STATE OF NEW YORK

8306--B

IN SENATE

April 30, 2018

Introduced by Sen. GRIFFO -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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:

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

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

ONEIDA COUNTY ARTS, CULTURE AND ENTERTAINMENT AUTHORITY

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

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

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

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

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

LBD13583-07-8

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

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

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

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

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

(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 fifteen-A of the executive law.

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

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

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

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

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

[~~7.~~] **8.** "Construction" or "Constructed" means the acquisition, erection, building, alteration, improvement, increase, enlargement, extension, reconstruction, renovation or rehabilitation of the auditorium **and any and all other properties, facilities and structures acquired and/or identified for acquisition**; the inspection and supervision thereof; and the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedure and other actions preliminary or incidental thereto and claims arising therefrom.

[~~8.~~] **9.** "Cost" as applied to the auditorium **and any and all other properties, facilities and structures acquired and/or identified for acquisition**, includes the cost of construction, the cost of the acquisition of all property, including real property and other property, both real, personal and mixed, improved and unimproved, the cost of the demolishing, removing or relocating any buildings or structures on lands

so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated, the cost of all machinery, apparatus and equipment, financing charges, interest prior to, during and after construction to the extent not paid or provided for from revenues or other sources, the cost of engineering and architectural surveys, plans and specifications, the cost of consultant and legal services, the cost of guarantee, bond insurance or other credit support devices and the cost of other expenses necessary or incidental to the construction of the auditorium and the acquisition of property [~~therefor~~] **thereof** and the financing of the construction and acquisition of property, including the amount authorized in the resolution of the authority providing for the issuance of bonds to be paid into any reserve or other special funds from the proceeds of such bonds and the financing of the placing of the auditorium **and any and all other properties, facilities and structures acquired and/or identified for acquisition,** in operation, including reimbursement to any municipality, state agency, the state, the United States government, or any other **government or** person for expenditures that would be costs of the auditorium **and any and all other properties, facilities and structures acquired and/or identified for acquisition,** hereunder had they been made directly by the authority.

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

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

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

[~~12.~~] **13.** "County legislature" means the county legislature of the county.

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

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

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

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

[~~16.~~] **18. "Procurement record" shall mean documentation of the decisions made and the approach taken in the procurement process.**

19. "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.

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

[~~17.~~] **21.** "Revenues" means all fees, charges and other income and receipts derived from the operation of the auditorium including, without

limiting the generality of the foregoing, investment proceeds and proceeds of insurance, condemnation, and sale or other disposition of assets, together with all federal, state or municipal aid, if any.

[~~18.~~] 22. "Service area" means the area comprising the entirety of the [~~city and of the towns of Deerfield, Kirkland, Marcy, New Hartford, Trenton and Whitestown, including all villages located entirely or partly therein~~] county.

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

[~~20.~~] 24. "State agency" means any state office, public benefit corporation, department, board, commission, bureau or division, or other agency or instrumentality of the state.

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

Oneida county arts, culture and entertainment authority, formerly the Upper Mohawk Valley memorial auditorium authority. 1. A public corporation, to be known as the [~~"Upper Mohawk Valley memorial auditorium authority"~~] "Oneida county arts, culture and entertainment authority" is hereby created for the public purposes and charged with the duties and having the powers provided in this title. The authority shall be a body corporate and politic constituting a public benefit corporation. The governing body of the authority shall consist of a total of [~~seven~~] nine members, [~~three~~] five of whom shall be appointed by the county executive, without confirmation of the county legislature, and four of whom shall be appointed by the county legislature, without county executive right to veto. The first members appointed by the county executive shall be appointed for the following terms of office: one for a term ending on December thirty-first of the first year following the year in which this title shall have become law, [~~one~~] two for a term ending on December thirty-first of the third year following the year in which this title shall have become law and [~~one~~] two for a term ending on December thirty-first of the fifth year following the year in which this title shall have become law. The first members appointed by the county legislature shall be appointed for the following terms of office: one for a term ending on December thirty-first of the first year following the year in which this title shall have become law, one for a term ending on December thirty-first of the third year following the year in which this title shall have become law, and two for a term ending on December thirty-first of the fifth year following the year in which this title shall have become law. Subsequent appointments of members shall be made for a term of five years ending in each case on December thirty-first of the last year of such term. All members shall continue to hold office until their successors are appointed and qualify. Vacancies shall be [~~filed~~] filled in the manner provided for original appointment. Vacancies, occurring otherwise than by expiration of term of office, shall be filled by appointment for the unexpired terms. Members may be removed from office by the party which appointed such member for inefficiency, neglect of duty or misconduct in office; provided, however, that such member shall be given a copy of the charges against him or her and an opportunity of being heard in person, or by counsel, in his or her defense upon not less than ten days notice. The members of the authority shall receive no compensation for their services, but shall be reimbursed for their actual and necessary expenses incurred in connection with the carrying out of the purposes of this title; provided, however, that no member shall be reimbursed for any expense exceeding one thousand dollars incurred with respect to any individual purpose unless the

governing body at a meeting duly called and held when a quorum of four members are present shall have authorized the incurrence of such expense by such member. The powers of the authority shall be vested in and be exercised by the governing body at a meeting duly called and held where a quorum of four members are present. No action shall be taken except pursuant to the favorable vote of at least four voting members. All votes must be made in person [~~at~~] **or through participation by way of videoconferencing during** a meeting and no vote may be made by proxy. The governing body may delegate to one or more of its members, officers, agents or employees such powers and duties as it may deem proper.

2. The officers of the authority shall consist of a chair, a vice-chair, a treasurer and a secretary, which secretary need not be a member of the authority. Such officers shall be appointed by the governing body and shall serve in such capacities at the pleasure of the governing body. In addition to the secretary, the governing body may appoint and at pleasure remove such additional officers and employees as it may determine necessary for the performance of the powers and duties of the authority and fix and determine their qualifications, duties and compensation, subject to the provisions of the civil service law. The governing body may also from time to time contract for expert professional services. The members, officers, executive director, if any, comptroller, if any, and counsel, if any, shall be an exempt position under any rule or classification of the civil service commission. The treasurer shall execute a bond, conditioned upon the faithful performance of the duties of his or her office, the amount and sufficiency of which shall be approved by the governing body and the premium [~~therefor~~] **thereof** shall be paid by the authority.

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

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

1. To sue and be sued.

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

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

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

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

[~~5.~~] **6. To assist with the planning, development, construction and financing of the cost of a multi-use sports complex located within the area in the city of Utica bounded on the north by the southerly boundary of Whitesboro Street, on the south by the northerly boundary of Oriskany Street West, on the east by the westerly boundary of Broadway and on the west by the westerly boundary of Charles Street, whether or not such project is to be owned or operated by the OCACE authority, which assistance may include loans to any appropriate entity.**

7. To acquire**, without limitation,** by purchase, gift, grant, transfer, contract or lease or by condemnation pursuant to the eminent domain procedure law, lease as lessee, hold, and use any property, real, personal or mixed or any interest therein constituting or for use in connection with the [~~auditorium~~] **authority**, as the authority may deem necessary, convenient or desirable to carry out the purpose of this title and, subject to any limitations in any agreement entered into

pursuant to this title, to sell, lease as lessor, transfer or otherwise dispose of any such property or interest therein. In connection with the acquisition of any such property, the authority may assume any obligations of the owner of such property and, to the extent required by the terms of any indentures or other instruments under which such obligations were issued, the authority may assume and agree to perform covenants and observe the restrictions contained in such instruments; and furthermore the owner of any property which the authority is authorized to acquire is hereby authorized to sell or otherwise transfer the same to the authority, whereupon the authority shall become charged with the performance of all public duties with respect to such property with which such owner was charged and such owner shall become discharged from the performance thereof.

[~~6.~~] 8. To develop, construct, operate, maintain and manage or contract for the operation, maintenance or management of, or for services to be performed in connection with [~~, the auditorium~~] any and all properties, facilities and structures owned, acquired and/or identified for acquisition; to allow the use of [~~the auditorium~~] any and all properties, facilities and structures owned, acquired and/or identified for acquisition for the conduct of any and all activities in furtherance of the authority as set forth herein, including but not limited to, tourism, housing, professional and amateur athletic events, entertainment, cultural and artistic events [~~and, or,~~] and/or civic events, conventions, and all activities related thereto; and to rent parts thereof and to grant concessions, all on such terms and conditions as the authority may determine.

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

[~~8.~~] 10. To appoint such officers and employees as are required for the performance of its duties, to fix and determine their qualifications, duties and compensation, and to retain or employ counsel, auditors, engineers and private consultants on a contract basis or otherwise for rendering professional or technical services and advice.

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

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

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

[~~12.~~] 14. To make and amend by-laws for its organization and management and regulation of its affairs and rules and regulations governing the exercise of its powers and the fulfillment of its purposes under this title. A copy of such rules, regulations and by-laws, and all

amendments thereto, duly certified by the secretary of the authority shall be filed in the office of the county clerk.

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

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

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

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

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

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

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

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

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

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

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

§ 1944. Appropriations for purposes of the authority; transfer of property to the authority; acquisition of property by municipality for authority; contracts with municipality. 1. In addition to any powers

granted to it by law, any municipality may, from time to time, appropriate by resolution sums of money for purposes of the authority to defray [~~auditorium costs or~~] any [~~other~~] costs and expenses of the authority or to pay amounts payable or anticipated to be payable to the authority pursuant to any agreement authorized by this title. Subject to the rights of bondholders, such municipality may determine if the moneys so appropriated shall be subject to repayment by the authority and, in such event, the manner and time or times for such repayment.

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

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

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

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

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

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

1. The authority shall have the power and is hereby authorized from time to time to issue bonds, notes or other obligations to pay the costs [~~of the auditorium or~~] for any [~~other~~] corporate purpose, including the establishment of reserves to secure the bonds, the payment of principal

of, premium, if any, and interest on the bonds and the payment of incidental expenses in connection therewith. [~~The aggregate principal amount of such bonds, notes or other obligations shall not exceed two million dollars ($2,000,000), excluding bonds, notes or other obligations issued to refund or otherwise repay bonds, notes or other obligations theretofore issued for such purposes; provided, however, that upon any such refunding or repayment the total aggregate principal amount of outstanding bonds, notes or other obligations may be greater than two million dollars ($2,000,000) only if the present value of the aggregate debt service of the refunding or repayment bonds, notes or other obligations to be issued shall not exceed the present value of the aggregate debt service of the bonds, notes or other obligations so to be refunded or repaid. For purposes hereof, the present values of the aggregate debt service of the refunding or repayment bonds, notes or other obligations and of the aggregate debt service of the bonds, notes or other obligations so refunded or repaid, shall be calculated by utilizing the effective interest rate of the refunding or repayment bonds, notes or other obligations, which shall be that rate arrived at by doubling the semi-annual interest rate (compounded semi-annually) necessary to discount the debt service payments on the refunding or repayment bonds, notes or other obligations from the payment dates thereof to the date of issue of the refunding or repayment bonds, notes or other obligations and to the price bid including estimated accrued interest or proceeds received by the authority including estimated accrued interest from the sale thereof.~~] The authority shall have power and is hereby authorized to enter into such agreements and perform such acts as may be required under any applicable federal legislation to secure a federal guarantee of any bonds.

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

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

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

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

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

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

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

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

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

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

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

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

(l) limitations on the power of the authority to sell or otherwise dispose of [~~the auditorium~~] **any of its properties, facilities, structures or other assets** or any part thereof;

(m) limitations on the amount of revenues and other monies to be expended for operating, administrative or other expenses of the authority;

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

(o) any other matters of like or different character which in any way affect the security or protection of the bonds or the rights and remedies of bondholders.

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

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

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

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

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

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

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

~~The authority may, in its discretion, assign contracts for supervision and coordination to the successful bidder for any subdivision of work for which the authority receives bids. The authority shall not award any construction contract except to the lowest bidder who, in its opinion, is qualified to perform the work required and who is responsible and reliable. The authority may, however, reject any or all bids or waive any informality in a bid if it believes that the public interest will be promoted thereby. The authority may reject any bid if, in its judgment, the business and technical organization, plant, resources, financial standing, or experience of the bidder justifies such rejection in view of the work to be performed.~~] 1. Notwithstanding section one hundred three of the general municipal law or the provisions of any other law, in conformity with the requirements of this section, and only when a project labor agreement is performed, the authority may utilize the alternative delivery method referred to as a design-build contract for a multi-use sports complex located within the area in the city of Utica bounded on the north by the southerly boundary of Whitesboro Street, on the south by the northerly boundary of Oriskany Street West, on the east by the westerly boundary of Broadway and on the west by the westerly boundary of Charles Street. The authority shall ensure that its procurement record reflects the design-build contract process authorized by this section.

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

(a) The generation of a list of entities that have demonstrated the general capability to perform design-build contracts. Such list shall consist of a specified number of entities, as determined by the authority, and shall be generated based upon the authority's review of responses to publicly advertised requests for qualifications. The authority's request for qualifications shall include a general description of the work to be performed, 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: (i) 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 one hundred forty-five, one hundred forty-seven and one hundred forty-eight of the education law; (ii) past record of compliance with the labor law including prevailing wage requirements under state and federal law; (iii) the past record of compliance with existing labor standards and maintaining harmonious labor relations; (iv) 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; (v) the prospective bidder's ability to undertake the particular type and complexity of work; (vi) the financial capability, responsibility and reliability of the prospective bidder for such type and complexity of work; (vii) 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 subcontractor relationships; (viii) 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 USC 3144 and 29 CFR 5.12; (ix) any other such qualifications the authority deems appropriate which may include, but shall not be limited to, project understanding, financial capability and record of past performance. The authority shall evaluate and rate all entities responding to the request for qualifications. Based upon such ratings, the authority shall list the entities that shall receive a request for proposals in accordance with subdivision three of this section. To the extent consistent with applicable federal law, the authority shall consider, when awarding any contract pursuant to this section, the participation of firms certified pursuant to article fifteen-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 small business concerns identified pursuant to subdivision (b) of section one hundred thirty-nine-g of the state finance law;

(b) The selection of the proposal which is the best value to the authority. The authority shall issue a request for proposals for the work to be performed to the entities listed pursuant to paragraph (a) of this subdivision. 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 paragraph (a) of this subdivision unless otherwise approved by the authority. The request for proposals for a project shall set forth the project's scope of work, and other requirements, as determined by the authority. 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 authority which may include, but shall not be limited to, the proposal's project implementation, the 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, offers the best value to the authority, as determined by the authority. Nothing

in this act shall be construed to prohibit the authority from negotiating final contract terms and conditions including cost.

3. Notwithstanding the 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 USC 3144 and 29 CFR 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 of, shall be ineligible to submit a bid on or be awarded any contract authorized by this section while the name of the person or entity is published in the list of debarred contractors pursuant to 40 USC 3144. The department of labor shall notify the person or entity immediately of such ineligibility and such person or entity shall be afforded the opportunity to appeal to the department of labor.

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

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

6. A project labor agreement shall be included in the request for proposals for a project, provided that, based upon a study done by or for the authority, the authority 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 authority shall conduct such a study and the project labor agreement shall be performed consistent with the provisions of section two hundred twenty-two of the labor law. If a project labor agreement is not performed on a project the authority shall not utilize a design-build contract for such project and sections one hundred one and one hundred three of the general municipal law shall apply to such project.

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

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

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

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

11. Nothing contained in this section shall limit the right or obligation of the authority 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 authority, or to award contracts as otherwise provided by law.

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

§ 1949-i. Employees of the Oneida county arts, culture and entertainment authority. 1. Notwithstanding any provision of law to the contrary, all rights or benefits, including terms and conditions of employment, and protection of civil service and collective bargaining status of all employees of the Oneida county arts, culture and entertainment authority shall be preserved and protected.

2. Nothing in this title shall result in the: (a) displacement of any currently employed worker or loss of position (including partial displacement such as a reduction in the hours of non-overtime work, wages or employment benefits), or result in the impairment of existing collective bargaining agreements; or (b) transfer of existing duties and functions related to maintenance and operations currently performed by existing employees of the Oneida county arts, culture and entertainment authority to a contracting entity.

3. Employees of the Oneida county arts, culture and entertainment authority using design-build contracts serving in positions in newly created titles shall be assigned to the appropriate bargaining unit. Nothing contained in this title shall be construed to affect: (a) the existing rights of employees of such entities pursuant to an existing collective bargaining agreement, (b) the existing representational relationships among employee organizations representing employees of such entities, or (c) the bargaining relationships between such entities and such employee organizations.

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