest, provided that the trust maintains a written record of the conduct of negotiations or discussions and the basis for every determination to continue or suspend negotiations, and further provided that if the trust determines for a particular contract or for a particular type of contract that it is in the trust's best interest to negotiate or enter into discussions with fewer proposers, it may make such a determination in writing. If the trust enters into such negotiations, the trust shall allow all proposers to revise their proposals upon conclusion of negotiations, and the trust shall evaluate the proposers' revised proposals using the criteria included in the request for proposals. Any contract awarded pursuant to this section 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 trust. 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, so that the material designated as confidential shall be readily separable from the proposal. Nothing in this subdivision shall be construed to prohibit the trust 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 trust's website after the date upon which such contract may be implemented.

(b) The trust, in awarding an alternative project delivery contract to a contractor offering the best value may use the following types of contracts:

(1) a cost-plus not to exceed guaranteed maximum price form of contract in which the trust 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 trust 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: (i) 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, (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, as applicable, and (v) include a schedule of unit prices. The trust shall maintain a written record of each 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 trust, as required pursuant to a policy established by the trust, the contractor's actual cost schedules and unit prices, and any other factors that the trust considered. If the trust and the contractor cannot agree upon a guaranteed maximum price for one or more portions of construction phase work, the trust 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 pursuant to subparagraph two of paragraph (a) of this subdivision that offered the best value of the remaining proposers and that will agree to accept such assignment. This subparagraph shall not be deemed to prohibit the use of any contract terms or procedures pursuant to any other provision of law, including but not limited to provisions included in this article;

(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;

(3) incentive payments identified in the text of the contract for performance objectives; or

(4) a combination of elements of the contract types listed herein.

2. All alternative project delivery contracts entered into pursuant to this section 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 the appropriate article.

3. The submission of a proposal or responses or the execution of an alternative project delivery contract pursuant to this article shall not be construed to be a violation of section six thousand five hundred twelve of the education law.

4. Each alternative project delivery contract entered into by the trust 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 section 6-129 of the administrative code of the city of New York, or, 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.

5. (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 NYCHA and the trust solely in connection with the use of an alternative project delivery contract pursuant to this section shall be preserved and protected.

(b) The use of alternative project delivery contracts pursuant to this section shall not result in the (1) displacement of any currently employed worker of NYCHA 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 to which NYCHA is a party, or (2)

transfer of existing duties and functions related to maintenance and operations currently performed by existing employees of NYCHA to a contractor.

(c) Employees of the trust and NYCHA serving in positions in newly created titles shall be assigned to the appropriate bargaining unit. Nothing contained in this section shall be construed to affect (1) the existing rights of employees of NYCHA pursuant to an existing collective bargaining agreement, (2) the existing representational relationships among employee organizations representing employees of NYCHA, or (3) the bargaining relationships between NYCHA and such employee organizations.

(d) Without limiting contractors' obligations under alternative project delivery contracts to issue their own initial certifications of substantial completion and final completion, public employees of the trust 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, 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 public employees of the trust 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 alternative project delivery contract or the contractors' or any subcontractors' obligations or liabilities under any law.