S T A T E O F N E W Y O R K

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I N A S S E M B L Y

June 3, 2014

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Magnarelli) -- read once and referred to the Committee on Local Governments

AN ACT creating the Onondaga Lake Amphitheater Infrastructure and Revitalization Project; and providing for the repeal of such provisions upon expiration thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. This act shall be known and may be cited as the "Onondaga Lake Amphitheater Infrastructure and Revitalization Project act".

S 2. Definitions. For the purposes of this act, the following terms shall have the following meanings:

1. "Onondaga Lake Amphitheater Infrastructure and Revitalization Project" or "project" shall mean, in conformity with the requirements of this act, the construction of a performing arts amphitheater known as the "Onondaga Lake Amphitheater" located in the Town of Geddes on the western shore of Onondaga Lake that is part of the Onondaga County Revitalization project which was partially funded in the 2014 New York state budget.

2. "County" shall mean the county of Onondaga.

3. "Best value" shall mean the basis for awarding contracts for services to the bidder that optimize quality, cost and efficiency, price and performance criteria, which may include, but is not limited to:

(a) The quality of the contractor's performance on previous projects;

(b) The timeliness of the contractor's performance on previous projects;

(c) The level of customer satisfaction with the contractor's performance on previous projects;

(d) The contractor's record of performing previous projects on budget and ability to minimize cost overruns;

(e) The contractor's ability to limit change orders;

(f) The contractor's ability to prepare appropriate project plans;

(g) The contractor's technical capacities;

(h) The individual qualifications of the contractor's key personnel;

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(i) The contractor's ability to assess and manage risk and minimize risk impact; and

(j) The contractor's past record of encouraging women and minority-owned business enterprise participation and compliance with article 15-A of the executive law.

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

4. "Design-build contract" shall mean, in conformity with the requirements of this act, a contract for the design and construction of the Onondaga Lake Amphitheater Infrastructure and Revitalization Project with a single entity, which may be a team comprised of separate entities.

5. "Procurement record" shall mean documentation of the decisions made and the approach taken in the procurement process.

6. "Project labor agreement" shall mean a pre-hire collective bargaining agreement between a contractor and a bona fide building and construction trade labor organization establishing the labor organization as the collective bargaining representative for all persons who will perform work on the project, and which provides that only contractors and subcontractors who sign a pre-negotiated agreement with the labor organization can perform project work.

S 3. Notwithstanding section 103 of the general municipal law or the provisions of any other law to the contrary, in conformity with the requirements of this act, and only when a project labor agreement is performed, the county may utilize the alternative delivery method referred to as a design-build contract for the project. The county shall ensure that its procurement record reflects the design-build contract process authorized by this act.

S 4. An entity selected by the county to enter into a design-build contract for the project shall be selected through a two-step method, as follows:

1. Step one. Generation of a list of entities that have demonstrated the general capability to perform a design-build contract for the project. Such list shall consist of a specified number of entities, as determined by the county, and shall be generated based upon the county's review of responses to a publicly advertised request for qualifications for the project. The county's request for qualifications for the project 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 including prevailing wage requirements under state and federal law; the past record of compliance with existing labor standards and maintaining harmonious labor relations; the record of protecting the health and safety of workers on public works projects and job sites as demonstrated by the experience modification rate for each of the last three years; the prospective bidder's ability to undertake the particular type and complexity of work; the financial capability, responsibility and reliability of the prospective bidder for such type and complexity of work; the prospective bidder's compliance with equal employment opportunity requirements and anti-discrimination laws, and demonstrated commitment to working with minority and women-owned businesses through joint ventures or subcon-

tractor relationships; whether or not the prospective bidder or a person or entity with an interest of at least ten per centum in the prospective bidder, is debarred for having disregarded obligations to employees under the Davis-Bacon Act pursuant to 40 U.S.C. 3144 and 29 C.F.R. 5.12 and such other qualifications the county deems appropriate which may include but are not limited to project understanding, financial capability and record of past performance. The county shall evaluate and rate all entities responding to the request for qualifications. Based upon such ratings, the county shall list the entities that shall receive a request for proposals in accordance with subdivision two of this section. To the extent consistent with applicable federal law, the county shall consider, when awarding any contract pursuant to this section, the participation of: (a) 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 (b) small business concerns identified pursuant to subdivision (b) of section 139-g of the state finance law.

2. Step two. Selection of the proposal which is the best value to the county. The county shall issue a request for proposals for the project to the entities listed pursuant to subdivision one of this section. If such an 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 one of this section unless otherwise approved by the county. The request for proposals for the project shall set forth the project's scope of work, and other requirements, as determined by the county. 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 county, 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 county, as determined by the county. Nothing in this act shall be construed to prohibit the county from negotiating final contract terms and conditions including cost.

3. Notwithstanding the foregoing provisions of this section, when any person or entity is debarred for having disregarded obligations to employees under the Davis-Bacon Act pursuant to 40 U.S.C. 3144 and 29 C.F.R. 5.12, such person or entity, and any firm, corporation, partnership or association in which the person or entity owns or controls at least ten per centum, shall be ineligible to submit a bid on or be awarded any contract authorized by this act while the name of the person or entity is published in the list of debarred contractors pursuant to 40 U.S.C. 3144. The department of labor will notify the person or entity immediately of such ineligibility and such person or entity must be afforded the opportunity to appeal to the department of labor.

S 5. Any contract entered into pursuant to this act shall include a clause requiring that any professional services 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.

S 6. The construction, demolition, reconstruction, excavation, rehabilitation, repair, renovation of the project undertaken by the county 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.

S 7. A project labor agreement shall be included in the request for proposals for the project, provided that, based upon a study done by or for the county, the county 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. The county shall conduct such a study and the project labor agreement shall be performed consistent with the provisions of section 222 of the labor law. If a project labor agreement is not performed on the project; (1) the county shall not utilize a design-build contract for the project; and (2) sections 101 and 103 of the general municipal law shall apply to the project.

S 8. Each contract entered into by the county pursuant to this act shall comply, whenever practical, 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.

S 9. The project undertaken by the county pursuant to this act shall be subject to the requirements of article 8 of the environmental conservation law, and, where applicable, the requirements of the national environmental policy act.

S 10. If otherwise applicable, the project undertaken by the county pursuant to this act shall be governed by the general municipal law.

S 11. The submission of a proposal or responses or the execution of a design-build contract pursuant to this act shall not be construed to be a violation of section 6512 of the education law.

S 12. Nothing contained in this act shall limit the right or obligation of the county 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 county, or to award contracts as otherwise provided by law.

S 13. This act shall take effect immediately and shall expire and be deemed repealed two years after such date, provided that, if Onondaga county has issued requests for qualifications for the project prior to such repeal, such project shall be permitted to continue under this act notwithstanding such repeal.