

# STATE OF NEW YORK

10513--A

## IN ASSEMBLY

May 4, 2018

Introduced by M. of A. BRINDISI -- read once and referred to the Committee on Corporations, Authorities and Commissions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public authorities law, in relation to renaming the Upper Mohawk Valley memorial auditorium authority to the Oneida county arts, culture and entertainment authority

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The title heading of title 10-B of article 8 of the public  
2 authorities law, as added by chapter 130 of the laws of 1996, is amended  
3 to read as follows:

4 [~~UPPER MOHAWK VALLEY MEMORIAL AUDITORIUM AUTHORITY~~]

5 ONEIDA COUNTY ARTS, CULTURE AND ENTERTAINMENT AUTHORITY

6 § 2. Section 1940 of the public authorities law, as added by chapter  
7 130 of the laws of 1996, is amended to read as follows:

8 § 1940. Short title. This title shall be known and may be cited as  
9 the "Oneida county arts, culture and entertainment authority act"  
10 (OCACE), formerly the "Upper Mohawk Valley memorial auditorium authority  
11 act."

12 § 3. The public authorities law is amended by adding a new section  
13 1940-a to read as follows:

14 § 1940-a. Purpose and mission. It shall be the purpose and mission of  
15 the OCACE authority to identify, develop, construct, assist, promote and  
16 coordinate arts, culture, entertainment, tourism, sports, recreation and  
17 related projects through the development of an integrated network of  
18 facilities, consistent with and through the facilitation of continued  
19 redevelopment, historic preservation and tourism promotion under the  
20 leadership of a financially independent, self-sustaining public benefit  
21 corporation which shall revitalize existing programs and forge new part-  
22 nerships with local municipalities and private developers.

23 § 4. Section 1941 of the public authorities law, as added by chapter  
24 130 of the laws of 1996, is amended to read as follows:

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

LBD13583-04-8

1 § 1941. Definitions. As used or referred to in this title, unless a  
2 different meaning clearly appears from the context:

3 1. "Auditorium" means the auditorium commonly known as the Utica memo-  
4 rial auditorium located in the city of Utica, as well as surrounding  
5 lands, including all structures appurtenant thereto, located in the  
6 vicinity of Oriskany street west and Charles street, as the same may be  
7 reconstructed, enlarged or modified from time to time.

8 2. "Authority" means the corporation created by section one thousand  
9 nine hundred forty-two of this title.

10 3. "Best value" means the basis for awarding contracts for services to  
11 the bidder that optimizes quality, cost efficiency and price and  
12 performance criteria, which may include, but shall not be limited to:

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

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

16 (c) the level of customer satisfaction with the contractor's perform-  
17 ance on previous projects;

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

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

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

22 (g) the contractor's technical capacities;

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

24 (i) the contractor's ability to assess and manage risk and minimize  
25 risk impact; and

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

29 Such basis shall reflect, wherever possible, objective and quantifi-  
30 able analysis.

31 4. "Bonds" means the bonds, notes or other evidences of indebtedness  
32 issued by the authority pursuant to this title, and the provisions of  
33 this title relating to bonds and bondholders shall apply with equal  
34 force and effect to notes and noteholders, respectively, unless the  
35 context otherwise clearly requires.

36 ~~[4-]~~ 5. "City" means the city of Utica, Oneida county.

37 ~~[5-]~~ 6. "Civil service commission" means the civil service commission  
38 of the county of Oneida.

39 ~~[6-]~~ 7. "Comptroller" means the comptroller of the state.

40 ~~[7-]~~ 8. "Construction" or "Constructed" means the acquisition,  
41 erection, building, alteration, improvement, increase, enlargement,  
42 extension, reconstruction, renovation or rehabilitation of the auditori-  
43 um and any and all other properties, facilities and structures acquired  
44 and/or identified for acquisition; the inspection and supervision there-  
45 of; and the engineering, architectural, legal, fiscal and economic  
46 investigations and studies, surveys, designs, plans, working drawings,  
47 specifications, procedure and other actions preliminary or incidental  
48 thereto and claims arising therefrom.

49 ~~[8-]~~ 9. "Cost" as applied to the auditorium and any and all other  
50 properties, facilities and structures acquired and/or identified for  
51 acquisition, includes the cost of construction, the cost of the acquisi-  
52 tion of all property, including real property and other property, both  
53 real, personal and mixed, improved and unimproved, the cost of the  
54 demolishing, removing or relocating any buildings or structures on lands  
55 so acquired, including the cost of acquiring any lands to which such  
56 buildings or structures may be moved or relocated, the cost of all

1 machinery, apparatus and equipment, financing charges, interest prior  
2 to, during and after construction to the extent not paid or provided for  
3 from revenues or other sources, the cost of engineering and architec-  
4 tural surveys, plans and specifications, the cost of consultant and  
5 legal services, the cost of guarantee, bond insurance or other credit  
6 support devices and the cost of other expenses necessary or incidental  
7 to the construction of the auditorium and the acquisition of property  
8 [~~therefor~~] thereof and the financing of the construction and acquisition  
9 of property, including the amount authorized in the resolution of the  
10 authority providing for the issuance of bonds to be paid into any  
11 reserve or other special funds from the proceeds of such bonds and the  
12 financing of the placing of the auditorium and any and all other proper-  
13 ties, facilities and structures acquired and/or identified for acquisi-  
14 tion, in operation, including reimbursement to any municipality, state  
15 agency, the state, the United States government, or any other government  
16 or person for expenditures that would be costs of the auditorium and any  
17 and all other properties, facilities and structures acquired and/or  
18 identified for acquisition, hereunder had they been made directly by the  
19 authority.

20 [~~9-~~] 10. "Council" means the common council of the city.

21 [~~10-~~] 11. "County" means the county of Oneida, New York.

22 [~~11-~~] 12. "County executive" means the county executive of the county.

23 [~~12-~~] 13. "County legislature" means the county legislature of the  
24 county.

25 [~~13-~~] 14. "Design-build contract" means, in conformity with the  
26 requirements of this act, a contract for the design and construction of  
27 any project with a single entity, which may be a team comprised of sepa-  
28 rate entities.

29 15. "Governing body" means the members of the authority, constituting  
30 and acting as the governing body of the authority.

31 [~~14-~~] 16. "Municipality" means the county and any city, town, village  
32 or school district located within or partly within the service area.

33 [~~15-~~] 17. "Person" means any natural person, firm, partnership, asso-  
34 ciation, joint venture or corporation, exclusive of a public corporation  
35 as defined pursuant to article two-A of the general construction law.

36 [~~16-~~] 18. "Procurement record" shall mean documentation of the deci-  
37 sions made and the approach taken in the procurement process.

38 19. "Project labor agreement" shall mean a pre-hire collective  
39 bargaining agreement between a contractor and a bona fide building and  
40 construction trade labor organization establishing the labor organiza-  
41 tion as the collective bargaining representative for all persons who  
42 will perform work on the project, and which provides that only contrac-  
43 tors and subcontractors who sign a pre-negotiated agreement with the  
44 labor organization can perform project work.

45 20. "Real property" means lands, structures, franchise, rights and  
46 interests in land, air space, waters, lands under water, riparian  
47 rights, and air rights and any and all things and rights included within  
48 said term and includes not only fees simple absolute, but also any and  
49 all lesser interests including, but not limited to, easements, rights-  
50 of-way, uses, leases, licenses and all other incorporeal hereditaments  
51 and every estate, interest or right, legal or equitable, including terms  
52 for years and liens thereon by way of judgments, mortgages or otherwise.

53 [~~17-~~] 21. "Revenues" means all fees, charges and other income and  
54 receipts derived from the operation of the auditorium including, without  
55 limiting the generality of the foregoing, investment proceeds and

1 proceeds of insurance, condemnation, and sale or other disposition of  
2 assets, together with all federal, state or municipal aid, if any.

3 [~~18-~~ 22. "Service area" means the area comprising the entirety of the  
4 [~~city and of the towns of Deerfield, Kirkland, Marcy, New Hartford,~~  
5 ~~Trenton and Whitestown, including all villages located entirely or part-~~  
6 ~~ly therein~~] area in the city of Utica bounded on the north by the south-  
7 erly boundary of Whitesboro Street, on the south by the northerly bound-  
8 ary of Oriskany Street West, on the east by the westerly boundary of  
9 Broadway and on the west by the westerly boundary of Charles Street.

10 [~~19-~~ 23. "State" means the state of New York.

11 [~~20-~~ 24. "State agency" means any state office, public benefit corpo-  
12 ration, department, board, commission, bureau or division, or other  
13 agency or instrumentality of the state.

14 § 5. The section heading and subdivisions 1 and 2 of section 1942 of  
15 the public authorities law, as added by chapter 130 of the laws of 1996,  
16 are amended to read as follows:

17 Oneida county arts, culture and entertainment authority, formerly the  
18 Upper Mohawk Valley memorial auditorium authority. 1. A public corpo-  
19 ration, to be known as the [~~"Upper Mohawk Valley memorial auditorium~~  
20 ~~authority"~~] "Oneida county arts, culture and entertainment authority" is  
21 hereby created for the public purposes and charged with the duties and  
22 having the powers provided in this title. The authority shall be a body  
23 corporate and politic constituting a public benefit corporation. The  
24 governing body of the authority shall consist of a total of [~~seven~~ nine  
25 members, [~~three~~ five of whom shall be appointed by the county execu-  
26 tive, without confirmation of the county legislature, and four of whom  
27 shall be appointed by the county legislature, without county executive  
28 right to veto. The first members appointed by the county executive shall  
29 be appointed for the following terms of office: one for a term ending  
30 on December thirty-first of the first year following the year in which  
31 this title shall have become law, [~~one~~ two for a term ending on Decem-  
32 ber thirty-first of the third year following the year in which this  
33 title shall have become law and [~~one~~ two for a term ending on December  
34 thirty-first of the fifth year following the year in which this title  
35 shall have become law. The first members appointed by the county legis-  
36 lature shall be appointed for the following terms of office: one for a  
37 term ending on December thirty-first of the first year following the  
38 year in which this title shall have become law, one for a term ending on  
39 December thirty-first of the third year following the year in which this  
40 title shall have become law, and two for a term ending on December thir-  
41 ty-first of the fifth year following the year in which this title shall  
42 have become law. Subsequent appointments of members shall be made for a  
43 term of five years ending in each case on December thirty-first of the  
44 last year of such term. All members shall continue to hold office until  
45 their successors are appointed and qualify. Vacancies shall be [~~filed~~  
46 filled in the manner provided for original appointment. Vacancies,  
47 occurring otherwise than by expiration of term of office, shall be  
48 filled by appointment for the unexpired terms. Members may be removed  
49 from office by the party which appointed such member for inefficiency,  
50 neglect of duty or misconduct in office; provided, however, that such  
51 member shall be given a copy of the charges against him or her and an  
52 opportunity of being heard in person, or by counsel, in his or her  
53 defense upon not less than ten days notice. The members of the authority  
54 shall receive no compensation for their services, but shall be reim-  
55 bursed for their actual and necessary expenses incurred in connection  
56 with the carrying out of the purposes of this title; provided, however,

1 that no member shall be reimbursed for any expense exceeding one thou-  
2 sand dollars incurred with respect to any individual purpose unless the  
3 governing body at a meeting duly called and held when a quorum of four  
4 members are present shall have authorized the incurrence of such expense  
5 by such member. The powers of the authority shall be vested in and be  
6 exercised by the governing body at a meeting duly called and held where  
7 a quorum of four members are present. No action shall be taken except  
8 pursuant to the favorable vote of at least four voting members. All  
9 votes must be made in person [~~at~~] or through participation by way of  
10 videoconferencing during a meeting and no vote may be made by proxy. The  
11 governing body may delegate to one or more of its members, officers,  
12 agents or employees such powers and duties as it may deem proper.

13 2. The officers of the authority shall consist of a chair, a vice-  
14 chair, a treasurer and a secretary, which secretary need not be a member  
15 of the authority. Such officers shall be appointed by the governing body  
16 and shall serve in such capacities at the pleasure of the governing  
17 body. In addition to the secretary, the governing body may appoint and  
18 at pleasure remove such additional officers and employees as it may  
19 determine necessary for the performance of the powers and duties of the  
20 authority and fix and determine their qualifications, duties and compen-  
21 sation, subject to the provisions of the civil service law. The govern-  
22 ing body may also from time to time contract for expert professional  
23 services. The members, officers, executive director, if any, comp-  
24 troller, if any, and counsel, if any, shall be an exempt position under  
25 any rule or classification of the civil service commission. The treasur-  
26 er shall execute a bond, conditioned upon the faithful performance of  
27 the duties of his or her office, the amount and sufficiency of which  
28 shall be approved by the governing body and the premium [~~therefor~~] ther-  
29 eof shall be paid by the authority.

30 § 6. Section 1943 of the public authorities law, as added by chapter  
31 130 of the laws of 1996, is amended to read as follows:

32 § 1943. Powers of the authority. Except as otherwise limited by this  
33 title, the authority shall have the power:

34 1. To sue and be sued.

35 2. To have a seal and alter the same at pleasure.

36 3. To engage in planning, development, financing, construction and  
37 operation of arts, culture, entertainment, tourism, sports, recreation  
38 and related facilities and programs.

39 4. To borrow money and issue bonds, notes or other obligations for its  
40 corporate purposes and to provide for the rights of the holders thereof.

41 [~~4.~~] 5. To enter into contracts and to execute all instruments neces-  
42 sary or convenient or desirable for the purposes of the authority to  
43 carry out any powers expressly given to it in this title.

44 [~~5.~~] 6. To assist with the planning, development, construction and  
45 financing of the cost of any project located in Oneida county, whether  
46 or not such project is to be owned or operated by the OCACE authority,  
47 which assistance may include loans to any appropriate entity.

48 7. To acquire, without limitation, by purchase, gift, grant, transfer,  
49 contract or lease or by condemnation pursuant to the eminent domain  
50 procedure law, lease as lessee, hold, and use any property, real,  
51 personal or mixed or any interest therein constituting or for use in  
52 connection with the [~~auditorium~~] authority, as the authority may deem  
53 necessary, convenient or desirable to carry out the purpose of this  
54 title and, subject to any limitations in any agreement entered into  
55 pursuant to this title, to sell, lease as lessor, transfer or otherwise  
56 dispose of any such property or interest therein. In connection with the

1 acquisition of any such property, the authority may assume any obli-  
2 gations of the owner of such property and, to the extent required by the  
3 terms of any indentures or other instruments under which such obli-  
4 gations were issued, the authority may assume and agree to perform  
5 covenants and observe the restrictions contained in such instruments;  
6 and furthermore the owner of any property which the authority is author-  
7 ized to acquire is hereby authorized to sell or otherwise transfer the  
8 same to the authority, whereupon the authority shall become charged with  
9 the performance of all public duties with respect to such property with  
10 which such owner was charged and such owner shall become discharged from  
11 the performance thereof.

12 [~~6-~~] 8. To develop, construct, operate, maintain and manage or  
13 contract for the operation, maintenance or management of, or for  
14 services to be performed in connection with [~~, the auditorium~~] any and  
15 all properties, facilities and structures owned, acquired and/or identi-  
16 fied for acquisition; to allow the use of [~~the auditorium~~] any and all  
17 properties, facilities and structures owned, acquired and/or identified  
18 for acquisition for the conduct of any and all activities in furtherance  
19 of the authority as set forth herein, including but not limited to,  
20 tourism, housing, professional and amateur athletic events, enter-  
21 tainment, cultural and artistic events [~~and, or,~~] and/or civic events,  
22 conventions, and all activities related thereto; and to rent parts ther-  
23 eof and to grant concessions, all on such terms and conditions as the  
24 authority may determine.

25 [~~7-~~] 9. To apply to the appropriate agencies and officials of the  
26 federal, state and local governments for such licenses, permits or  
27 approvals of its plans as it may deem necessary or advisable, and upon  
28 such terms and conditions as it may deem appropriate, and to accept, in  
29 its discretion, such licenses, permits or approvals as may be tendered  
30 to it by such agencies and officials.

31 [~~8-~~] 10. To appoint such officers and employees as are required for  
32 the performance of its duties, to fix and determine their qualifica-  
33 tions, duties and compensation, and to retain or employ counsel, audi-  
34 tors, engineers and private consultants on a contract basis or otherwise  
35 for rendering professional or technical services and advice.

36 [~~9-~~] 11. To make plans and studies necessary, convenient or desirable  
37 for the effectuation of the purposes and the powers of the authority and  
38 to prepare recommendations in regard thereto.

39 [~~10-~~] 12. To enter upon such lands or premises as in the judgment of  
40 the authority shall be necessary for the purpose of making surveys,  
41 [~~sounding~~] soundings, [~~borings~~] borings and examinations to accomplish  
42 any purpose authorized by this title, the authority being liable only  
43 for actual damage done.

44 [~~11-~~] 13. To apply for and to accept any gifts or grants or loans of  
45 funds or property or financial or other aid in any form from the federal  
46 government or any agency or instrumentality thereof, or from the state  
47 or any agency or instrumentality thereof or from any other source, for  
48 any or all of the purposes specified in this title, and to comply,  
49 subject to the provisions of this title, with the terms and conditions  
50 thereof.

51 [~~12-~~] 14. To make and amend by-laws for its organization and manage-  
52 ment and regulation of its affairs and rules and regulations governing  
53 the exercise of its powers and the fulfillment of its purposes under  
54 this title. A copy of such rules, regulations and by-laws, and all  
55 amendments thereto, duly certified by the secretary of the authority  
56 shall be filed in the office of the county clerk.

1     ~~[13.]~~ 15. To enter into cooperative agreements with other authorities,  
2 with municipalities, individuals, or corporations, within or without the  
3 service area, for any lawful purposes necessary or desirable to effect  
4 the ~~[purposes]~~ purpose and mission of this title upon such terms and  
5 conditions as the authority shall ~~[be determined]~~ determine to be  
6 reasonable.

7     ~~[14.]~~ 16. With the consent of the chief executive officer of munici-  
8 palities within the service area, to use officers and employees of such  
9 municipalities and to pay a proper portion of compensation or costs for  
10 the services of such officers or employees.

11     ~~[15.]~~ 17. To establish, fix~~[, revise, charge,]~~ and collect ~~[and~~  
12 ~~enforce fees and charges for the use of the auditorium so as to provide~~  
13 ~~revenues which, together with other earnings of the auditorium, if any,~~  
14 ~~are at least sufficient at all times to pay, as the same shall become~~  
15 ~~due, the expense of operating and maintaining the auditorium together~~  
16 ~~with proper reserves for maintenance, contingencies and all other obli-~~  
17 ~~gations and indebtedness of the authority],~~ on any equitable basis,  
18 rates, rentals, fees and other charges for the use of any and all prop-  
19 erties, facilities and structures owned, leased, or otherwise managed by  
20 OCACE.

21     ~~[16.]~~ 18. To establish a separate per diem fee for any of the proper-  
22 ties, facilities, structures, as well as for programs, planning, events  
23 and other authorized activities of the authority which such revenue  
24 shall be used for purposes deemed necessary and appropriate by the OCACE  
25 board.

26     19. To collect, under contract with Oneida county fees and charges  
27 established by the county for the use of hotel and motel facilities.  
28 Such revenue shall be used for purposes deemed necessary and appropriate  
29 by the OCACE board including, but not limited to, tourism promotion.

30     20. All the revenue from such rates, rentals, fees and other charges  
31 set forth in subdivisions seventeen through nineteen of this section  
32 shall be established by the authority so that they are at least suffi-  
33 cient at all times to pay, as the same shall become due, all debt  
34 service and all operating and maintenance expenses, together with proper  
35 reserves for maintenance, contingencies and all other obligations of the  
36 authority.

37     21. To pledge its revenues and mortgage any or all of its properties  
38 to secure the obligations of the authority.

39     ~~[17.]~~ 22. To establish and maintain such reserves, special funds and  
40 accounts, to be held in trust or otherwise, as may be required by any  
41 agreement with bondholders ~~[and, or,]~~ and/or any municipality.

42     ~~[18.]~~ 23. For the purposes of article fifteen-A of the executive law  
43 only, the authority shall be deemed a state agency as that term is used  
44 in such article, and its contracts for procurement, design,  
45 construction, services, and materials shall be deemed state contracts  
46 within the meaning of that term as set forth in such article.

47     ~~[19.]~~ 24. To do all things necessary, convenient or desirable to carry  
48 out ~~[its purposes]~~ the purpose and mission of the authority and for the  
49 exercise of the powers granted in this title.

50     § 7. Section 1944 of the public authorities law, as added by chapter  
51 130 of the laws of 1996, is amended to read as follows:

52     § 1944. Appropriations for purposes of the authority; transfer of  
53 property to the authority; acquisition of property by municipality for  
54 authority; contracts with municipality. 1. In addition to any powers  
55 granted to it by law, any municipality may, from time to time, appropri-  
56 ate by resolution sums of money for purposes of the authority to defray

1 ~~[auditorium costs or]~~ any ~~[other]~~ costs and expenses of the authority or  
2 to pay amounts payable or anticipated to be payable to the authority  
3 pursuant to any agreement authorized by this title. Subject to the  
4 rights of bondholders, such municipality may determine if the moneys so  
5 appropriated shall be subject to repayment by the authority and, in such  
6 event, the manner and time or times for such repayment.

7 2. Any municipality may give, grant, sell, convey, loan or license the  
8 use of or lease to the authority any property, real, personal or mixed,  
9 which is useful to the authority in order to carry out its powers under  
10 this title. Any such transfer of property shall be for such term and  
11 upon such terms and conditions, subject to the rights of bondholders, as  
12 the authority and such municipality may agree, including provision for  
13 the authority to assume the primary responsibility for the payment of  
14 any bonds or notes issued by such municipality for such property.

15 3. Notwithstanding the provisions of any other law, general, special  
16 or local to the contrary, real property acquired by the authority or any  
17 municipality from the state may be used for any corporate purpose of the  
18 authority.

19 4. One or more ~~[municipality]~~ ~~municipalities~~ and/or the authority  
20 shall have the power to contract, from time to time, between or among  
21 themselves, ~~[in relation to the auditorium]~~ which contracts may include  
22 any or all of the following provisions: (i) requiring the use by any  
23 municipality of the auditorium; (ii) limiting the right, including a  
24 prohibition, of any municipality to construct a facility which will  
25 serve the same, or substantially the same, function as the auditorium;  
26 (iii) requiring the authority to reserve time in the auditorium to  
27 assure the availability to any municipality of a specified use of the  
28 auditorium; (iv) providing for specified minimum periodic payments by a  
29 municipality to the authority, whether or not the auditorium is actually  
30 used by the municipality, subject to such limitations, exceptions and  
31 provisions therein, and (v) requiring any municipality to pay to the  
32 authority such amounts as shall be necessary to assure the continued  
33 operation of the authority. All such payments shall be determined and  
34 paid in such manner and at such times as may be provided in such  
35 contracts.

36 5. Any gift, grant, sale, conveyance, loan, contract or lease author-  
37 ized by this section may be made or entered into by any municipality  
38 and/or the authority without a public hearing being first held therein  
39 and no such gift, grant, sale, conveyance, loan, contract or lease shall  
40 be subject to referendum, permissive or otherwise.

41 ~~[6. Notwithstanding the provisions of any law, general, special or~~  
42 ~~local, or charter provision to the contrary, the city, by the affirma-~~  
43 ~~tive vote of not less than a majority of the entire voting strength of~~  
44 ~~the board of estimate of said city, may sell or transfer, by deed, lease~~  
45 ~~or other arrangement, to the authority the auditorium. Any such agree-~~  
46 ~~ment of sale or transfer shall be upon such terms and conditions as the~~  
47 ~~governing body of said city and the authority may agree.]~~

48 § 8. Subdivisions 1, 2 and 5 of section 1945 of the public authorities  
49 law, as added by chapter 130 of the laws of 1996, are amended to read as  
50 follows:

51 1. The authority shall have the power and is hereby authorized from  
52 time to time to issue bonds, notes or other obligations to pay the costs  
53 ~~[of the auditorium or]~~ for any ~~[other]~~ corporate purpose, including the  
54 establishment of reserves to secure the bonds, the payment of principal  
55 of, premium, if any, and interest on the bonds and the payment of inci-  
56 dental expenses in connection therewith. ~~[The aggregate principal amount~~



1 ~~of such bonds, notes or other obligations shall not exceed two million~~  
2 ~~dollars (\$2,000,000), excluding bonds, notes or other obligations issued~~  
3 ~~to refund or otherwise repay bonds, notes or other obligations thereto-~~  
4 ~~fore issued for such purposes; provided, however, that upon any such~~  
5 ~~refunding or repayment the total aggregate principal amount of outstand-~~  
6 ~~ing bonds, notes or other obligations may be greater than two million~~  
7 ~~dollars (\$2,000,000) only if the present value of the aggregate debt~~  
8 ~~service of the refunding or repayment bonds, notes or other obligations~~  
9 ~~to be issued shall not exceed the present value of the aggregate debt~~  
10 ~~service of the bonds, notes or other obligations so to be refunded or~~  
11 ~~repaid. For purposes hereof, the present values of the aggregate debt~~  
12 ~~service of the refunding or repayment bonds, notes or other obligations~~  
13 ~~and of the aggregate debt service of the bonds, notes or other obli-~~  
14 ~~gations so refunded or repaid, shall be calculated by utilizing the~~  
15 ~~effective interest rate of the refunding or repayment bonds, notes or~~  
16 ~~other obligations, which shall be that rate arrived at by doubling the~~  
17 ~~semi-annual interest rate (compounded semi-annually) necessary to~~  
18 ~~discount the debt service payments on the refunding or repayment bonds,~~  
19 ~~notes or other obligations from the payment dates thereof to the date of~~  
20 ~~issue of the refunding or repayment bonds, notes or other obligations~~  
21 ~~and to the price bid including estimated accrued interest or proceeds~~  
22 ~~received by the authority including estimated accrued interest from the~~  
23 ~~sale thereof.] The authority shall have power and is hereby authorized~~  
24 to enter into such agreements and perform such acts as may be required  
25 under any applicable federal legislation to secure a federal guarantee  
26 of any bonds.

27 2. The authority shall have power from time to time to renew bonds or  
28 to issue renewal bonds for such purpose, to issue bonds to pay bonds,  
29 and, whenever it deems refunding expedient, to refund any bond by the  
30 issuance of new bonds, whether the bonds to be refunded have or have not  
31 matured, and may issue bonds partly to refund bonds then outstanding and  
32 partly for any other corporate purpose of the authority. [~~Bonds (other~~  
33 ~~than notes or other evidence of indebtedness) issued for refunding~~  
34 ~~purposes, which have a final maturity date longer than the maturity of~~  
35 ~~the bonds being refunded, shall be approved by a resolution of the coun-~~  
36 ~~ty legislature adopted by a majority vote and approved by the county~~  
37 ~~executive.] Bonds issued for refunding purposes shall be sold and the  
38 proceeds applied to the purchase, redemption or payment of the bonds or  
39 notes to be refunded.~~

40 5. Any resolution or resolutions authorizing bonds or any issue of  
41 bonds may contain provisions which may be a part of the contract with  
42 the holders of the bonds thereby authorized as to: (a) pledging all or  
43 part of the revenues, other monies or property of the authority to  
44 secure the payment of the bonds, or any costs of issuance thereof,  
45 including but not limited to any contracts, earnings or proceeds of any  
46 grant to the authority received from any private or public source  
47 subject to such agreements with bond holders as may then exist;

48 (b) the setting aside of reserves and the creation of sinking funds  
49 and the regulation and disposition thereof;

50 (c) limitations on the purpose to which the proceeds from the sale of  
51 bonds may be applied;

52 (d) the rates, rents, fees and other charges to be fixed and collected  
53 by the authority and the amount to be raised in each year thereby and  
54 the use and disposition of revenues;

1 (e) limitations on the right of the authority to restrict and regulate  
2 the use of [~~the auditorium~~] its properties, facilities, programs or  
3 [~~part~~] parts thereof in connection with which bonds are issued;

4 (f) limitations on the issuance of additional bonds, the terms upon  
5 which additional bonds may be issued and secured and the refunding of  
6 outstanding or other bonds;

7 (g) the procedure, if any, by which the terms of any contract with  
8 bond holders may be amended or abrogated, the amount of bonds the hold-  
9 ers of which must consent thereto, and the manner in which such consent  
10 may be given;

11 (h) the creation of special funds into which any revenues or monies  
12 may be deposited;

13 (i) the terms and provisions of any trust, mortgage, deed or indenture  
14 securing the bonds under which the bond may be issued;

15 (j) vesting in a trustee or trustees such properties, rights, powers  
16 and duties in trust as the authority may determine which may include any  
17 or all of the rights, powers and duties of the trustees appointed by the  
18 bond holders to appoint a trustee pursuant to this title or limiting the  
19 rights, duties and powers of such trustee;

20 (k) defining the acts or omissions to act which may constitute a  
21 default in the obligations and duties of the authority to the bond hold-  
22 ers and providing for the rights and remedies of the bond holders in the  
23 event of such default, including as a matter of right, appointment of a  
24 receiver, provided, however, that such rights and remedies shall not be  
25 inconsistent with the general laws of the state and other provisions of  
26 this title;

27 (l) limitations on the power of the authority to sell or otherwise  
28 dispose of [~~the auditorium~~] any of its properties, facilities, struc-  
29 tures or other assets or any part thereof;

30 (m) limitations on the amount of revenues and other monies to be  
31 expended for operating, administrative or other expenses of the authori-  
32 ty;

33 (n) the payment of the proceeds of bonds, revenues and other monies to  
34 a trustee or other depository, and for the method of disbursement there-  
35 of with such safeguards and restrictions as the authority may determine;  
36 and

37 (o) any other matters of like or different character which in any way  
38 affect the security or protection of the bonds or the rights and reme-  
39 dies of bondholders.

40 § 9. Section 1947 of the public authorities law, as added by chapter  
41 130 of the laws of 1996, is amended to read as follows:

42 § 1947. State or municipality not liable on authority bonds. Neither  
43 the state, the county nor any other municipality shall be liable on the  
44 bonds of the authority and such bonds shall not be a debt of either the  
45 state, the county or any other municipality, and each such bond shall  
46 contain, on the face thereof, a statement to such effect.

47 § 10. Section 1949-a of the public authorities law, as added by chap-  
48 ter 130 of the laws of 1996, is amended to read as follows:

49 § 1949-a. Agreement with state. The state does hereby pledge to and  
50 agree with the holders of any bonds issued by the authority pursuant to  
51 this title and with those persons or public corporations who may enter  
52 into contracts with the authority pursuant to the provisions of this  
53 title that the state will not alter, limit or impair the rights hereby  
54 vested in the authority to purchase, construct, own and operate, main-  
55 tain, repair, improve, reconstruct, renovate, rehabilitate, enlarge,  
56 increase and extend, or dispose of [~~the auditorium~~] any of the authori-

1 ty's properties, facilities, structures, programs or other assets, or  
2 any part or parts thereof for which bonds of the authority shall have  
3 been issued, to establish and collect rates, rents, fees and other  
4 charges referred to in this title, to fulfill the terms of any contracts  
5 or agreements made with or for the benefit of the holders of bonds or  
6 with any person or public corporation with reference to such project or  
7 part thereof, or in any way to impair the rights and remedies of the  
8 holders of bonds, until the bonds, together with interest thereon,  
9 including interest on any unpaid installments of interest, and all costs  
10 and expenses in connection with any action or proceeding by or on behalf  
11 of the holders of bonds, are fully met and discharged and such contracts  
12 are fully performed on the part of the authority. The authority is  
13 authorized to include this pledge and agreement of the state in any  
14 agreement with the holders of bonds.

15 § 11. Section 1949-d of the public authorities law, as added by chap-  
16 ter 130 of the laws of 1996, is amended to read as follows:

17 § 1949-d. Contracts. [~~All contracts for construction shall be let by~~  
18 ~~the authority in conformity with the applicable provisions of section~~  
19 ~~one hundred thirty-five of the state finance law and shall be let in~~  
20 ~~accordance with the provisions of state law pertaining to prevailing~~  
21 ~~wages, labor standards and working hours.~~

22 ~~The authority may, in its discretion, assign contracts for supervision~~  
23 ~~and coordination to the successful bidder for any subdivision of work~~  
24 ~~for which the authority receives bids. The authority shall not award any~~  
25 ~~construction contract except to the lowest bidder who, in its opinion,~~  
26 ~~is qualified to perform the work required and who is responsible and~~  
27 ~~reliable. The authority may, however, reject any or all bids or waive~~  
28 ~~any informality in a bid if it believes that the public interest will be~~  
29 ~~promoted thereby. The authority may reject any bid if, in its judgment,~~  
30 ~~the business and technical organization, plant, resources, financial~~  
31 ~~standing, or experience of the bidder justifies such rejection in view~~  
32 ~~of the work to be performed.] 1. Notwithstanding section one hundred  
33 three of the general municipal law or the provisions of any other law,  
34 in conformity with the requirements of this section, and only when a  
35 project labor agreement is performed, the authority may utilize the  
36 alternative delivery method referred to as a design-build contract. The  
37 authority shall ensure that its procurement record reflects the design-  
38 build contract process authorized by this section.~~

39 2. An entity selected by the authority to enter into a design-build  
40 contract shall be selected through a two-step process, as follows:

41 (a) The generation of a list of entities that have demonstrated the  
42 general capability to perform design-build contracts. Such list shall  
43 consist of a specified number of entities, as determined by the authori-  
44 ty, and shall be generated based upon the authority's review of  
45 responses to publicly advertised requests for qualifications. The  
46 authority's request for qualifications shall include a general  
47 description of the work to be performed, the maximum number of entities  
48 to be included on the list and the selection criteria to be used in  
49 generating the list. Such selection criteria shall include: (i) the  
50 qualifications and experience of the design and construction team,  
51 organization, demonstrated responsibility, ability of the team or of a  
52 member or members of the team to comply with applicable requirements,  
53 including the provisions of articles one hundred forty-five, one hundred  
54 forty-seven and one hundred forty-eight of the education law; (ii) past  
55 record of compliance with the labor law including prevailing wage  
56 requirements under state and federal law; (iii) the past record of

1 compliance with existing labor standards and maintaining harmonious  
2 labor relations; (iv) the record of protecting the health and safety of  
3 workers on public works projects and job sites as demonstrated by the  
4 experience modification rate for each of the last three years; (v) the  
5 prospective bidder's ability to undertake the particular type and  
6 complexity of work; (vi) the financial capability, responsibility and  
7 reliability of the prospective bidder for such type and complexity of  
8 work; (vii) the prospective bidder's compliance with equal employment  
9 opportunity requirements and anti-discrimination laws, and demonstrated  
10 commitment to working with minority and women-owned businesses through  
11 joint ventures or subcontractor relationships; (viii) whether or not the  
12 prospective bidder or a person or entity with an interest of at least  
13 ten per centum in the prospective bidder, is debarred for having disre-  
14 garded obligations to employees under the Davis Bacon Act pursuant to 40  
15 USC 3144 and 29 CFR 5.12; (ix) any other such qualifications the author-  
16 ity deems appropriate which may include, but shall not be limited to,  
17 project understanding, financial capability and record of past perform-  
18 ance. The authority shall evaluate and rate all entities responding to  
19 the request for qualifications. Based upon such ratings, the authority  
20 shall list the entities that shall receive a request for proposals in  
21 accordance with subdivision three of this section. To the extent  
22 consistent with applicable federal law, the authority shall consider,  
23 when awarding any contract pursuant to this section, the participation  
24 of firms certified pursuant to article fifteen-A of the executive law as  
25 minority or women-owned businesses and the ability of other businesses  
26 under consideration to work with minority and women-owned businesses so  
27 as to promote and assist participation by such businesses and small  
28 business concerns identified pursuant to subdivision (b) of section one  
29 hundred thirty-nine-g of the state finance law;

30 (b) The selection of the proposal which is the best value to the  
31 authority. The authority shall issue a request for proposals for the  
32 work to be performed to the entities listed pursuant to paragraph (a) of  
33 this subdivision. If such an entity consists of a team of separate enti-  
34 ties, the entities that comprise such a team must remain unchanged from  
35 the entity as listed pursuant to paragraph (a) of this subdivision  
36 unless otherwise approved by the authority. The request for proposals  
37 for a project shall set forth the project's scope of work, and other  
38 requirements, as determined by the authority. The request for proposals  
39 shall specify the criteria to be used to evaluate the responses and the  
40 relative weight of each such criteria. Such criteria shall include the  
41 proposal's cost, the quality of the proposal's solution, the qualifica-  
42 tions and experience of the design-build entity and other factors deemed  
43 pertinent by the authority which may include, but shall not be limited  
44 to, the proposal's project implementation, the ability to complete the  
45 work in a timely and satisfactory manner, maintenance costs of the  
46 completed project, maintenance of traffic approach and community impact.  
47 Any contract awarded pursuant to this act shall be awarded to a respon-  
48 sive and responsible entity that submits the proposal which, in consid-  
49 eration of these and other specified criteria deemed pertinent, offers  
50 the best value to the authority, as determined by the authority. Nothing  
51 in this act shall be construed to prohibit the authority from negotiat-  
52 ing final contract terms and conditions including cost.

53 3. Notwithstanding the provisions of this section, when any person or  
54 entity is debarred for having disregarded obligations to employees under  
55 the Davis-Bacon Act pursuant to 40 USC 3144 and 29 CFR 5.12, such person  
56 or entity, and any firm, corporation, partnership or association in

1 which the person or entity owns or controls at least ten per centum of,  
2 shall be ineligible to submit a bid on or be awarded any contract  
3 authorized by this section while the name of the person or entity is  
4 published in the list of debarred contractors pursuant to 40 USC 3144.  
5 The department of labor shall notify the person or entity immediately of  
6 such ineligibility and such person or entity shall be afforded the  
7 opportunity to appeal to the department of labor.

8 4. Any contract entered into pursuant to this section shall include a  
9 clause requiring that any professional services regulated by articles  
10 one hundred forty-five, one hundred forty-seven and one hundred forty-  
11 eight of the education law shall be performed and stamped and sealed,  
12 where appropriate, by a professional licensed in accordance with such  
13 articles.

14 5. The construction, demolition, reconstruction, excavation, rehabili-  
15 tation, repair, renovation of a project undertaken by the authority  
16 pursuant to this section shall be deemed a "public work" to be performed  
17 in accordance with the provisions of article eight of the labor law, as  
18 well as subject to sections two hundred, two hundred forty, two hundred  
19 forty-one and two hundred forty-two of the labor law and enforcement of  
20 prevailing wage requirements by the New York state department of labor.

21 6. A project labor agreement shall be included in the request for  
22 proposals for a project, provided that, based upon a study done by or  
23 for the authority, the authority determines that its interest in obtain-  
24 ing the best work at the lowest possible price, preventing favoritism,  
25 fraud and corruption, and other considerations such as the impact of  
26 delay, the possibility of cost savings advantages, and any local history  
27 of labor unrest, are best met by requiring a project labor agreement.  
28 The authority shall conduct such a study and the project labor agreement  
29 shall be performed consistent with the provisions of section two hundred  
30 twenty-two of the labor law. If a project labor agreement is not  
31 performed on a project the authority shall not utilize a design-build  
32 contract for such project and sections one hundred one and one hundred  
33 three of the general municipal law shall apply to such project.

34 7. Each contract entered into by the authority pursuant to this  
35 section shall comply, whenever practical, with the objectives and goals  
36 of minority and women-owned business enterprises pursuant to article  
37 fifteen-A of the executive law or, if the project receives federal aid,  
38 shall comply with applicable federal requirements for disadvantaged  
39 business enterprises.

40 8. Any project undertaken by the authority pursuant to this section  
41 shall be subject to the requirements of article eight of the environ-  
42 mental conservation law, and, where applicable, the requirements of the  
43 national environmental policy act.

44 9. If otherwise applicable, a project undertaken by the authority  
45 pursuant to this section shall be governed by the general municipal law.

46 10. The submission of a proposal or responses or the execution of a  
47 design-build contract pursuant to this section shall not be construed to  
48 be a violation of section sixty-five hundred twelve of the education  
49 law.

50 11. Nothing contained in this section shall limit the right or obli-  
51 gation of the authority to comply with the provisions of any existing  
52 contract, including any existing contract with or for the benefit of the  
53 holders of the obligations of the authority, or to award contracts as  
54 otherwise provided by law.

1 § 12. Sections 1949-i, 1949-j, and 1949-k of the public authorities  
2 law are renumbered sections 1949-j, 1949-k, and 1949-l and a new section  
3 1949-i is added to read as follows:

4 § 1949-i. Employees of authorized entities. 1. Notwithstanding any  
5 provision of law to the contrary, all rights or benefits, including  
6 terms and conditions of employment, and protection of civil service and  
7 collective bargaining status of all employees of authorized entities  
8 shall be preserved and protected.

9 2. Nothing in this title shall result in the: (a) displacement of any  
10 currently employed worker or loss of position (including partial  
11 displacement such as a reduction in the hours of non-overtime work,  
12 wages or employment benefits), or result in the impairment of existing  
13 collective bargaining agreements; or (b) transfer of existing duties and  
14 functions related to maintenance and operations currently performed by  
15 existing employees of authorized entities to a contracting entity.

16 3. Employees of authorized entities using design-build contracts serv-  
17 ing in positions in newly created titles shall be assigned to the appro-  
18 priate bargaining unit. Nothing contained in this title shall be  
19 construed to affect: (a) the existing rights of employees of such enti-  
20 ties pursuant to an existing collective bargaining agreement, (b) the  
21 existing representational relationships among employee organizations  
22 representing employees of such entities, or (c) the bargaining relation-  
23 ships between such entities and such employee organizations.

24 § 13. This act shall take effect immediately and shall apply to all  
25 contracts and agreements entered into on and after such date.