

Amend Senate S6357-A, Assembly A8557-A, A BUDGET BILL, AN ACT to amend the highway law and to amend chapter 329 of the laws of 1991, amending the state finance law and other laws relating to the establishment of the dedicated highway and bridge trust fund...

Page	Line	Amendment
Page 1,	Unnumbered lines 10 and 11, (AN ACT CLAUSE)	After "projects," strike out "in relation to allowing authorized local entities to utilize the design-build method for infrastructure projects," and insert "in relation to utilizing project labor agreements,"
Page 6,	Line 12,	After "Sections" strike out "3, 4, 5, 7,"
Page 6,	Line 12,	After "8" strike out ", 10, 11, 13, 14, 15, 16"
Page 6,	Lines 16 through 53,	<p>Strike out "§ 3. For the purposes of this act:</p> <p>(a) "authorized state entity" shall mean the New York state thruway authority, the department of transportation, the office of parks, recreation and historic preservation, the department of environmental conservation and the New York state bridge authority.</p> <p>(b) "best value" shall mean the basis for awarding contracts for services to the offerer that optimize quality, cost and efficiency, price and performance criteria, which may include, but is not limited to:</p> <ol style="list-style-type: none"> 1. The quality of the contractor's performance on previous projects; 2. The timeliness of the contractor's performance on previous projects; 3. The level of customer satisfaction with the contractor's performance on previous projects; 4. The contractor's record of performing previous projects on budget and ability to minimize cost overruns; 5. The contractor's ability to limit change orders; 6. The contractor's ability to prepare appropriate project plans; 7. The contractor's technical capacities; 8. The individual qualifications of the contractor's key personnel; 9. The contractor's ability to assess and manage risk and minimize risk impact; and 10. The contractor's past record of compliance with article 15-A of the executive law. <p>Such basis shall reflect, wherever possible, objective and quantifiable analysis.</p> <p>(c) "capital project" shall have the same meaning as such term is defined by subdivision 2-a of section 2 of the state finance law.</p> <p>(d) "cost plus" shall mean compensating a</p>

		<p>contractor for the cost to complete a contract by reimbursing actual costs for labor, equipment and materials plus an additional amount for overhead and profit.</p> <p>(e) "design-build contract" shall mean a contract for the design and construction of a capital project with a single entity, which may be a team comprised of separate entities.</p> <p>(f) "procurement record" means documentation of the decisions made and the approach taken in the procurement process.</p> <p><u>(g) "authorized local entity" shall mean any city, town or village with a population of more than fifty thousand, or any county."</u></p>
Page 7,	Lines 1 through 55,	<p>Strike out "§ 4. Notwithstanding the provisions of section 38 of the highway law, section 136-a of the state finance law, section 359 of the public authorities law, section 7210 of the education law, <u>section 103 of the general municipal law,</u> and the provisions of any other law to the contrary, and in conformity with the requirements of this act, an authorized state <u>or local</u> entity may utilize the alternative delivery method referred to as design-build contracts for capital projects related to the state's <u>or local entity's</u> physical infrastructure, including, but not limited to, the state's <u>or local entity's</u> highways, bridges, dams, flood control projects, canals, and parks, including, but not limited to, to repair damage caused by natural disaster, to correct health and safety defects, to comply with federal and state laws, standards, and regulations, to extend the useful life of or replace the state's <u>or local entity's</u> highways, bridges, dams, flood control projects, canals, and parks or to improve or add to the state's <u>or local entity's</u> highways, bridges, dams, flood control projects, canals, and parks; provided that for the contracts executed by the department of transportation, the office of parks, recreation and historic preservation, or the department of environmental conservation, <u>or by any local entity,</u> the total cost of each such project shall not be less than one million two hundred thousand dollars (\$1,200,000); <u>and further provided that authorized local entities may utilize the alternative delivery method referred to as design-build contracts only for capital projects that are not subject to section 101 of the general municipal law.</u></p> <p>§ 5. An entity selected by an authorized state <u>or local</u> entity to enter into a</p>

		<p>design-build contract shall be selected through a two-step method, as follows:</p> <p>(a) Step one. Generation of a list of entities that have demonstrated the general capability to perform the design-build contract. Such list shall consist of a specified number of entities, as determined by an authorized state <u>or local</u> entity, and shall be generated based upon the authorized state <u>or local</u> entity's review of responses to a publicly advertised request for qualifications. The authorized state <u>or local</u> entity's request for qualifications shall include a general description of the project, the maximum number of entities to be included on the list, and the selection criteria to be used in generating the list. Such selection criteria shall include the qualifications and experience of the design and construction team, organization, demonstrated responsibility, ability of the team or of a member or members of the team to comply with applicable requirements, including the provisions of articles 145, 147 and 148 of the education law, past record of compliance with the labor law, and such other qualifications the authorized state <u>or local</u> entity deems appropriate which may include but are not limited to project understanding, financial capability and record of past performance. The authorized state <u>or local</u> entity shall evaluate and rate all entities responding to the request for qualifications. Based upon such ratings, the authorized state <u>or local</u> entity shall list the entities that shall receive a request for proposals in accordance with subdivision (b) of this section. To the extent consistent with applicable federal law, the authorized state entity shall consider, when awarding any contract pursuant to this section, the participation of: (i) 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) small"</p>
Page 8,	Lines 1 through 33,	<p>Strike out "business concerns identified pursuant to subdivision (b) of section 139-g of the state finance law.</p> <p>(b) Step two. Selection of the proposal which is the best value to the state <u>or local entity</u>. The authorized state <u>or local</u> entity shall issue a request for proposals to the entities listed pursuant to subdivision (a) of this section. If such an</p>

		<p>entity consists of a team of separate entities, the entities that comprise such a team must remain unchanged from the entity as listed pursuant to subdivision (a) of this section unless otherwise approved by the authorized state <u>or local</u> entity. The request for proposals shall set forth the project's scope of work, and other requirements, as determined by the authorized state <u>or local</u> entity. The request for proposals shall specify the criteria to be used to evaluate the responses and the relative weight of each such criteria. Such criteria shall include the proposal's cost, the quality of the proposal's solution, the qualifications and experience of the design-build entity, and other factors deemed pertinent by the authorized state <u>or local</u> entity, which may include, but shall not be limited to, the proposal's project implementation, ability to complete the work in a timely and satisfactory manner, maintenance costs of the completed project, maintenance of traffic approach, and community impact. Any contract awarded pursuant to this act shall be awarded to a responsive and responsible entity that submits the proposal, which, in consideration of these and other specified criteria deemed pertinent to the project, offers the best value to the state <u>or local entity</u>, as determined by the authorized state <u>or local</u> entity. Nothing herein shall be construed to prohibit the authorized entity from negotiating final contract terms and conditions including cost.</p> <p>§ 7. Construction for each capital project undertaken by the authorized state <u>or local</u> entity pursuant to this act shall be deemed a "public work" to be performed in accordance with the provisions of article 8 of the labor law, as well as subject to sections 200, 240, 241 and 242 of the labor law and enforcement of prevailing wage requirements by the New York state department of labor."</p>
Page 8,	Line 35,	After "state" strike out " <u>or local</u> "
Page 8,	Line 37,	<p>After "law." insert "<u>For all capital projects using a design-build contract that are estimated to cost in excess of \$10 million, a project labor agreement shall be included in the request for proposals for the capital project unless, based upon a feasibility study examining the potential cost saving and efficiencies of a project labor agreement, the authorized state entity cannot determine that a project labor agreement would result in labor cost savings of at least five percent and that</u></p>

		<p><u>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, and any history of labor unrest, are best met by requiring a project labor agreement. For all capital projects using a design-build contract that are estimated to cost \$10 million or less, a project labor agreement feasibility study may be considered but is not required."</u></p>
Page 8,	Lines 38 through 56,	<p>Strike out "§ 10. Capital projects undertaken by the authorized state <u>or local</u> entity pursuant to this act shall be subject to the requirements of article eight of the environmental conservation law, and, where applicable, the requirements of the national environmental policy act.</p> <p>§ 11. If otherwise applicable, capital projects undertaken by the authorized state entity pursuant to this act shall be governed by 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, <u>and capital projects undertaken by the authorized local entity pursuant to this act shall be governed by section 103-d of the general municipal law.</u></p> <p>§ 13. Nothing contained in this act shall limit the right or obligation of the authorized state <u>or local</u> entity to comply with the provisions of any existing contract, including any existing contract with or for the benefit of the holders of the obligations of the authorized state <u>or local</u> entity, or to award contracts as otherwise provided by law.</p> <p>§ 14. Alternative construction awarding processes. (i) Notwithstanding the provisions of any other law to the contrary, the authorized state <u>or local</u> entity may award a construction contract:"</p>
Page 9,	Lines 1 through 47,	<p>Strike out "1. To the contractor offering the best value; or</p> <p>2. Utilizing a cost-plus not to exceed guaranteed maximum price form of contract in which the authorized state <u>or local</u> entity shall be entitled to monitor and audit all project costs. In establishing the schedule and process for determining a guaranteed maximum price, the contract between the authorized state <u>or local</u> entity and the contractor shall:</p> <p>(a) describe the scope of the work and the cost of performing such work;</p> <p>(b) include a detailed line item cost breakdown;</p> <p>(c) include a list of all drawings,</p>

		<p>specifications and other information on which the guaranteed maximum price is based;</p> <p>(d) include the dates for substantial and final completion on which the guaranteed maximum price is based; and</p> <p>(e) include a schedule of unit prices; or</p> <p>3. Utilizing 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 project.</p> <p>(ii) Capital projects undertaken by an authorized state <u>or local</u> entity may include an incentive clause in the contract for various performance objectives, but the incentive clause shall not include an incentive that exceeds the quantifiable value of the benefit received by the state <u>or local entity</u>. The authorized state <u>or local</u> entity shall establish such performance and payment bonds as it deems necessary.</p> <p>§ 15. Prequalified contractors. (a) Notwithstanding any other provision of law, the authorized state <u>or local</u> entity may maintain a list of prequalified contractors who are eligible to submit a proposal pursuant to this act and entry into such list shall be continuously available. Prospective contractors may be prequalified as contractors to provide particular types of construction, in accordance with general criteria established by the authorized state <u>or local</u> entity which may include, but shall not be limited to, the experience, past performance, ability to undertake the type and complexity of work, financial capability, responsibility, compliance with equal employment opportunity requirements and anti-discrimination laws, and reliability. Such prequalification may be by categories designed by size and other factors.</p> <p>(b) A contractor who is denied prequalification or whose prequalification is revoked or suspended by the authorized state <u>or local</u> entity may appeal such decision to the authorized state entity. If such a suspension extends for more than three months, it shall be deemed a revocation of the prequalification. The authorized state <u>or local</u> entity may proceed with the contract award during any appeal.</p> <p>§ 16. Nothing in this act shall affect existing powers of New York state public entities <u>or local entities</u> to use</p>
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		alternative project delivery methods."
Page 9,	Line 48,	After "immediately" strike out "["
Page 9,	Line 49,	After "repealed" insert "[", and after "3" insert " <u>6</u> "
Page 9,	Line 51,	After "repeal" strike out "]"
Page 35,	Line 50,	After "on and after April 1, 2014" insert "; provided, however, that sections 3, 4, 5 and 6 of this act shall take effect on January 1, 2015."