



LEGISLATIVE UPDATE MARCH 2017

NYS EXECUTIVE BUDGET

The Senate and Assembly have adopted their one house budget responses to the Governor's budget. The next step will be to convene Conference Committees to work out the differences and begin negotiations with the Governor with a goal of getting an on time agreed upon budget by April 1.

The following are the issues we have been involved in:

MWBE Governor's bill calls for one-year extender of the current law.

- Senate: Rejected but will study.
- Assembly: Extends for 2 years.

DESIGN/BUILD Governor would make the Infrastructure Investment Act permanent, and expand the set of authorized entities that may utilize design-build contracts to include all state agencies, authorities, and counties outside of New York City.

The bill would expand the provisions of the Act to enable all State agencies and public authorities, as well as counties outside of New York City, to award a contract to a single entity for both the design and construction (design-build) aspects of a project to optimize quality, cost and efficiency.

The types of capital projects for which design-build contracts can be used would be amended to be consistent with the existing definition of "capital asset" in State Finance Law. These are defined as fixed assets and infrastructure assets, including but not limited to roads, bridges, facilities, mass transportation facilities, and water, sewer and drainage systems.

- Senate: Rejected and wants to study prior authorization for design-build. Additionally, they would repeal the NYS Design and Construction Corporation which was enacted last year to provide additional project management expertise and oversight on public works projects in excess of \$50 million in value that are undertaken by state agencies, departments, public authorities and public benefit corporations after January 1, 2016. Authorizes NYSDCC to review, make recommendations and require corrective action be taken on such public works projects.
- Assembly: Rejected

DORMITORY AUTHORITY-DESIGN/BUILD The bill would permanently authorize the Dormitory Authority of the State of New York (DASNY) to enter design and construction management agreements with the Department of Environmental Conservation (DEC) and the Office of Parks, Recreation and Historic Preservation (OPRHP). DASNY is currently authorized to enter management agreements with DEC and OPRHP to provide design and construction services until April 1, 2017. This bill would make such authorization permanent.

- Senate: Extends for 2 years.
- Assembly: Rejected.

EMERGENCY CONTRACTS AND SECURE FACILITIES This bill would extend, by two years, the authority of OGS to enter certain emergency construction contracts, up to a value of \$600,000, without formal competitive bidding. It also creates a list of eligible bidders to perform work at secure facilities operated by the Department of Corrections and Community Supervision (DOCCS), the Office of Mental Health (OMH), the Office of Children and Family Services (OCFS), and the Office for People with Developmental Disabilities (OPWDD) and limits the accessibility to drawings and specifications of secure facilities.

The emergency contracting authority granted by Public Buildings Law § 9 allows OGS to respond quickly to damage sustained by buildings and facilities on State property resulting from fire, explosion, equipment failure, or similar emergencies. A new section would also be added to Public Buildings Law § 8, allowing OGS to establish a list of eligible bidders to perform work at secure facilities operated by DOCCS, OMH, OCFS, and OPWDD. Contractors in secure facilities need to be familiar with security procedures, including accounting for all tools and equipment, cell phones, and employees at each secure facility, and requiring appropriate background checks for the contractor's employees. Having a list of eligible bidders familiar with the specialized nature of secure facilities would allow projects to run more efficiently and reduces risk to the State.

Finally, this bill would authorize the OGS Commissioner to determine that certain drawings and specifications for construction projects at secure facilities would not be open to public inspection and be made available only to contractors on the list of eligible bidders. These provisions would increase safety in secure facilities by ensuring that drawings and specifications are not inadvertently provided to unauthorized individuals.

- Senate: Accepts the proposal to extend the emergency contract provision but rejects the creation of a list of eligible bidders and the rest of the secure facility provisions.
- Assembly: Accepts the proposal with some modifications.

BUY AMERICAN ACT The bill would expand the contract and procurement provisions of State Finance Law and Public Authorities Law to require State agencies and authorities to give preference to American-made products when issuing a procurement and entering contracts. Current State procurement regulations place little emphasis on ensuring State government spending power is leveraged to support American manufacturing jobs and industry.

New York State currently has a Buy American provision, yet it applies solely to the State's procurement of structural steel, reinforcing steel and other major steel in contracts greater than \$100,000. This bill would amend the State Finance Law and the Public Authorities law

to include Buy American preference requirements for all contracts and procurements more than \$100,000. Contractors would be required to certify whether the products are American made.

Contracts and procurements for energy, electricity, fuel and other petroleum products, software products such as software, microprocessors, computers, microcomputers, and other such products used for processing or storing data would be excluded.

The bill would also provide for exemptions based upon an immediate or emergency need for certain products, or for health, safety, or welfare reasons; or if a product is manufactured in America by only one manufacturer and a foreign-made product is less expensive and of equal or better quality.

Additional exemptions would include: (i) products subject to a reciprocal trade agreement or treaty that has been negotiated by the State or by the United States government on behalf of or including this State with a foreign nation or government for nondiscriminatory governmental procurement practices or policies with such foreign nation or government; (ii) the State contract is subject to federal funding and the requirements of such federal funding supersede this section; (iii) the specified Products are not manufactured in America in sufficient quantities or quality to meet the State entity's requirements or cannot be manufactured in America or within the necessary time in sufficient quantities to meet the agency's requirements; (iv) obtaining the specified Products manufactured in America or would increase the cost of the contract by an unreasonable amount, as such is determined by the executive; or (v) the specified products are necessary for the operation of or repairs of critical infrastructure that is necessary to avoid a delay in the delivery of critical services that could compromise the public.

- Senate: Has their own version.
- Assembly: Has their own version.

The Senate included language expressing a desire to reform the workers compensation system to reduce the unsustainable cost increases for employers.
