

STATE OF NEW YORK

10513--C

IN ASSEMBLY

May 4, 2018

Introduced by M. of A. BRINDISI, MAGEE -- 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 -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public authorities law, in relation to the total amount of bonds the Upper Mohawk Valley memorial authority may issue; authorizing, for certain public works undertaken pursuant to project labor agreements, use of the alternative delivery method known as design-build contracts; increasing the membership of the authority and providing for the repeal of certain provisions upon expiration thereof

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

1 Section 1. Subdivision 1 of section 1945 of the public authorities
2 law, as added by chapter 130 of the laws of 1996, is amended to read as
3 follows:
4 1. The authority shall have the power and is hereby authorized from
5 time to time to issue bonds, notes or other obligations to pay the costs
6 of the auditorium or for any other corporate purpose, including the
7 establishment of reserves to secure the bonds, the payment of principal
8 of, premium, if any, and interest on the bonds and the payment of inci-
9 dental expenses in connection therewith. The aggregate principal amount
10 of such bonds, notes or other obligations shall not exceed [~~two~~] fifty
11 million dollars [~~(\$2,000,000)~~] (\$50,000,000), excluding bonds, notes or
12 other obligations issued to refund or otherwise repay bonds, notes or
13 other obligations theretofore issued for such purposes; provided, howev-
14 er, that upon any such refunding or repayment the total aggregate prin-
15 cipal amount of outstanding bonds, notes or other obligations may be
16 greater than [~~two~~] fifty million dollars [~~(\$2,000,000)~~] (\$50,000,000)
17 only if the present value of the aggregate debt service of the refunding
18 or repayment bonds, notes or other obligations to be issued shall not

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

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1 exceed the present value of the aggregate debt service of the bonds,
2 notes or other obligations so to be refunded or repaid. For purposes
3 hereof, the present values of the aggregate debt service of the refund-
4 ing or repayment bonds, notes or other obligations and of the aggregate
5 debt service of the bonds, notes or other obligations so refunded or
6 repaid, shall be calculated by utilizing the effective interest rate of
7 the refunding or repayment bonds, notes or other obligations, which
8 shall be that rate arrived at by doubling the semi-annual interest rate
9 (compounded semi-annually) necessary to discount the debt service
10 payments on the refunding or repayment bonds, notes or other obligations
11 from the payment dates thereof to the date of issue of the refunding or
12 repayment bonds, notes or other obligations and to the price bid includ-
13 ing estimated accrued interest or proceeds received by the authority
14 including estimated accrued interest from the sale thereof. The authori-
15 ty shall have power and is hereby authorized to enter into such agree-
16 ments and perform such acts as may be required under any applicable
17 federal legislation to secure a federal guarantee of any bonds.

18 § 2. Subdivision 1 of section 1942 of the public authorities law, as
19 added by chapter 130 of the laws of 1996, is amended to read as follows:

20 1. A public corporation, to be known as the "Upper Mohawk Valley memo-
21 rial auditorium authority" is hereby created for the public purposes and
22 charged with the duties and having the powers provided in this title.
23 The authority shall be a body corporate and politic constituting a
24 public benefit corporation. The governing body of the authority shall
25 consist of a total of seven members until January thirty-first, two
26 thousand nineteen, three of whom shall be appointed by the county execu-
27 tive, without confirmation of the county legislature, and four of whom
28 shall be appointed by the county legislature, without county executive
29 right to veto. The first members appointed by the county executive shall
30 be appointed for the following terms of office: one for a term ending
31 on December thirty-first of the first year following the year in which
32 this title shall have become law, one for a term ending on December
33 thirty-first of the third year following the year in which this title
34 shall have become law and one for a term ending on December thirty-first
35 of the fifth year following the year in which this title shall have
36 become law. The first members appointed by the county legislature shall
37 be appointed for the following terms of office: one for a term ending on
38 December thirty-first of the first year following the year in which this
39 title shall have become law, one for a term ending on December thirty-
40 first of the third year following the year in which this title shall
41 have become law, and two for a term ending on December thirty-first of
42 the fifth year following the year in which this title shall have become
43 law. Commencing February first, two thousand nineteen, the governing
44 body of the authority shall consist of a total of nine members, five of
45 whom shall be appointed by the county executive, without confirmation of
46 the county legislature, and four of whom shall be appointed by the coun-
47 ty legislature, without county executive right to veto. The seven
48 members appointed to the board prior to February first, two thousand
49 nineteen, shall continue their existing five year terms pursuant to this
50 section. The fourth member appointed by the county executive shall be
51 for a term ending on December thirty-first, two thousand twenty-one. The
52 fifth member appointed by the county executive shall be for a term
53 ending on December thirty-first, two thousand twenty-two. Subsequent
54 appointments of members shall be made for a term of five years ending in
55 each case on December thirty-first of the last year of such term. All
56 members shall continue to hold office until their successors are

1 appointed and qualify. Vacancies shall be [~~filed~~] **filled** in the manner
2 provided for original appointment. Vacancies, occurring otherwise than
3 by expiration of term of office, shall be filled by appointment for the
4 unexpired terms. Members may be removed from office by the party which
5 appointed such member for inefficiency, neglect of duty or misconduct in
6 office; provided, however, that such member shall be given a copy of the
7 charges against him or her and an opportunity of being heard in person,
8 or by counsel, in his or her defense upon not less than ten days notice.
9 The members of the authority shall receive no compensation for their
10 services, but shall be reimbursed for their actual and necessary
11 expenses incurred in connection with the carrying out of the purposes of
12 this title; provided, however, that no member shall be reimbursed for
13 any expense exceeding one thousand dollars incurred with respect to any
14 individual purpose unless the governing body at a meeting duly called
15 and held when a quorum of [~~four~~] **five** members are present shall have
16 authorized the incurrence of such expense by such member. The powers of
17 the authority shall be vested in and be exercised by the governing body
18 at a meeting duly called and held where a quorum of [~~four~~] **five** members
19 are present. No action shall be taken except pursuant to the favorable
20 vote of at least [~~four~~] **five** voting members. All votes must be made in
21 person at a meeting and no vote may be made by proxy. The governing body
22 may delegate to one or more of its members, officers, agents or employ-
23 ees such powers and duties as it may deem proper.

24 § 3. 1. For the purposes of this section, the following terms shall
25 have the following meanings:

26 (a) "Project" shall mean any installation, construction, demolition,
27 reconstruction, excavation, rehabilitation, repair, and renovation in
28 connection with a multi-use sports complex located in the city of Utica
29 bounded on the north by the southerly boundary of Whitesboro Street, on
30 the south by the northerly boundary of Oriskany Street West, on the east
31 by the westerly boundary of Broadway and on the west by the westerly
32 boundary of Charles Street.

33 (b) "Best value" shall mean the basis for awarding contracts for
34 services to the bidder that optimizes quality, cost, efficiency, price
35 and performance criteria, which may include, but shall not be limited
36 to:

37 (i) the quality of the contractor's performance on previous projects;

38 (ii) the timeliness of the contractor's performance on previous
39 projects;

40 (iii) the level of customer satisfaction with the contractor's
41 performance on previous projects;

42 (iv) the contractor's record of performing previous projects on budget
43 and ability to minimize cost overruns;

44 (v) the contractor's ability to limit change orders;

45 (vi) the contractor's ability to prepare appropriate project plans;

46 (vii) the contractor's technical capacities;

47 (viii) the individual qualifications of the contractor's key person-
48 nel;

49 (ix) the contractor's ability to assess and manage risk and minimize
50 risk impact; and

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

54 Such basis shall reflect, wherever possible, objective and quantifi-
55 able analysis.

1 (c) "Design-build contract" shall mean, in conformity with the
2 requirements of this section, a contract for the design and construction
3 of the project with a single entity, which may be a team comprised of
4 separate entities.

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

7 (e) "Project labor agreement" shall mean a pre-hire collective
8 bargaining agreement between a contractor and a bona fide building and
9 construction trade labor organization establishing the labor organiza-
10 tion as the collective bargaining representative for all persons who
11 will perform work on the project, and which provides that only contrac-
12 tors and subcontractors who sign a pre-negotiated agreement with the
13 labor organization can perform project work.

14 (f) "Authority" shall mean the Upper Mohawk Valley memorial auditorium
15 authority created by section 1942 of the public authorities law.

16 2. Notwithstanding any inconsistent provisions of section 1949-d of
17 the public authorities law or the provisions of any other law, in
18 conformity with the requirements of this section, and only when a
19 project labor agreement is performed, the authority may utilize the
20 alternative delivery method referred to as a design-build contract for
21 the project. The authority shall ensure that its procurement record
22 reflects the design-build contract process authorized by this section.

23 3. An entity selected by the authority to enter into a design-build
24 contract for the project shall be selected through a two-step process,
25 as follows:

26 (a) Step one. Generation of a list of entities that have demonstrated
27 the general capability to perform a design-build contract for the
28 project. Such list shall consist of a specified number of entities, as
29 determined by the authority, and shall be generated based upon the
30 authority's review of responses to publicly advertised requests for
31 qualifications for the project. The authority's request for qualifica-
32 tions for the project shall include a general description of the
33 project, the maximum number of entities to be included on the list, and
34 the selection criteria to be used in generating the list. Such selection
35 criteria shall include: (i) the qualifications and experience of the
36 design and construction team, organization, demonstrated responsibility,
37 ability of the team or of a member or members of the team to comply with
38 applicable requirements, including the provisions of articles 145, 147
39 and 148 of the education law; (ii) past record of compliance with the
40 labor law including prevailing wage requirements under state and federal
41 law; (iii) the past record of compliance with existing labor standards
42 and maintaining harmonious labor relations; (iv) the record of protect-
43 ing the health and safety of workers on public works projects and job
44 sites as demonstrated by the experience modification rate for each of
45 the last 3 years; (v) the prospective bidder's ability to undertake the
46 particular type and complexity of work; (vi) the financial capability,
47 responsibility and reliability of the prospective bidder for such type
48 and complexity of work; (vii) the prospective bidder's compliance with
49 equal employment opportunity requirements and anti-discrimination laws,
50 and demonstrated commitment to working with minority- and women-owned
51 businesses through joint ventures or subcontractor relationships; (viii)
52 whether or not the prospective bidder or a substantially owned-affiliat-
53 ed entity, as defined by paragraph g of subdivision 5 of section 220 of
54 the labor law, is listed by the federal government as excluded from
55 receiving federal contracts and certain subcontracts, assistance, or
56 benefits pursuant to 48 C.F.R. subpart 9.4; and (ix) such other quali-

1 fications the authority deems appropriate which may include, but shall
2 not be limited to, project understanding, financial capability and
3 record of past performance. The authority shall evaluate and rate all
4 entities responding to the request for qualifications. Based upon such
5 ratings, the authority shall list the entities that shall receive a
6 request for proposals in accordance with paragraph (b) of this subdivi-
7 sion. To the extent consistent with applicable federal law, the authori-
8 ty shall consider, when awarding any contract pursuant to this section,
9 the participation of: (1) firms certified pursuant to article 15-A of
10 the executive law as minority- or women-owned businesses and the ability
11 of other businesses under consideration to work with minority- and
12 women-owned businesses so as to promote and assist participation by such
13 businesses; and (2) small business concerns identified pursuant to
14 subdivision (b) of section 139-g of the state finance law.

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

39 4. Notwithstanding the provisions of this section, when any person or
40 entity is listed by the federal government as excluded from receiving
41 federal contracts and certain subcontracts, assistance, or benefits,
42 pursuant to 48 C.F.R. subpart 9.4, such person or entity, and any
43 substantially owned-affiliated entity, as defined by paragraph g of
44 subdivision 5 of section 220 of the labor law, shall be ineligible to
45 submit a bid on or be awarded any contract authorized by this act during
46 such period of exclusion. The department of labor shall notify the
47 person or entity immediately of such ineligibility and such person or
48 entity shall be afforded the opportunity to appeal to the department of
49 labor. A substantially owned-affiliated entity, shall be afforded an
50 opportunity to be heard consistent with the provisions of subparagraph 3
51 of paragraph b of subdivision 3 of section 220-b of the labor law.

52 5. Any contract entered into pursuant to this section shall include a
53 clause requiring that any professional services regulated by articles
54 145, 147 and 148 of the education law shall be performed and stamped and
55 sealed, where appropriate, by a professional licensed in accordance with
56 such articles.

1 6. The construction, installation, demolition, reconstruction, exca-
2 vation, rehabilitation, repair, and renovation of a project undertaken
3 by the authority pursuant to this section shall be deemed a "public
4 work" to be performed in accordance with the provisions of article 8 of
5 the labor law, as well as subject to sections 200, 240, 241 and 242 of
6 the labor law and enforcement of prevailing wage requirements by the
7 department of labor.

8 7. A project labor agreement shall be included in the request for
9 proposals for the project, provided that, based upon a study done by or
10 for the authority, the authority determines that its interest in obtain-
11 ing the best work at the lowest possible price, preventing favoritism,
12 fraud and corruption, and other considerations such as the impact of
13 delay, the possibility of cost savings advantages, and any local history
14 of labor unrest, are best met by requiring a project labor agreement.
15 The authority shall conduct such a study and the project labor agreement
16 shall be performed consistent with the provisions of section 222 of the
17 labor law. If a project labor agreement is not performed on the project
18 (i) the authority shall not utilize a design-build contract for such
19 project; (ii) and section 1949-d of the public authorities law shall
20 apply to such project.

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

27 9. The project undertaken by the authority pursuant to this section
28 shall be subject to the requirements of article 8 of the environmental
29 conservation law, and, where applicable, the requirements of the
30 National Environmental Policy Act.

31 10. If otherwise applicable, a project undertaken by the authority
32 pursuant to this section shall be governed by the public authorities law
33 and sections 139-d, 139-j, and 139-k of the state finance law.

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

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

42 13. (a) Notwithstanding any provision of law to the contrary, all
43 rights or benefits, including terms and conditions of employment, and
44 protection of civil service and collective bargaining status of all
45 employees of the authority shall be preserved and protected.

46 (b) Nothing in this section shall result in the: (i) displacement of
47 any currently employed worker or loss of position (including partial
48 displacement such as a reduction in the hours of non-overtime work,
49 wages or employment benefits), or result in the impairment of existing
50 collective bargaining agreements; or (ii) transfer of existing duties
51 and functions related to maintenance and operations currently performed
52 by existing employees of the authority to a contracting entity.

53 (c) Employees of the authority using design-build contracts serving in
54 positions in newly created titles shall be assigned to the appropriate
55 bargaining unit. Nothing contained in this act shall be construed to
56 affect: (i) the existing rights of employees of such entities pursuant

1 to an existing collective bargaining agreement; (ii) the existing
2 representational relationships among employee organizations representing
3 employees of such entities; or (iii) the bargaining relationships
4 between such entities and such employee organizations.

5 § 4. This act shall take effect immediately, provided, however, that
6 the provisions of section three of this act shall expire and be deemed
7 repealed two years after such date; provided, further, that if the Upper
8 Mohawk Valley memorial authority has issued requests for qualifications
9 for the project prior to such repeal, such project shall be permitted to
10 continue under this act notwithstanding such repeal.