

STATE OF NEW YORK

9090

IN SENATE

June 15, 2018

Introduced by Sen. GRIFFO -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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:

Section 1. Subdivision 1 of section 1945 of the public authorities law, as added by chapter 130 of the laws of 1996, is 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]~~ fifty million dollars ~~[\$2,000,000]~~ (\$50,000,000), 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]~~ fifty million dollars ~~[\$2,000,000]~~ (\$50,000,000) 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

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

LBD13583-19-8

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

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

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

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

18 § 3. 1. For the purposes of this section, the following terms shall
19 have the following meanings:

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

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

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

32 (ii) the timeliness of the contractor's performance on previous
33 projects;

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

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

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

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

40 (vii) the contractor's technical capacities;

41 (viii) the individual qualifications of the contractor's key person-
42 nel;

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

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

48 Such basis shall reflect, wherever possible, objective and quantifi-
49 able analysis.

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

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

(e) "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.

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

2. Notwithstanding any inconsistent provisions of section 1949-d of the public authorities 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 the project. The authority shall ensure that its procurement record reflects the design-build contract process authorized by this section.

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

(a) Step one. Generation of a list of entities that have demonstrated the general capability to perform a design-build contract for the project. Such list shall consist of a specified number of entities, as determined by the authority, and shall be generated based upon the authority's review of responses to publicly advertised requests for qualifications for the project. The authority's request for qualifications for the project shall include a general description of the project, the maximum number of entities to be included on the list, and the selection criteria to be used in generating the list. Such selection criteria shall include: (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 145, 147 and 148 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 3 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 substantially owned-affiliated entity, as defined by paragraph g of subdivision 5 of section 220 of the labor law, is listed by the federal government as excluded from receiving federal contracts and certain subcontracts, assistance, or benefits pursuant to 48 C.F.R. subpart 9.4; and (ix) such other 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 paragraph (b) of this subdivi-

1 sion. To the extent consistent with applicable federal law, the authori-
2 ty shall consider, when awarding any contract pursuant to this section,
3 the participation of: (1) firms certified pursuant to article 15-A of
4 the executive law as minority- or women-owned businesses and the ability
5 of other businesses under consideration to work with minority- and
6 women-owned businesses so as to promote and assist participation by such
7 businesses; and (2) small business concerns identified pursuant to
8 subdivision (b) of section 139-g of the state finance law.

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

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

46 5. Any contract entered into pursuant to this section shall include a
47 clause requiring that any professional services regulated by articles
48 145, 147 and 148 of the education law shall be performed and stamped and
49 sealed, where appropriate, by a professional licensed in accordance with
50 such articles.

51 6. The construction, installation, demolition, reconstruction, exca-
52 vation, rehabilitation, repair, and renovation of a project undertaken
53 by the authority pursuant to this section shall be deemed a "public
54 work" to be performed in accordance with the provisions of article 8 of
55 the labor law, as well as subject to sections 200, 240, 241 and 242 of

1 the labor law and enforcement of prevailing wage requirements by the
2 department of labor.

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

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

22 9. The project undertaken by the authority pursuant to this section
23 shall be subject to the requirements of article 8 of the environmental
24 conservation law, and, where applicable, the requirements of the
25 National Environmental Policy Act.

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

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

32 12. Nothing contained in this section shall limit the right or obli-
33 gation of the authority to comply with the provisions of any existing
34 contract, including any existing contract with or for the benefit of the
35 holders of the obligations of the authority, or to award contracts as
36 otherwise provided by law.

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

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

48 (c) Employees of the authority using design-build contracts serving in
49 positions in newly created titles shall be assigned to the appropriate
50 bargaining unit. Nothing contained in this act shall be construed to
51 affect: (i) the existing rights of employees of such entities pursuant
52 to an existing collective bargaining agreement; (ii) the existing
53 representational relationships among employee organizations representing
54 employees of such entities; or (iii) the bargaining relationships
55 between such entities and such employee organizations.

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