

## KD Alert: New NYS Law Could Impact Public Projects Contract Awards

In what could end up being the first step towards a new way of awarding contracts for public projects works in the future, NY Governor Cuomo signed the "Infrastructure Investment Act" into law on December 9, 2011. Citing "the potential to achieve projects delivered on guaranteed or accelerated schedules, lower costs and risk shifting to the private sector generally retained in conventional design-bid-build projects as well as to accelerate capital investments throughout the state," the law authorizes certain state entities engaged in large scale infrastructure initiatives to utilize design-build contracts by awarding contracts based upon either (1) the "best value", which, as defined, is essentially an evaluation of the contractor's prior overall performance and current capabilities to optimize quality, cost and efficiency; (2) utilizing a cost-plus methodology not exceeding a guaranteed maximum price; or (3) the utilization of a lump sum contract. The authorized state entities are: 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.

The bill includes a two-step selection process for contractors. Step one involves the creation of a list of firms "...that have demonstrated the general capability to perform the design-build contract." Step two calls for the selection of the proposal which provides the "best value" to the state based upon proposals submitted by approved contractors.

Of course, work awarded pursuant to the enactment of this law is subject to current prevailing wage mandates and subject to all of the Wicks law obligations under section 135 of New York State's Finance Law, Project Labor Agreement requirements of section 222 of the NYS Labor Law and the objectives and goals of minority and women-owned business enterprises (MWBE) under Article 15-A of the NYS Executive Law.

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