A BUDGET BILL submitted by the Governor
in accordance with Article VII of the Constitution

AN ACT to establish an alternative financing and construction
method between the DOH and DASNY for the state's consolidated laboratory project

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

Section 1. Short title. This act shall be known and may be cited as the "New York state consolidated laboratory project act".

§ 2. Legislative findings and declarations. The legislature hereby finds and declares as follows:

(a) Procurement findings and declarations.

1. Public works projects in New York have typically been delivered using the traditional design-bid-build project delivery method, under which separate contracts are let for design on a qualifications basis and for construction on a lowest responsible bidder basis, with financing provided by municipal bonds and operation and maintenance by the governmental owner.

2. Experience in New York and in a large number of other states has successfully demonstrated that using alternative project delivery for major public works can provide several advantages over design-bid-build delivery. Alternative project delivery involves combining two or more elements of project responsibility in a single contract, with the contract procured under a competitive proposal process in which both price and non-price factors such as technical, financial and commercial merit are used to select the contractor. Alternative project delivery
methods include design-build, design-build-finance, design-build-finance-maintain, and design-build-finance-operate-maintain.

3. The potential advantages to the public of alternative project delivery generally include:

(A) Providing a single point of project accountability;
(B) Expediting project delivery;
(C) Improving project innovation, quality and efficiency;
(D) Reducing and guaranteeing design, construction, operation and maintenance costs;
(E) Permitting the selection of the highest qualified designer, builder and facility manager team based on past performance and demonstrated capability;
(F) Increasing competition for design, construction and facilities management services;
(G) Enhancing collaboration among the designer, builder, and facility manager;
(H) Reducing change orders and pricing contingencies;
(I) Creating jobs, consistent with state policy regarding prevailing wages and utilization of minority and women-owned businesses;
(J) Expanding contractor and investor opportunities for businesses in the state;
(K) Securing long term project performance guarantees;
(L) Maximizing a life-cycle project focus and better assuring life-cycle maintenance;
(M) Transferring responsibility for issuing debt for the project from the governmental owner to the contractor;
Transferring to equity and debt investors and private contractors project risks that would otherwise be retained by the governmental owner; and

Enhancing the security for contractor performance by making contract payments contingent on receipt of service by the governmental owner.

(b) Project findings and declarations.

1. The current state of the laboratories and related facilities of the Wadsworth Center constitutes a potential risk to public health and safety because they are functionally obsolete and deteriorating. Independent facility assessments have established that the remediation of such facilities through renovation is neither feasible, nor safe, nor cost-effective. Accordingly, such facilities must be replaced.

2. Consolidating such laboratories and related facilities with certain facilities of the department of environmental conservation and other public agencies will serve to: strengthen and advance public health and preparedness strategies throughout the state; replace antiquated facilities that are costly to operate and are a hindrance to scientific progress; result in a smaller overall footprint than the combined footprint of the existing facilities; establish a sustainable, modernized, and consolidated laboratory campus; provide facilities with improved efficiency and reliability of operations and maintenance; promote economic and intellectual property development; and generate savings from synergies and shared services with other agencies.

3. A new consolidated laboratory facility will provide a safer and more efficient work environment for public employees.
4. A new laboratory facility may provide opportunities to host private users that could complement the operations and work of the consolidated laboratory or enhance its economic benefits to the state.

5. Utilization of an alternative project delivery method is appropriate for the development of a new consolidated laboratory facility and in the best interests of the public.

6. No state employee shall be subject to involuntary loss of employment as a result of the procurement authorized by this act.

§ 3. Definitions. For the purposes of this act:

(a) "best value" shall mean the basis for awarding a project agreement to the offerer that optimizes the quality, cost, efficiency, and price and performance criteria of the project. Such basis may include, but is not limited to:

1. The quality of the offerer's performance on previous projects;

2. The timeliness of the offerer's performance on previous projects;

3. The level of customer satisfaction with the offerer's performance on previous projects;

4. The offerer's record of performing previous projects on budget and its ability to minimize cost overruns;

5. The offerer's ability to incorporate innovative ideas and limit change orders;

6. The offerer's ability to prepare appropriate project plans;

7. The offerer's financial strength and technical capacities;

8. The individual qualifications of the offerer's key personnel;

9. The offerer's ability to assess and manage risk and minimize risk impact; and
10. The offerer's past record of compliance with article 15-A of the executive law or comparable laws of other jurisdictions in which the offerer has conducted business.

Such basis shall reflect, wherever possible, objective and quantifiable analysis.

(b) "comptroller" shall mean the state comptroller.

(c) "contractor" shall mean the entity that enters into the project agreement with the department.

(d) "DASNY" shall mean the dormitory authority of the state of New York.

(e) "department" shall mean the department of health.

(f) "offerer" shall mean an entity that has submitted a proposal in response to a request for proposals issued by the department pursuant to paragraph 2 of subdivision (a) of section five of this act.

(g) "project" shall mean the New York state consolidated laboratory project, consisting of the consolidation into a new laboratory campus of (1) the laboratory facilities and functions of the department, (2) certain laboratory facilities and functions of the department of environmental conservation, (3) certain laboratory functions and facilities of other state or local departments, agencies, institutions and public authorities, as determined appropriate, (4) the facilities and functions of private or non-profit users that are complementary to the public laboratory function and not inconsistent with the purposes of this act, and (5) parking and other facilities and functions ancillary to or supportive of the foregoing, which facilities and functions may or may not be dedicated to use solely in connection with the project.

(h) "project agreement" shall mean a contract entered into pursuant to this act by the department with a single entity for the design,
construction, financing, operation and maintenance of the project, or any combination of such functions as the department may determine.

(i) "related agreements" shall mean any leases, subleases, easements, licenses, or other agreements related to the project or ancillary to the project agreement.


Notwithstanding the provisions of sections 136-a, 137, 162 and 163 of the state finance law, section 142 of the economic development law, section 224 of the labor law, subdivision 5 of section 63 of the executive law, sections 1680 and 2879-a of the public authorities law, section 7210 of the education law, subdivision 6 of section 8 of the public buildings law and the provisions of any other law to the contrary (including but not limited to provisions of non-enumerated sections of the foregoing laws):

(a) Upon compliance with the two-step procurement method described in section five of this act and in conformity with the other requirements of this act, the department may enter into a project agreement providing for the delivery of the project on such terms and conditions as the department may determine in accordance with such procurement method, provided that the term of such agreement shall not exceed 50 years following project completion and acceptance, and provided further that the project agreement shall expressly provide that upon expiration or earlier termination of the project agreement for any reason all right, title and interest in the project and the project site shall be vested in the state. The department may also enter into such related agreements, and amendments to the project agreement, as it determines to be necessary or convenient for the project, including agreements for utility services or infrastructure, without public auction or bidding or any
other competitive procurement process and regardless of whether such agreements have resulted from the two-step procurement method described in section five of this act.

(b) Nothing contained in this act shall limit the right of the department to award contracts as otherwise provided by law, nor shall anything in this act limit or impair any existing rights, powers or authority of DASNY.

§ 5. Project procurement. (a) Procurement method. Except as expressly provided for in subdivision (a) of section eight of this act, and notwithstanding any other provision of law to the contrary, the department may, in a manner consistent with the requirements of this act, procure the project and enter into a project agreement and related agreements authorized by section four of this act without the approval or authorization of any state officer or agency. An entity selected by the department to enter into a project agreement authorized by section four of this act shall be selected through a two-step procurement method, as follows:

1. Pre-qualification of prospective contractors. The department shall generate a list of qualified entities that have demonstrated the general capability to deliver the project and otherwise perform the requirements of a project agreement. Such list shall consist of a specified number of entities, as determined by the department, and shall be generated based upon the department's review of responses to a publicly advertised request for qualifications for the project. The department's request for qualifications shall include a general description of the project and the selection criteria to qualify entities. Such selection criteria shall include such qualifications as the department deems appropriate, which may include but are not limited to the general qualifications and
experience of the members of the proposing team, the organization of the proposing team, demonstrated responsibility, the ability of the team or of a member or members of the team to comply with applicable project requirements, including the provisions of articles 145, 147 and 148 of the education law, past record of compliance with the labor law or any comparable law applicable in jurisdictions where such entity has conducted business (in each instance to the extent applicable), understanding of the project and its requirements, financial, management and technical capability, and record of past performance. The department shall evaluate all entities responding to the request for qualifications. Based upon such evaluation, the department may develop a list of the entities that shall receive a request for proposals in accordance with this subdivision. To the extent consistent with applicable law, the department shall consider, when rating entities pursuant to this section: (i) such entities' records of compliance with article 15-A of the executive law on other projects or otherwise providing for the participation of firms certified pursuant to article 15-A of the executive law as minority or women-owned businesses (or any comparable law applicable in jurisdictions where such entity has conducted business) and the ability of other businesses under consideration to work with minority and women-owned businesses so as to promote and assist participation by such businesses; and (ii) such entities' utilization of small business concerns identified pursuant to subdivision (b) of section 139-g of the state finance law.

2. Solicitation and selection of the proposal which is the best value to the state. The department may issue a request for proposals to the entities listed pursuant to paragraph one of this subdivision. If such an entity consists of a team of separate entities, the entities that
comprise such a team and their lead members must remain unchanged from
the entity and team members listed pursuant to paragraph one of this
subdivision unless otherwise approved by the department. The request
for proposals may include the department's form of project agreement.
The request for proposals shall set forth the scope of work for the
project, and other applicable requirements, as determined by the depart-
ment and shall specify the criteria to be used to evaluate the
responses, as determined by the department, including the relative
weight of such criteria. Such criteria shall include but are not limited
to the proposal's cost, its technical merit, the qualifications and
experience of the proposing entity and its team members, the entity's
plan of project implementation, the entity's ability to complete the
work in a timely and satisfactory manner, and the community impact of
the proposal. A project agreement awarded pursuant to this act shall be
awarded to a responsive and responsible entity that submits the
proposal, which, in consideration of these and the other criteria set
forth in the request for proposals, offers the best value to the state,
as determined by the department. To the extent consistent with applica-
ble law, the department shall consider, when awarding a project agree-
ment pursuant to this section: (i) the participation of firms certified
pursuant to article 15-A of the executive law as minority or women-owned
businesses and the ability of other businesses under consideration to
work with minority and women-owned businesses so as to promote and
assist participation by such businesses; and (ii) such entities' utili-
zation of small business concerns identified pursuant to subdivision (b)
of section 139-g of the state finance law. Notwithstanding any other law
to the contrary, the department may conduct discussions individually on
a commercially confidential basis with the pre-qualified entities prior
to their submittal of proposals in a manner determined by the depart-
ment, and may conduct negotiations regarding contract terms and condi-
tions, including cost, with one or more offerers following their submit-
tal of a proposal.

(b) Notice of award and execution of agreements. Notice of the award
and execution of the project agreement, together with a summary of the
rights of contest provided in this act, shall be published by the
department or DASNY in the state register and in at least one newspaper
of general circulation in the municipality in which the project is
located.

(c) Applicability of certain laws to procurement.

1. The submission of qualifications, proposals or responses, or the
execution of a project agreement or any related agreement, shall not be
construed to be a violation of section 6512 of the education law.

2. Sections 139-d, 139-j, 139-k, paragraph f of subdivision 1 and
paragraph g of subdivision 9 of section 163 of the state finance law
shall, except as otherwise provided in this act, apply to the procure-
ment process authorized by this section.

§ 6. Department of health responsible for project and project site.

Notwithstanding the provisions of any other law to the contrary, respon-
sibility for and jurisdiction over the project and the project site is
hereby transferred from the commissioner of general services, and any
other state officer, agency or department, to the department. Notwith-
standing the provisions of any other law to the contrary, in exercising
such responsibility and jurisdiction the department, acting through the
commissioner of health or his or her designee, is authorized to enter
into such leases, subleases, easements, licenses and other related
agreements, including but not limited to agreements with public corpo-
rations and agreements with utilities, in each instance on such terms and conditions as the department determines to be necessary or convenient to the effectuation of the project, provided that the term of any lease shall not exceed 50 years from the date of completion and acceptance of the project. In addition, the department may permit the mortgaging, pledging and granting of a security interest in any such lease or related agreement in connection with any public or private project financing and may enter into such other related agreements as the department determines to be necessary or convenient to facilitate the public or private financing of the project, in each case on such terms and conditions as the department determines to be necessary or convenient to the financing of the project.

§ 7. DASNY as agent of and project advisor to department of health. Notwithstanding the provisions of any other law to the contrary, DASNY shall have the power and authority to act as agent of and advisor to the department for all purposes necessary or convenient for the planning, procurement, construction, post-completion management and administration and overall effectuation of the project. In acting as agent of or advisor to the department, DASNY shall have no independent liability in connection with the project and the department shall indemnify DASNY to the extent permitted by law. In addition, DASNY shall be the construction-permitting agency for the project and shall be responsible for post-completion monitoring, enforcement of the Uniform Fire Prevention and Building Code and enforcing compliance with article 15-A of the executive law. DASNY further shall have the power and authority to act as a procurement, technical and administrative consultant and advisor to the department in connection with the planning, procurement and implementation of the project, including the power and authority as agent for
or consultant to the department in procuring and managing the services of technical, financial, legal and other consultants; soliciting, reviewing and evaluating the qualifications and proposals from potential contractors for the project; drafting and negotiating the project agreement and any related agreements; assisting in planning and carrying out any private financing of the project; supervising the performance of the design, construction, operation, maintenance and management of the project by the contractor under the project agreement; and coordinating participation in the project by other involved state agencies and departments.

§ 8. Procurement and contract approval authority. (a) The procurement of the project pursuant to this act by the department, including but not limited to pre-qualification of prospective contractors, the election to issue a request for proposals, the evaluation of responses to the request for proposals, the determination by the department to award the project agreement and any related agreements and the execution of the project agreement pursuant to this act, any related agreement or any amendments thereto, shall not be subject to the approval or authorization of any state officer or agency, except for: (1) the approval of the project agreement and any related agreements to which the state is a party by the comptroller to the extent required under section 112 of the state finance law; and (2) the approval of the project agreement and any related agreements to which the state is a party by the state division of the budget.

(b) Notwithstanding any provision of law to the contrary, DASNY and other state agencies and departments involved in the project are each authorized to enter into such agreements with each other, which shall be in the nature of intergovernmental cooperation agreements, as each may
deem necessary or appropriate in furtherance of the project or the purposes of this act. Notwithstanding section 112 of the state finance law, section 2879-a of the public authorities law or any other provision of law to the contrary, no agreement entered into pursuant to this subdivision shall require public auction or bidding or any other competitive procurement process or require any approvals or authorizations of any state officer or agency other than the respective parties to such agreements.

(c) Agreements relating to the project between non-state parties. Subject to the terms of the project agreement or any related agreement, and notwithstanding section 112 of the state finance law, section 2879-a of the public authorities law or any other law to the contrary that relates to state or other public contracts, agreements relating to the project or otherwise in furtherance of this act to which neither the state nor any state agency or department is a party shall not be deemed to be state contracts and shall not be subject to (i) public auction or bidding requirements or any other competitive procurement requirement, or (ii) audit, review, oversight, approval or authorization by any state officer or agency.

§ 9. Project agreement subject to appropriation. The project agreement shall provide that the obligation of the state to make any payments thereunder is subject to appropriation by the legislature and shall be deemed executory only to the extent of state monies appropriated therefore; that no liability shall be incurred by the state under the project agreement beyond appropriated monies; and that the project agreement does not constitute a debt of the state within the meaning of any constitutional or statutory provision.

§ 10. No state-supported debt.
(a) Any debt issued by the contractor under the project agreement shall not constitute state-supported debt for purposes of article 5-B of the state finance law.

(b) Amounts paid to the contractor or any other party pursuant to the project agreement or any related agreement shall, upon such payment, no longer constitute funds of the state.

(c) Agreements relating to the project to which the department is not a party (regardless of whether it shall have approved or consented to such agreement) shall not constitute state contracts.

§ 11. Limitation on challenges and contests.

(a) The validity of a project agreement and any related agreement awarded and executed pursuant to this act, or the validity of the procedures relating to such award and execution, or of any administrative or other determination or finding made by the department or any other state or municipal agency, authority, department or other subdivision in connection with such procedures or award, may be contested or challenged only if an action, suit or proceeding contesting or challenging any such matter is commenced within thirty days after: (i) publication of the notice of award and execution as described in subdivision (b) of section five of this act in the case of the award and execution of the project agreement, or (ii) the publication or filing of such finding or determination or related agreement as required by law, in the case of any finding or administrative determination or related agreement, and solely on the grounds that:

1. such award and execution or procedure was not authorized pursuant to this act; or
any of the provisions of this act which should be complied with at the date of publication of notice of such award and execution have not been substantially complied with; or

3. a conflict of interest can be shown in the manner in which the project agreement and any related agreement was awarded and executed.

(b) The state supreme court shall have exclusive jurisdiction of any action, suit or special proceeding brought in connection with this act. The venue of any action, suit or special proceeding brought in connection with this act shall be Albany county. Any action, suit or special proceeding brought in connection with this act shall be entitled to a preference under rule 3403 of the civil practice law and rules.

§ 12. Zoning, land use, real estate tax and other exemptions.

(a) The project and the project site shall be exempt from zoning and other land use, permit and licensing laws, rules and regulations of the municipality and county in which it is to be located, notwithstanding the provisions of any other law, rule or regulation to the contrary. No county, city, town or village has the power to modify or change the plans or specifications for the project, to require any person, firm or corporation to obtain any authorization or permit for the project from such county, city, town or village or to impose any condition on the project.

(b) The project and the project site shall be exempt from taxation and from special ad valorem levies and special assessments, and exempt from sales tax on building materials imposed under section 1132 of the tax law.

(c) Notwithstanding section 252 of the tax law, any mortgages granted by the contractor on any leasehold interest in the project or the
§ 13. Applicability of certain laws to the project.

(a) Any professional services performed pursuant to the project agreement or any related agreements that are regulated by articles 145, 147 and 148 of the education law shall be performed and stamped and sealed, where appropriate, by a professional licensed in accordance with such articles.

(b) Construction of the project is a "public work" for the purposes of article 8 of the labor law, to be performed in accordance therewith (except as otherwise expressly provided in this act), as well as subject to enforcement of prevailing wage requirements by the New York state department of labor.

(c) The project shall be subject to section 222 of the labor law, except that notwithstanding any other section of this act or such section of the labor law or any other law the payment bond and the performance bond required under such section 222 or any other law may be provided by the construction contractor or the design-builder performing the construction work if the contractor subcontracts the construction work to a construction contractor or a design-builder.

(d) The project agreement shall require that the project be undertaken pursuant to a project labor agreement, as defined in subdivision 1 of section 222 of the labor law, provided that, based upon a study done by or for the department, the department determines that its interest in obtaining the best work at the lowest possible price, preventing favoritism, fraud, and corruption, and other considerations such as the impact of delay, the possibility of cost savings advantages, and any local history of labor unrest, are best met by requiring a project labor
agreement. If the department conducts such a study, and if such study shows that a project labor agreement will benefit construction of the project, and if the request for proposals requires the project be undertaken pursuant to a project labor agreement, then notwithstanding any other provision of this act, section 135 of the state finance law shall not apply in any way to any project procurement conducted pursuant to this act, including but not limited to the selection of an entity to enter into a project agreement authorized by section four of this act, to the project agreement or to the project.

(e) The project agreement shall comply with the objectives and goals of minority and women-owned business enterprises pursuant to article 15-A of the executive law or, if the project receives federal aid, shall comply with applicable federal requirements for disadvantaged business enterprises.

§ 14. Severability. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 15. This act shall take effect immediately. The project agreement and any related agreements awarded, executed and entered into in accordance with this act shall be deemed valid, binding and enforceable, notwithstanding the fact that the request for qualifications was issued or the selection of the entities authorized to receive a request for
proposals occurred prior to the effective date of this act, if such
issuance and selection were conducted in accordance with the applicable
requirements of this act.