

DRAFT LBDC

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 consol-  
idated laboratory project

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

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

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

5 (a) Procurement findings and declarations.

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

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

1 methods include design-build, design-build-finance, design-build-fi-  
2 nance-maintain, and design-build-finance-operate-maintain.

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

5 (A) Providing a single point of project accountability;

6 (B) Expediting project delivery;

7 (C) Improving project innovation, quality and efficiency;

8 (D) Reducing and guaranteeing design, construction, operation and  
9 maintenance costs;

10 (E) Permitting the selection of the highest qualified designer, build-  
11 er and facility manager team based on past performance and demonstrated  
12 capability;

13 (F) Increasing competition for design, construction and facilities  
14 management services;

15 (G) Enhancing collaboration among the designer, builder, and facility  
16 manager;

17 (H) Reducing change orders and pricing contingencies;

18 (I) Creating jobs, consistent with state policy regarding prevailing  
19 wages and utilization of minority and women-owned businesses;

20 (J) Expanding contractor and investor opportunities for businesses in  
21 the state;

22 (K) Securing long term project performance guarantees;

23 (L) Maximizing a life-cycle project focus and better assuring life-cy-  
24 cle maintenance;

25 (M) Transferring responsibility for issuing debt for the project from  
26 the governmental owner to the contractor;

1 (N) Transferring to equity and debt investors and private contractors  
2 project risks that would otherwise be retained by the governmental  
3 owner; and

4 (O) Enhancing the security for contractor performance by making  
5 contract payments contingent on receipt of service by the governmental  
6 owner.

7 (b) Project findings and declarations.

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

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

25 3. A new consolidated laboratory facility will provide a safer and  
26 more efficient work environment for public employees.

1 4. A new laboratory facility may provide opportunities to host private  
2 users that could complement the operations and work of the consolidated  
3 laboratory or enhance its economic benefits to the state.

4 5. Utilization of an alternative project delivery method is appropri-  
5 ate for the development of a new consolidated laboratory facility and in  
6 the best interests of the public.

7 6. No state employee shall be subject to involuntary loss of employ-  
8 ment as a result of the procurement authorized by this act.

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

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

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

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

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

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

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

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

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

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

25 9. The offerer's ability to assess and manage risk and minimize risk  
26 impact; and

1 10. The offerer's past record of compliance with article 15-A of the  
2 executive law or comparable laws of other jurisdictions in which the  
3 offerer has conducted business.

4 Such basis shall reflect, wherever possible, objective and quantifi-  
5 able analysis.

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

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

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

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

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

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

27 (h) "project agreement" shall mean a contract entered into pursuant to  
28 this act by the department with a single entity for the design,

1 construction, financing, operation and maintenance of the project, or  
2 any combination of such functions as the department may determine.

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

6 § 4. Authorization for alternative delivery project procurement.  
7 Notwithstanding the provisions of sections 136-a, 137, 162 and 163 of  
8 the state finance law, section 142 of the economic development law,  
9 section 224 of the labor law, subdivision 5 of section 63 of the execu-  
10 tive law, sections 1680 and 2879-a of the public authorities law,  
11 section 7210 of the education law, subdivision 6 of section 8 of the  
12 public buildings law and the provisions of any other law to the contrary  
13 (including but not limited to provisions of non-enumerated sections of  
14 the foregoing laws):

15 (a) Upon compliance with the two-step procurement method described in  
16 section five of this act and in conformity with the other requirements  
17 of this act, the department may enter into a project agreement providing  
18 for the delivery of the project on such terms and conditions as the  
19 department may determine in accordance with such procurement method,  
20 provided that the term of such agreement shall not exceed 50 years  
21 following project completion and acceptance, and provided further that  
22 the project agreement shall expressly provide that upon expiration or  
23 earlier termination of the project agreement for any reason all right,  
24 title and interest in the project and the project site shall be vested  
25 in the state. The department may also enter into such related agree-  
26 ments, and amendments to the project agreement, as it determines to be  
27 necessary or convenient for the project, including agreements for utili-  
28 ty services or infrastructure, without public auction or bidding or any

1 other competitive procurement process and regardless of whether such  
2 agreements have resulted from the two-step procurement method described  
3 in section five of this act.

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

8 § 5. Project procurement. (a) Procurement method. Except as express-  
9 ly provided for in subdivision (a) of section eight of this act, and  
10 notwithstanding any other provision of law to the contrary, the depart-  
11 ment may, in a manner consistent with the requirements of this act,  
12 procure the project and enter into a project agreement and related  
13 agreements authorized by section four of this act without the approval  
14 or authorization of any state officer or agency. An entity selected by  
15 the department to enter into a project agreement authorized by section  
16 four of this act shall be selected through a two-step procurement meth-  
17 od, as follows:

18 1. Pre-qualification of prospective contractors. The department shall  
19 generate a list of qualified entities that have demonstrated the general  
20 capability to deliver the project and otherwise perform the requirements  
21 of a project agreement. Such list shall consist of a specified number of  
22 entities, as determined by the department, and shall be generated based  
23 upon the department's review of responses to a publicly advertised  
24 request for qualifications for the project. The department's request for  
25 qualifications shall include a general description of the project and  
26 the selection criteria to qualify entities. Such selection criteria  
27 shall include such qualifications as the department deems appropriate,  
28 which may include but are not limited to the general qualifications and

1 experience of the members of the proposing team, the organization of the  
2 proposing team, demonstrated responsibility, the ability of the team or  
3 of a member or members of the team to comply with applicable project  
4 requirements, including the provisions of articles 145, 147 and 148 of  
5 the education law, past record of compliance with the labor law or any  
6 comparable law applicable in jurisdictions where such entity has  
7 conducted business (in each instance to the extent applicable), under-  
8 standing of the project and its requirements, financial, management and  
9 technical capability, and record of past performance. The department  
10 shall evaluate all entities responding to the request for qualifica-  
11 tions. Based upon such evaluation, the department may develop a list of  
12 the entities that shall receive a request for proposals in accordance  
13 with this subdivision. To the extent consistent with applicable law,  
14 the department shall consider, when rating entities pursuant to this  
15 section: (i) such entities' records of compliance with article 15-A of  
16 the executive law on other projects or otherwise providing for the  
17 participation of firms certified pursuant to article 15-A of the execu-  
18 tive law as minority or women-owned businesses (or any comparable law  
19 applicable in jurisdictions where such entity has conducted business)  
20 and the ability of other businesses under consideration to work with  
21 minority and women-owned businesses so as to promote and assist partic-  
22 ipation by such businesses; and (ii) such entities' utilization of small  
23 business concerns identified pursuant to subdivision (b) of section  
24 139-g of the state finance law.

25 2. Solicitation and selection of the proposal which is the best value  
26 to the state. The department may issue a request for proposals to the  
27 entities listed pursuant to paragraph one of this subdivision. If such  
28 an entity consists of a team of separate entities, the entities that



1 comprise such a team and their lead members must remain unchanged from  
2 the entity and team members listed pursuant to paragraph one of this  
3 subdivision unless otherwise approved by the department. The request  
4 for proposals may include the department's form of project agreement.  
5 The request for proposals shall set forth the scope of work for the  
6 project, and other applicable requirements, as determined by the depart-  
7 ment and shall specify the criteria to be used to evaluate the  
8 responses, as determined by the department, including the relative  
9 weight of such criteria. Such criteria shall include but are not limited  
10 to the proposal's cost, its technical merit, the qualifications and  
11 experience of the proposing entity and its team members, the entity's  
12 plan of project implementation, the entity's ability to complete the  
13 work in a timely and satisfactory manner, and the community impact of  
14 the proposal. A project agreement awarded pursuant to this act shall be  
15 awarded to a responsive and responsible entity that submits the  
16 proposal, which, in consideration of these and the other criteria set  
17 forth in the request for proposals, offers the best value to the state,  
18 as determined by the department. To the extent consistent with applica-  
19 ble law, the department shall consider, when awarding a project agree-  
20 ment pursuant to this section: (i) the participation of firms certified  
21 pursuant to article 15-A of the executive law as minority or women-owned  
22 businesses and the ability of other businesses under consideration to  
23 work with minority and women-owned businesses so as to promote and  
24 assist participation by such businesses; and (ii) such entities' utili-  
25 zation of small business concerns identified pursuant to subdivision (b)  
26 of section 139-g of the state finance law. Notwithstanding any other law  
27 to the contrary, the department may conduct discussions individually on  
28 a commercially confidential basis with the pre-qualified entities prior

1 to their submittal of proposals in a manner determined by the depart-  
2 ment, and may conduct negotiations regarding contract terms and condi-  
3 tions, including cost, with one or more offerers following their submit-  
4 tal of a proposal.

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

11 (c) Applicability of certain laws to procurement.

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

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

19 § 6. Department of health responsible for project and project site.  
20 Notwithstanding the provisions of any other law to the contrary, respon-  
21 sibility for and jurisdiction over the project and the project site is  
22 hereby transferred from the commissioner of general services, and any  
23 other state officer, agency or department, to the department. Notwith-  
24 standing the provisions of any other law to the contrary, in exercising  
25 such responsibility and jurisdiction the department, acting through the  
26 commissioner of health or his or her designee, is authorized to enter  
27 into such leases, subleases, easements, licenses and other related  
28 agreements, including but not limited to agreements with public corpo-

1 rations and agreements with utilities, in each instance on such terms  
2 and conditions as the department determines to be necessary or conven-  
3 ient to the effectuation of the project, provided that the term of any  
4 lease shall not exceed 50 years from the date of completion and accept-  
5 ance of the project. In addition, the department may permit the mortgag-  
6 ing, pledging and granting of a security interest in any such lease or  
7 related agreement in connection with any public or private project  
8 financing and may enter into such other related agreements as the  
9 department determines to be necessary or convenient to facilitate the  
10 public or private financing of the project, in each case on such terms  
11 and conditions as the department determines to be necessary or conven-  
12 ient to the financing of the project.

13 § 7. DASNY as agent of and project advisor to department of health.  
14 Notwithstanding the provisions of any other law to the contrary, DASNY  
15 shall have the power and authority to act as agent of and advisor to the  
16 department for all purposes necessary or convenient for the planning,  
17 procurement, construction, post-completion management and administration  
18 and overall effectuation of the project. In acting as agent of or advi-  
19 sor to the department, DASNY shall have no independent liability in  
20 connection with the project and the department shall indemnify DASNY to  
21 the extent permitted by law. In addition, DASNY shall be the construc-  
22 tion-permitting agency for the project and shall be responsible for  
23 post-completion monitoring, enforcement of the Uniform Fire Prevention  
24 and Building Code and enforcing compliance with article 15-A of the  
25 executive law. DASNY further shall have the power and authority to act  
26 as a procurement, technical and administrative consultant and advisor to  
27 the department in connection with the planning, procurement and imple-  
28 mentation of the project, including the power and authority as agent for

1 or consultant to the department in procuring and managing the services  
2 of technical, financial, legal and other consultants; soliciting,  
3 reviewing and evaluating the qualifications and proposals from potential  
4 contractors for the project; drafting and negotiating the project agree-  
5 ment and any related agreements; assisting in planning and carrying out  
6 any private financing of the project; supervising the performance of the  
7 design, construction, operation, maintenance and management of the  
8 project by the contractor under the project agreement; and coordinating  
9 participation in the project by other involved state agencies and  
10 departments.

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

25 (b) Notwithstanding any provision of law to the contrary, DASNY and  
26 other state agencies and departments involved in the project are each  
27 authorized to enter into such agreements with each other, which shall be  
28 in the nature of intergovernmental cooperation agreements, as each may

1 deem necessary or appropriate in furtherance of the project or the  
2 purposes of this act. Notwithstanding section 112 of the state finance  
3 law, section 2879-a of the public authorities law or any other provision  
4 of law to the contrary, no agreement entered into pursuant to this  
5 subdivision shall require public auction or bidding or any other compet-  
6 itive procurement process or require any approvals or authorizations of  
7 any state officer or agency other than the respective parties to such  
8 agreements.

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

20 § 9. Project agreement subject to appropriation. The project agree-  
21 ment shall provide that the obligation of the state to make any payments  
22 thereunder is subject to appropriation by the legislature and shall be  
23 deemed executory only to the extent of state monies appropriated there-  
24 for; that no liability shall be incurred by the state under the project  
25 agreement beyond appropriated monies; and that the project agreement  
26 does not constitute a debt of the state within the meaning of any  
27 constitutional or statutory provision.

28 § 10. No state-supported debt.

1 (a) Any debt issued by the contractor under the project agreement  
2 shall not constitute state-supported debt for purposes of article 5-B of  
3 the state finance law.

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

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

10 § 11. Limitation on challenges and contests.

11 (a) The validity of a project agreement and any related agreement  
12 awarded and executed pursuant to this act, or the validity of the proce-  
13 dures relating to such award and execution, or of any administrative or  
14 other determination or finding made by the department or any other state  
15 or municipal agency, authority, department or other subdivision in  
16 connection with such procedures or award, may be contested or challenged  
17 only if an action, suit or proceeding contesting or challenging any such  
18 matter is commenced within thirty days after: (i) publication of the  
19 notice of award and execution as described in subdivision (b) of section  
20 five of this act in the case of the award and execution of the project  
21 agreement, or (ii) the publication or filing of such finding or determi-  
22 nation or related agreement as required by law, in the case of any find-  
23 ing or administrative determination or related agreement, and solely on  
24 the grounds that:

25 1. such award and execution or procedure was not authorized pursuant  
26 to this act; or

1 2. any of the provisions of this act which should be complied with at  
2 the date of publication of notice of such award and execution have not  
3 been substantially complied with; or

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

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

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

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

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

26 (c) Notwithstanding section 252 of the tax law, any mortgages granted  
27 by the contractor on any leasehold interest in the project or the

1 project site shall be exempt from any taxes provided for in sections  
2 253, 253-b or 253-p of the tax law.

3 § 13. Applicability of certain laws to the project.

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

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

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

21 (d) The project agreement shall require that the project be undertaken  
22 pursuant to a project labor agreement, as defined in subdivision 1 of  
23 section 222 of the labor law, provided that, based upon a study done by  
24 or for the department, the department determines that its interest in  
25 obtaining the best work at the lowest possible price, preventing favori-  
26 tism, fraud, and corruption, and other considerations such as the impact  
27 of delay, the possibility of cost savings advantages, and any local  
28 history of labor unrest, are best met by requiring a project labor



1 agreement. If the department conducts such a study, and if such study  
2 shows that a project labor agreement will benefit construction of the  
3 project, and if the request for proposals requires the project be under-  
4 taken pursuant to a project labor agreement, then notwithstanding any  
5 other provision of this act, section 135 of the state finance law shall  
6 not apply in any way to any project procurement conducted pursuant to  
7 this act, including but not limited to the selection of an entity to  
8 enter into a project agreement authorized by section four of this act,  
9 to the project agreement or to the project.

10 (e) The project agreement shall comply with the objectives and goals  
11 of minority and women-owned business enterprises pursuant to article  
12 15-A of the executive law or, if the project receives federal aid, shall  
13 comply with applicable federal requirements for disadvantaged business  
14 enterprises.

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

24 § 15. This act shall take effect immediately. The project agreement  
25 and any related agreements awarded, executed and entered into in accord-  
26 ance with this act shall be deemed valid, binding and enforceable,  
27 notwithstanding the fact that the request for qualifications was issued  
28 or the selection of the entities authorized to receive a request for

1 proposals occurred prior to the effective date of this act, if such  
2 issuance and selection were conducted in accordance with the applicable  
3 requirements of this act.