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I N   S E N A T E

June 4, 2014

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Introduced by Sen. VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

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:

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

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

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

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

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

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

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

19     (c) The level of customer satisfaction with the contractor's perform-  
20 ance on previous projects;

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

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

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

25     (g) The contractor's technical capacities;

26     (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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1 (i) The contractor's ability to assess and manage risk and minimize  
2 risk impact; and

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

6 Such basis shall reflect, wherever possible, objective and quantifi-  
7 able analysis.

8 4. "Design-build contract" shall mean, in conformity with the require-  
9 ments of this act, a contract for the design and construction of the  
10 Onondaga Lake Amphitheater Infrastructure and Revitalization Project  
11 with a single entity, which may be a team comprised of separate enti-  
12 ties.

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

15 6. "Project labor agreement" shall mean a pre-hire collective bargain-  
16 ing agreement between a contractor and a bona fide building and  
17 construction trade labor organization establishing the labor organiza-  
18 tion as the collective bargaining representative for all persons who  
19 will perform work on the project, and which provides that only contrac-  
20 tors and subcontractors who sign a pre-negotiated agreement with the  
21 labor organization can perform project work.

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

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

32 1. Step one. Generation of a list of entities that have demonstrated  
33 the general capability to perform a design-build contract for the  
34 project. Such list shall consist of a specified number of entities, as  
35 determined by the county, and shall be generated based upon the county's  
36 review of responses to a publicly advertised request for qualifications  
37 for the project. The county's request for qualifications for the project  
38 shall include a general description of the project, the maximum number  
39 of entities to be included on the list, and the selection criteria to be  
40 used in generating the list. Such selection criteria shall include the  
41 qualifications and experience of the design and construction team,  
42 organization, demonstrated responsibility, ability of the team or of a  
43 member or members of the team to comply with applicable requirements,  
44 including the provisions of articles 145, 147 and 148 of the education  
45 law, past record of compliance with the labor law including prevailing  
46 wage requirements under state and federal law; the past record of  
47 compliance with existing labor standards and maintaining harmonious  
48 labor relations; the record of protecting the health and safety of work-  
49 ers on public works projects and job sites as demonstrated by the expe-  
50 rience modification rate for each of the last three years; the prospec-  
51 tive bidder's ability to undertake the particular type and complexity of  
52 work; the financial capability, responsibility and reliability of the  
53 prospective bidder for such type and complexity of work; the prospective  
54 bidder's compliance with equal employment opportunity requirements and  
55 anti-discrimination laws, and demonstrated commitment to working with  
56 minority and women-owned businesses through joint ventures or subcon-

1 tractor relationships; whether or not the prospective bidder or a person  
2 or entity with an interest of at least ten per centum in the prospective  
3 bidder, is debarred for having disregarded obligations to employees  
4 under the Davis-Bacon Act pursuant to 40 U.S.C. 3144 and 29 C.F.R. 5.12  
5 and such other qualifications the county deems appropriate which may  
6 include but are not limited to project understanding, financial capabil-  
7 ity and record of past performance. The county shall evaluate and rate  
8 all entities responding to the request for qualifications. Based upon  
9 such ratings, the county shall list the entities that shall receive a  
10 request for proposals in accordance with subdivision two of this  
11 section. To the extent consistent with applicable federal law, the coun-  
12 ty shall consider, when awarding any contract pursuant to this section,  
13 the participation of: (a) firms certified pursuant to article 15-A of  
14 the executive law as minority or women-owned businesses and the ability  
15 of other businesses under consideration to work with minority and  
16 women-owned businesses so as to promote and assist participation by such  
17 businesses; and (b) small business concerns identified pursuant to  
18 subdivision (b) of section 139-g of the state finance law.

19 2. Step two. Selection of the proposal which is the best value to the  
20 county. The county shall issue a request for proposals for the project  
21 to the entities listed pursuant to subdivision one of this section. If  
22 such an entity consists of a team of separate entities, the entities  
23 that comprise such a team must remain unchanged from the entity as list-  
24 ed pursuant to subdivision one of this section unless otherwise approved  
25 by the county. The request for proposals for the project shall set forth  
26 the project's scope of work, and other requirements, as determined by  
27 the county. The request for proposals shall specify the criteria to be  
28 used to evaluate the responses and the relative weight of each such  
29 criteria. Such criteria shall include the proposal's cost, the quality  
30 of the proposal's solution, the qualifications and experience of the  
31 design-build entity, and other factors deemed pertinent by the county,  
32 which may include, but shall not be limited to, the proposal's project  
33 implementation, ability to complete the work in a timely and satisfac-  
34 tory manner, maintenance costs of the completed project, maintenance of  
35 traffic approach, and community impact. Any contract awarded pursuant to  
36 this act shall be awarded to a responsive and responsible entity that  
37 submits the proposal, which, in consideration of these and other speci-  
38 fied criteria deemed pertinent to the project, offers the best value to  
39 the county, as determined by the county. Nothing in this act shall be  
40 construed to prohibit the county from negotiating final contract terms  
41 and conditions including cost.

42 3. Notwithstanding the foregoing provisions of this section, when any  
43 person or entity is debarred for having disregarded obligations to  
44 employees under the Davis-Bacon Act pursuant to 40 U.S.C. 3144 and 29  
45 C.F.R. 5.12, such person or entity, and any firm, corporation, partner-  
46 ship or association in which the person or entity owns or controls at  
47 least ten per centum, shall be ineligible to submit a bid on or be  
48 awarded any contract authorized by this act while the name of the person  
49 or entity is published in the list of debarred contractors pursuant to  
50 40 U.S.C. 3144. The department of labor will notify the person or entity  
51 immediately of such ineligibility and such person or entity must be  
52 afforded the opportunity to appeal to the department of labor.

53 S 5. Any contract entered into pursuant to this act shall include a  
54 clause requiring that any professional services regulated by articles  
55 145, 147 and 148 of the education law shall be performed and stamped and

1 sealed, where appropriate, by a professional licensed in accordance with  
2 such articles.

3 S 6. The construction, demolition, reconstruction, excavation, reha-  
4 bilitation, repair, renovation of the project undertaken by the county  
5 pursuant to this act shall be deemed a "public work" to be performed in  
6 accordance with the provisions of article 8 of the labor law, as well as  
7 subject to sections 200, 240, 241 and 242 of the labor law and enforce-  
8 ment of prevailing wage requirements by the New York state department of  
9 labor.

10 S 7. A project labor agreement shall be included in the request for  
11 proposals for the project, provided that, based upon a study done by or  
12 for the county, the county determines that its interest in obtaining the  
13 best work at the lowest possible price, preventing favoritism, fraud and  
14 corruption, and other considerations such as the impact of delay, the  
15 possibility of cost savings advantages, and any local history of labor  
16 unrest, are best met by requiring a project labor agreement. The county  
17 shall conduct such a study and the project labor agreement shall be  
18 performed consistent with the provisions of section 222 of the labor  
19 law. If a project labor agreement is not performed on the project; (1)  
20 the county shall not utilize a design-build contract for the project;  
21 and (2) sections 101 and 103 of the general municipal law shall apply to  
22 the project.

23 S 8. Each contract entered into by the county pursuant to this act  
24 shall comply, whenever practical, with the objectives and goals of  
25 minority and women-owned business enterprises pursuant to article 15-A  
26 of the executive law or, if the project receives federal aid, shall  
27 comply with applicable federal requirements for disadvantaged business  
28 enterprises.

29 S 9. The project undertaken by the county pursuant to this act shall  
30 be subject to the requirements of article 8 of the environmental conser-  
31 vation law, and, where applicable, the requirements of the national  
32 environmental policy act.

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

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

38 S 12. Nothing contained in this act shall limit the right or obli-  
39 gation of the county to comply with the provisions of any existing  
40 contract, including any existing contract with or for the benefit of the  
41 holders of the obligations of the county, or to award contracts as  
42 otherwise provided by law.

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