

STATE OF NEW YORK

8306

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

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

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

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

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

5 ONEIDA COUNTY ARTS, CULTURE AND ENTERTAINMENT AUTHORITY

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

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

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

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

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

25 § 1941. Definitions. As used or referred to in this title, unless a
26 different meaning clearly appears from the context:

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

LBD13583-02-8

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

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

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

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

12 (b) the timeliness of the contractor's performance on previous
13 projects;

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

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

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

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

20 (g) the contractor's technical capacities;

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

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

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

27 Such basis shall reflect, wherever possible, objective and quantifi-
28 able analysis.

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

34 ~~[4-]~~ 5. "City" means the city of Utica, Oneida county.

35 ~~[5-]~~ 6. "Civil service commission" means the civil service commission
36 of the county of Oneida.

37 ~~[6-]~~ 7. "Comptroller" means the comptroller of the state.

38 ~~[7-]~~ 8. "Construction" or "Constructed" means the acquisition,
39 erection, building, alteration, improvement, increase, enlargement,
40 extension, reconstruction, renovation or rehabilitation of the auditori-
41 um and any and all other properties, facilities and structures acquired
42 and/or identified for acquisition; the inspection and supervision there-
43 of; and the engineering, architectural, legal, fiscal and economic
44 investigations and studies, surveys, designs, plans, working drawings,
45 specifications, procedure and other actions preliminary or incidental
46 thereto and claims arising therefrom.

47 ~~[8-]~~ 9. "Cost" as applied to the auditorium and any and all other
48 properties, facilities and structures acquired and/or identified for
49 acquisition, includes the cost of construction, the cost of the acquisi-
50 tion of all property, including real property and other property, both
51 real, personal and mixed, improved and unimproved, the cost of the
52 demolishing, removing or relocating any buildings or structures on lands
53 so acquired, including the cost of acquiring any lands to which such
54 buildings or structures may be moved or relocated, the cost of all
55 machinery, apparatus and equipment, financing charges, interest prior
56 to, during and after construction to the extent not paid or provided for

1 from revenues or other sources, the cost of engineering and architec-
2 tural surveys, plans and specifications, the cost of consultant and
3 legal services, the cost of guarantee, bond insurance or other credit
4 support devices and the cost of other expenses necessary or incidental
5 to the construction of the auditorium and the acquisition of property
6 [~~therefor~~] thereof and the financing of the construction and acquisition
7 of property, including the amount authorized in the resolution of the
8 authority providing for the issuance of bonds to be paid into any
9 reserve or other special funds from the proceeds of such bonds and the
10 financing of the placing of the auditorium and any and all other proper-
11 ties, facilities and structures acquired and/or identified for acquisi-
12 tion, in operation, including reimbursement to any municipality, state
13 agency, the state, the United States government, or any other government
14 or person for expenditures that would be costs of the auditorium and any
15 and all other properties, facilities and structures acquired and/or
16 identified for acquisition, hereunder had they been made directly by the
17 authority.

18 [~~9-~~] 10. "Council" means the common council of the city.

19 [~~10-~~] 11. "County" means the county of Oneida, New York.

20 [~~11-~~] 12. "County executive" means the county executive of the county.

21 [~~12-~~] 13. "County legislature" means the county legislature of the
22 county.

23 [~~13-~~] 14. "Design-build contract" means, in conformity with the
24 requirements of this act, a contract for the design and construction of
25 any project with a single entity, which may be a team comprised of sepa-
26 rate entities.

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

29 [~~14-~~] 16. "Municipality" means the county and any city, town, village
30 or school district located within or partly within the service area.

31 [~~15-~~] 17. "Person" means any natural person, firm, partnership, asso-
32 ciation, joint venture or corporation, exclusive of a public corporation
33 as defined pursuant to article two-A of the general construction law.

34 [~~16-~~] 18. "Procurement record" shall mean documentation of the deci-
35 sions made and the approach taken in the procurement process.

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

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

51 [~~17-~~] 21. "Revenues" means all fees, charges and other income and
52 receipts derived from the operation of the auditorium including, without
53 limiting the generality of the foregoing, investment proceeds and
54 proceeds of insurance, condemnation, and sale or other disposition of
55 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 [~~filled~~] 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, controller, 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 any project located in Oneida county, 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;

1 and furthermore the owner of any property which the authority is author-
2 ized to acquire is hereby authorized to sell or otherwise transfer the
3 same to the authority, whereupon the authority shall become charged with
4 the performance of all public duties with respect to such property with
5 which such owner was charged and such owner shall become discharged from
6 the performance thereof.

7 ~~[6-]~~ 8. To develop, construct, operate, maintain and manage or
8 contract for the operation, maintenance or management of, or for
9 services to be performed in connection with ~~[, the auditorium]~~ any and
10 all properties, facilities and structures owned, acquired and/or identi-
11 fied for acquisition; to allow the use of ~~[the auditorium]~~ any and all
12 properties, facilities and structures owned, acquired and/or identified
13 for acquisition for the conduct of any and all activities in furtherance
14 of the authority as set forth herein, including but not limited to,
15 tourism, housing, professional and amateur athletic events, enter-
16 tainment, cultural and artistic events ~~[and, or,]~~ and/or civic events,
17 conventions, and all activities related thereto; and to rent parts ther-
18 eof and to grant concessions, all on such terms and conditions as the
19 authority may determine.

20 ~~[7-]~~ 9. To apply to the appropriate agencies and officials of the
21 federal, state and local governments for such licenses, permits or
22 approvals of its plans as it may deem necessary or advisable, and upon
23 such terms and conditions as it may deem appropriate, and to accept, in
24 its discretion, such licenses, permits or approvals as may be tendered
25 to it by such agencies and officials.

26 ~~[8-]~~ 10. To appoint such officers and employees as are required for
27 the performance of its duties, to fix and determine their qualifica-
28 tions, duties and compensation, and to retain or employ counsel, audi-
29 tors, engineers and private consultants on a contract basis or otherwise
30 for rendering professional or technical services and advice.

31 ~~[9-]~~ 11. To make plans and studies necessary, convenient or desirable
32 for the effectuation of the purposes and the powers of the authority and
33 to prepare recommendations in regard thereto.

34 ~~[10-]~~ 12. To enter upon such lands or premises as in the judgment of
35 the authority shall be necessary for the purpose of making surveys,
36 ~~[sounding]~~ soundings, ~~[boring]~~ borings and examinations to accomplish
37 any purpose authorized by this title, the authority being liable only
38 for actual damage done.

39 ~~[11-]~~ 13. To apply for and to accept any gifts or grants or loans of
40 funds or property or financial or other aid in any form from the federal
41 government or any agency or instrumentality thereof, or from the state
42 or any agency or instrumentality thereof or from any other source, for
43 any or all of the purposes specified in this title, and to comply,
44 subject to the provisions of this title, with the terms and conditions
45 thereof.

46 ~~[12-]~~ 14. To make and amend by-laws for its organization and manage-
47 ment and regulation of its affairs and rules and regulations governing
48 the exercise of its powers and the fulfillment of its purposes under
49 this title. A copy of such rules, regulations and by-laws, and all
50 amendments thereto, duly certified by the secretary of the authority
51 shall be filed in the office of the county clerk.

52 ~~[13-]~~ 15. To enter into cooperative agreements with other authorities,
53 with municipalities, individuals, or corporations, within or without the
54 service area, for any lawful purposes necessary or desirable to effect
55 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

1 appropriated shall be subject to repayment by the authority and, in such
2 event, the manner and time or times for such repayment.

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

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

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

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

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

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

47 1. The authority shall have the power and is hereby authorized from
48 time to time to issue bonds, notes or other obligations to pay the costs
49 [~~of the auditorium or~~] for any [~~other~~] corporate purpose, including the
50 establishment of reserves to secure the bonds, the payment of principal
51 of, premium, if any, and interest on the bonds and the payment of inci-
52 dental expenses in connection therewith. [~~The aggregate principal amount~~
53 ~~of such bonds, notes or other obligations shall not exceed two million~~
54 ~~dollars (\$2,000,000), excluding bonds, notes or other obligations issued~~
55 ~~to refund or otherwise repay bonds, notes or other obligations thereto-~~
56 ~~fore 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;

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

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

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

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

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

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

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

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

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

34 § 9. Section 1947 of the public authorities law, as added by chapter
35 130 of the laws of 1996, is amended to read as follows:

36 § 1947. State or municipality not liable on authority bonds. Neither
37 the state, the county nor any other municipality shall be liable on the
38 bonds of the authority and such bonds shall not be a debt of either the
39 state, the county or any other municipality, and each such bond shall
40 contain, on the face thereof, a statement to such effect.

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

43 § 1949-a. Agreement with state. The state does hereby pledge to and
44 agree with the holders of any bonds issued by the authority pursuant to
45 this title and with those persons or public corporations who may enter
46 into contracts with the authority pursuant to the provisions of this
47 title that the state will not alter, limit or impair the rights hereby
48 vested in the authority to purchase, construct, own and operate, main-
49 tain, repair, improve, reconstruct, renovate, rehabilitate, enlarge,
50 increase and extend, or dispose of [~~the auditorium~~] any of the authori-
51 ty's properties, facilities, structures, programs or other assets, or
52 any part or parts thereof for which bonds of the authority shall have
53 been issued, to establish and collect rates, rents, fees and other
54 charges referred to in this title, to fulfill the terms of any contracts
55 or agreements made with or for the benefit of the holders of bonds or
56 with any person or public corporation with reference to such project or

1 part thereof, or in any way to impair the rights and remedies of the
2 holders of bonds, until the bonds, together with interest thereon,
3 including interest on any unpaid installments of interest, and all costs
4 and expenses in connection with any action or proceeding by or on behalf
5 of the holders of bonds, are fully met and discharged and such contracts
6 are fully performed on the part of the authority. The authority is
7 authorized to include this pledge and agreement of the state in any
8 agreement with the holders of bonds.

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

11 § 1949-d. Contracts. [~~All contracts for construction shall be let by~~
12 ~~the authority in conformity with the applicable provisions of section~~
13 ~~one hundred thirty-five of the state finance law and shall be let in~~
14 ~~accordance with the provisions of state law pertaining to prevailing~~
15 ~~wages, labor standards and working hours.~~

16 ~~The authority may, in its discretion, assign contracts for supervision~~
17 ~~and coordination to the successful bidder for any subdivision of work~~
18 ~~for which the authority receives bids. The authority shall not award any~~
19 ~~construction contract except to the lowest bidder who, in its opinion,~~
20 ~~is qualified to perform the work required and who is responsible and~~
21 ~~reliable. The authority may, however, reject any or all bids or waive~~
22 ~~any informality in a bid if it believes that the public interest will be~~
23 ~~promoted thereby. The authority may reject any bid if, in its judgment,~~
24 ~~the business and technical organization, plant, resources, financial~~
25 ~~standing, or experience of the bidder justifies such rejection in view~~
26 ~~of the work to be performed.]~~

27 1. Notwithstanding section one hundred
28 three of the general municipal law or the provisions of any other law,
29 in conformity with the requirements of this section, and only when a
30 project labor agreement is performed, the authority may utilize the
31 alternative delivery method referred to as a design-build contract. The
32 authority shall ensure that its procurement record reflects the design-
33 build contract process authorized by this section.

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

36 (a) The generation of a list of entities that have demonstrated the
37 general capability to perform design-build contracts. Such list shall
38 consist of a specified number of entities, as determined by the authori-
39 ty, and shall be generated based upon the authority's review of
40 responses to publicly advertised requests for qualifications. The
41 authority's request for qualifications shall include a general
42 description of the work to be performed, the maximum number of entities
43 to be included on the list and the selection criteria to be used in
44 generating the list. Such selection criteria shall include: (i) the
45 qualifications and experience of the design and construction team,
46 organization, demonstrated responsibility, ability of the team or of a
47 member or members of the team to comply with applicable requirements,
48 including the provisions of articles one hundred forty-five, one hundred
49 forty-seven and one hundred forty-eight of the education law; (ii) past
50 record of compliance with the labor law including prevailing wage
51 requirements under state and federal law; (iii) the past record of
52 compliance with existing labor standards and maintaining harmonious
53 labor relations; (iv) the record of protecting the health and safety of
54 workers on public works projects and job sites as demonstrated by the
55 experience modification rate for each of the last three years; (v) the
56 prospective bidder's ability to undertake the particular type and
complexity of work; (vi) the financial capability, responsibility and

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

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

47 3. Notwithstanding the provisions of this section, when any person or
48 entity is debarred for having disregarded obligations to employees under
49 the Davis-Bacon Act pursuant to 40 USC 3144 and 29 CFR 5.12, such person
50 or entity, and any firm, corporation, partnership or association in
51 which the person or entity owns or controls at least ten per centum of,
52 shall be ineligible to submit a bid on or be awarded any contract
53 authorized by this section while the name of the person or entity is
54 published in the list of debarred contractors pursuant to 40 USC 3144.
55 The department of labor shall notify the person or entity immediately of

1 such ineligibility and such person or entity shall be afforded the
2 opportunity to appeal to the department of labor.

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

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

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

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

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

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

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

45 11. Nothing contained in this section shall limit the right or obli-
46 gation of the authority to comply with the provisions of any existing
47 contract, including any existing contract with or for the benefit of the
48 holders of the obligations of the authority, or to award contracts as
49 otherwise provided by law.

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