STATE OF NEW YORK

1761--C

2021-2022 Regular Sessions

IN SENATE

January 15, 2021

Introduced by Sens. COONEY, BROUK -- read twice and ordered printed, and when printed to be committed to the Committee on Education -- committee discharged and said bill committed to the Committee on Cities 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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

AN ACT to amend chapter 416 of the laws of 2007, establishing the city of Rochester and the board of education of the city school district of the city of Rochester school facilities modernization program act, in relation to granting further authority to the RJSCB to modernize educational facilities in the city of Rochester; and to amend the education law, in relation to the computation of building aid

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

Section 1. Subdivisions (g) and (j) of section 2 of chapter 416 of the laws of 2007, establishing the city of Rochester and the board of education of the city school district of the city of Rochester school facilities modernization program act, as amended by chapter 533 of the laws of 2014, are amended to read as follows:

(g) "Project" shall mean work at an existing school building site that involves the design, reconstruction, or rehabilitation of an existing school building for its continued use as a school of the city school district, which may include an addition to existing school buildings for such continued use and which also may include (1) the construction or reconstruction of athletic fields, playgrounds, and other recreational facilities for such existing school buildings; and/or (2) the acquisi-

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

LBD05197-11-1

tion and installation of all equipment necessary and attendant to and for the use of such existing school [~~building~~] **buildings**, including but not limited to items located at sites not within a project that will allow the RJSCB to conduct district-wide technology improvements to benefit existing school buildings; and/or (3) the acquisition of additional real property by the city to facilitate the project.

(j) "Independent compliance officer" shall mean an independent firm hired by the RJSCB with an in-depth knowledge base and breadth of experience conducting minority and women-owned business enterprise (MWBE) and disadvantaged business enterprise (DBE) utilization compliance monitoring for public contracts within New York state, including school districts and auditing contractors and subcontractors in construction and reconstruction projects like those to be undertaken and contracted for by the RJSCB pursuant to this act. **Such firm shall develop and implement an MWBE/DBE outreach and utilization plan for the governance of all contracts to ensure compliance with all federal, state, and local laws, rules, and regulations.**

§ 2. Sections 4, 5, 6, 9, 10, 11 and 21 of chapter 416 of the laws of 2007, establishing the city of Rochester and the board of education of the city school district of the city of Rochester school facilities modernization program act, as amended by chapter 533 of the laws of 2014, are amended to read as follows:

§ 4. Project authorization. No more than: (a) 13 projects, up to a total cost of three hundred twenty-five million dollars in phase one, and (b) 26 projects, up to a total cost of four hundred thirty-five million dollars in phase two, **and (c) 12 projects, up to a total cost of four hundred seventy-five million dollars in phase three** shall be authorized and undertaken pursuant to this act, unless otherwise authorized by law.

§ 5. Comprehensive school facilities modernization plan. The superintendent shall submit to the RJSCB a comprehensive draft plan recommending and outlining the projects for phase two **and phase three** it proposes to be undertaken pursuant to this act. The RJSCB shall consider the plan in developing a comprehensive school facilities modernization plan recommending and outlining the projects it proposes to be potentially undertaken pursuant to this act. Such plan shall include: (a) an estimate of total costs to be financed, proposed financing plan, proposed method of financing, terms and conditions of the financing, estimated financing costs, and, if city general obligation bonds or notes are not proposed as the method of financing, a comparison of financing costs between such bonds or notes and the proposed method of financing. Payment of debt service on bonds, notes or other obligations issued to secure financing of not more than $325,000,000 in phase one [~~and~~], $435,000,000 in phase two**, and $475,000,000 in phase three** for projects undertaken pursuant to this act shall not be considered when determining the "city amount" required pursuant to subparagraph (ii) of paragraph a of subdivision 5-b of section 2576 of the education law; provided, however, that this provision shall not otherwise affect the determination of said "city amount" with respect to funding unrelated to projects undertaken pursuant to this act. The plan should also address what specific options would be used to ensure that sufficient resources exist to cover the local share of any such project cost on an annual basis; (b) information concerning the potential persons to be involved in the financing and such person's role and responsibilities; (c) estimates on the design, reconstruction and rehabilitation costs by project, any administrative costs for potential projects, and an outline of the

timeframe expected for completion of each potential project; (d) a detailed description of the request for proposals process and an outline of the criteria to be used for selection of the program manager, the independent compliance officer and all contractors; provided that the RJSCB may extend the contracts of the providers of professional services for phase one **or two** upon the adoption of findings that doing so would be in the public interest; the contracts of the program manager and the independent compliance officer for phase two **will be rebid and the contracts of the program manager and the independent compliance officer for phase three** will be rebid, and provided further that the program manager and the independent compliance officer and any new or different providers of professional services shall be engaged in compliance with the provisions of section eight of this act; (e) any proposed amendments to the city school district's five-year capital facilities plan submitted in accordance with subdivision 6 of section 3602 of the education law and the regulations of the commissioner; and (f) a [~~preliminary~~] diversity plan to develop diversity goals, including appropriate community input and public discussion, and develop strategies that would create and coordinate any efforts to ensure a more diverse workforce for the projects. The [~~preliminary~~] diversity plan should address accountability for attainment of the diversity goals, what forms of monitoring would be used, and how such information would be publicly communicated.

Prior to the development of the comprehensive school facilities modernization plan, the RJSCB and district shall hold as many public hearings as may be necessary to ensure sufficient public input and allow for significant public discussion on school building needs in such city, with at least one hearing to be held in each neighborhood potentially impacted by a proposed project.

All projects proposed in the comprehensive school facilities modernization plan shall be included by the city school district as a special section of the district's five-year capital facilities plan that is required pursuant to subdivision 6 of section 3602 of the education law and the regulations of the commissioner.

The RJSCB shall submit the components of such comprehensive plan outlined in subdivision (a) of this section to the comptroller, along with any other information requested by the comptroller, for his or her review and approval.

§ 6. Project selection. Notwithstanding any general, special or local law to the contrary and upon approval by the comptroller pursuant to section five of this act, the RJSCB may select projects to be undertaken pursuant to this act, as provided for in such approved comprehensive plan. After the RJSCB has selected a new project and plans and specifications for such project have been prepared and approved by the RJSCB, which are consistent with the approved comprehensive plan, the RJSCB shall deliver such plans and specifications to the superintendent of the city school district and the mayor of the city of Rochester for review to ensure that sufficient resources exist to pay the local share of any such project cost on an annual basis and that the plans meet program needs, and upon the approval of the superintendent, to the commissioner for his or her approval. After approval by the superintendent and commissioner, the plans and specifications shall be returned to the RJSCB. All such specifications shall detail the number of students the completed project is intended to serve, the site description, the types of subjects to be taught, the types of activities for school, recreational, social, safety, or other purposes intended to be incorporated in the school building or on its site and such other information as the

RJSCB and the commissioner shall deem necessary or advisable. The district program manager shall establish reasonable guidelines or limits on incidental costs to assure that to the greatest extent possible such costs for each project do not exceed the state's maximum incidental cost allowance, in order to maximize efficient use of state building aid.

Notwithstanding any other provision of law to the contrary, the RJSCB shall submit estimated project costs for the projects authorized pursuant to [~~subdivision~~] subdivisions (b) and (c) of section four of this act on a form provided by the commissioner after the completion of schematic plans and specifications for review by the commissioner. [~~If~~] For projects authorized pursuant to subdivision (b) of section four of this act, if the total project costs associated with such projects exceed the sum of the estimated individual approved cost allowance of each building project by more than the lesser of 43 million dollars or ten percent of the approved costs authorized pursuant to subdivision (b) of section four of this act, and the city school district has not otherwise demonstrated to the satisfaction of the state education department the availability of additional local shares for such excess costs, then the RJSCB shall not proceed with the preparation of final plans and specifications for such projects until the projects have been redesigned or value-engineered to reduce estimated project costs so as not to exceed the above cost limits. For projects authorized pursuant to subdivision (c) of section four of this act, if the total estimated building aid payable for projects authorized pursuant to subdivision (c) of section four of this act, based upon the sum of the estimated individual approved cost allowance of each building, is less than ninety-five percent of the total project costs, the RJSCB shall not proceed with preparation of final plans and specifications for such projects until the projects have been redesigned or value engineered to reduce estimated costs so as not to exceed this cost limit.

Notwithstanding any other provision of law to the contrary, the RJSCB shall submit estimated project costs for the projects authorized pursuant to subdivision (c) of section four of this act on a form provided by the commissioner after the completion of twenty-five percent of the final plans and specifications for review by the commissioner. If the total estimated building aid payable for projects authorized pursuant to subdivision (c) of section four of this act, based upon the sum of the estimated individual approved cost allowance of each building, is less than ninety-five percent of the total project costs, the RJSCB shall not proceed with the completion of the remaining seventy-five percent of the plans and specifications for such projects until the projects have been redesigned or value-engineered to reduce estimated costs so as not to exceed this cost limit.

Notwithstanding any other provision of law to the contrary, the RJSCB shall submit estimated project costs for the projects authorized pursuant to [~~subdivision~~] subdivisions (b) and (c) of section four of this act on a form provided by the commissioner after the completion of fifty percent of the final plans and specifications for review by the commissioner. [~~If~~] For projects authorized pursuant to subdivision (b) of section four of this act, if the total project costs associated with such projects exceed the sum of the estimated individual approved cost allowance of each building project by more than the lesser of 43 million dollars or ten percent of the approved costs authorized pursuant to subdivision (b) of section four of this act, and the city school district has not otherwise demonstrated to the satisfaction of the state education department the availability of additional local share for such

excess costs, then the RJSCB shall not proceed with the completion of the remaining fifty percent of the plans and specifications for such projects until the projects have been redesigned or value-engineered to reduce estimated project costs so as not to exceed the above cost limits. **For projects authorized pursuant to subdivision (c) of section four of this act, if the total estimated building aid payable for projects authorized pursuant to subdivision (c) of section four of this act, based upon the sum of the estimated individual approved cost allowance of each building, is less than ninety-five percent of the total project costs, the RJSCB shall not proceed with the completion of the remaining fifty percent of the plans and specifications for such projects until the projects have been redesigned or value-engineered to reduce estimated project costs so as not to exceed this cost limit.**

Notwithstanding any other provision of law to the contrary, the RJSCB shall submit estimated project costs for the projects authorized pursuant to subdivision (c) of section four of this act on a form provided by the commissioner after the completion of seventy-five percent of the final plans and specifications for review by the commissioner. If the total estimated building aid payable for projects authorized pursuant to subdivision (c) of section four of this act, based upon the sum of the estimated individual approved cost allowance of each building, is less than ninety-five percent of the total project costs, the RJSCB shall not proceed with the completion of the remaining twenty-five percent of the plans and specifications for such projects until the projects have been redesigned or value-engineered to reduce estimated project costs so as not to exceed this cost limit.

§ 9. Contracts generally. Notwithstanding the provisions of any general, special, or local law or judicial decision to the contrary:

(a) The RJSCB may require a contractor, as a condition to being awarded a contract, subcontract, lease, grant, bond, covenant or other agreement for a project to enter into a project labor agreement for the work involved with such project when such requirement is made part of the bid specifications for the project and when the RJSCB determines that the record supporting the decision to enter into such an agreement establishes that it is justified by the interests underlying the competitive bidding laws. In addition, the RJSCB may revise and extend the requirements of the project labor agreement entered into for phase one projects to the projects authorized in phase two **and three**, contingent upon the completion of a supplemental project labor agreement benefit analysis.

(b) Any contract, subcontract, lease, grant, bond, covenant or other agreement for projects undertaken pursuant to this act shall not be subject to section 101 of the general municipal law when the RJSCB has chosen to require a project labor agreement, pursuant to subdivision (a) of this section. This exemption shall only apply to the projects undertaken pursuant to this act and shall not apply to projects undertaken by any other school district or municipality unless otherwise specifically authorized.

(c) Whenever the RJSCB enters in a contract, subcontract, lease, grant, bond, covenant or other agreement for the construction, reconstruction, demolition, excavation, rehabilitation, repair, renovation, alteration, or improvement for a project undertaken pursuant to this act, it shall be deemed to be a public works project for the purposes of article 8 of the labor law, and all the provisions of article 8 of the labor law shall be applicable to all the work involved with such project

including the enforcement of prevailing wage requirements by the state department of labor.

(d) Every contract entered into by resolution of the RJSCB for construction or reconstruction of a project pursuant to this act shall contain a provision that the design of such project shall be subject to the review and approval of the city school district and that the design and construction standards of such project shall be subject to the review and approval of the commissioner. In addition, every such contract for construction or reconstruction shall contain a provision that the contractor shall furnish a labor and material bond guaranteeing prompt payment of moneys that are due to all persons furnishing labor and materials pursuant to the requirements of any contracts for a project undertaken pursuant to this section and a performance bond for the faithful performance of the project, which shall conform to the provisions of section 103-f of the general municipal law, and that a copy of such performance and payment bonds shall be kept by the RJSCB and shall be open to public inspection.

(d-1) Every contract entered into by resolution of the RJSCB pursuant to this act shall contain a provision providing that: (i) payment due on such contract shall be withheld where the contractor has not provided necessary information for the RJSCB to comply with the reporting requirements of this act, as determined by the state education department; and shall continue to be withheld until such information is provided satisfactory to the state education department; and (ii) such withholding shall not constitute a breach of contract entitling the contractor to terminate such contract or to be awarded damages.

(e) For the purposes of article 15-A of the executive law, any person entering into a contract for a project authorized pursuant to this act shall be deemed a state agency as that term is defined in such article and such contracts shall be deemed state contracts within the meaning of that term as set forth in such article.

(f) Notwithstanding the provisions of this act or of any general or special law to the contrary, for any contract, subcontract, lease, grant, bond, covenant or other agreement for construction, reconstruction, demolition, excavation, rehabilitation, repair, renovation, alteration, or improvement with respect to each project undertaken pursuant to this act, the RJSCB shall consider the financial and organizational capacity of contractors and subcontractors in relation to the magnitude of work they may perform, the record of performance of contractors and subcontractors on previous work, the record of contractors and subcontractors in complying with existing labor standards and maintaining harmonious labor relations, and the commitment of contractors to work with minority and women-owned business enterprises pursuant to article 15-A of the executive law through joint ventures or subcontractor relationships. The RJSCB shall further require, on any contract in excess of one million dollars for construction, reconstruction, demolition, excavation, rehabilitation, repair, renovation, alteration, or improvement that each contractor and subcontractor shall participate in apprentice training programs in the trades of work it employs that: have been approved for not less than three years by the state department of labor; have graduated at least one apprentice in the last 3 years; have at least one apprentice currently enrolled in such apprentice training program; and have demonstrated that the program has made significant efforts to attract and retain minority apprentices.

§ 10. Program managers. (a) All contracts entered into by resolution of the RJSCB for projects for phase two **and phase three** undertaken

pursuant to this act shall be managed by an independent program manager. The selection of the program manager shall be pursuant to the competitive process established in section eight of this act. Prior to issuance of the contract, the program manager selected shall be approved by the superintendent, mayor, city council and the Rochester city school district. The program manager shall have experience in planning, designing, and constructing new and/or reconstructing existing school buildings, public facilities, commercial facilities, and/or infrastructure facilities, and in the negotiation and management of labor contracts and agreements, training programs, educational programs, and physical technological requirements for educational programs. The program manager shall manage all projects undertaken pursuant to this act, review project schedules, review payment schedules, prepare cost estimates and assess the safety programs of contractors and all training programs, if required. The program manager shall implement procedures for verification by it that all work for which payment has been requested has been satisfactorily completed.

(b) The program manager, and its affiliates or subsidiaries, if any, shall be prohibited from awarding contracts or being awarded contracts for, or performing any work on, projects undertaken pursuant to this act. Contracts awarded by **the** RJSCB for construction work required for the reconstruction, rehabilitation or renovation of a project pursuant to this act shall be awarded pursuant to public bidding in compliance with section 103 of the general municipal law.

(c) Every contract entered into by resolution of the RJSCB to hire a program manager pursuant to this act shall contain a provision providing that: (i) payment due on such contract shall be withheld where the program manager has not provided necessary information for the RJSCB to comply with the reporting requirements of this act, as determined by the state education department, and shall continue to be withheld until such information is provided satisfactory to the state education department; and (ii) such withholding shall not constitute a breach of contract entitling the program manager to terminate such contract or to be awarded damages.

(d) All records of the program manager related to the RJSCB shall be subject to the city school district's annual external audit as set forth in subdivision 3 of section 2116-a of the education law and shall be subject to audits of the state conducted by the comptroller as set forth in section 33 of the general municipal law.

(e) All contracts entered into by resolution of the RJSCB for projects for phase three shall be subject to the public bidding requirements of section 103 of the general municipal law.

§ 11. Independent compliance officers. All contracts entered into by resolution of the RJSCB for projects for phase two **and phase three** undertaken by this act shall be monitored by an independent compliance officer. The **independent** compliance officer shall: develop, implement, advertise, promote and monitor policies and procedures to utilize and provide sufficient MWBE, DBE and skilled minority employment resources participation opportunities to be followed by prime contractors and subcontractors for such projects; review, modify if necessary, and approve the preliminary diversity plan established pursuant to section five of this act; provide technical assistance to potential MWBE and DBE contractors and subcontractors interested in bidding on any such projects; obtain and maintain records and documentation to confirm compliance with any requirements contained in the approved diversity plan, for any such project; identify contractors in non-compliance with

any such requirements contained in the approved diversity plan or in violation of any federal, state and local laws, rules or regulations; monitor and report the upward/downward price adjustment and payment amounts to MWBEs and DBEs listed on contractors utilization plan for any such project; develop and work with the RJSCB to enforce agreed financial or monetary sanctions for any contractor's non-compliance with the MWBE/DBE utilization master plan. In addition, the independent compliance officer shall: develop, implement, advertise, promote and monitor MWBE/DBE policies and procedures for each project to be followed by prime contractors and subcontractors for such projects; obtain and maintain records and documentation to confirm compliance with any applicable requirements for each project; identify contractors in non-compliance with any such requirements pursuant to this section or in violation of any federal, state and local laws, rules or regulations. The independent compliance officer shall report to the [~~RJCSB~~] RJSCB on a monthly basis.

§ 21. Reporting requirements. (a) On June 30, 2008 and annually thereafter, until completion of the [~~39~~] 51 projects authorized pursuant to this act, the RJSCB shall issue a report to the governor, the comptroller, the commissioner, the temporary president of the senate, the speaker of the assembly, the city, the city council and the city school district on the progress and status of the projects undertaken by the RJSCB. Provided further, that if any such entities request information on the progress and status of the projects prior to such report, it shall be provided to such entities by the RJSCB.

[~~In addition, on~~] (b) On or before June 30, 2021, or upon completion of the 26 projects authorized in phase two pursuant to this act, whichever shall first occur, the RJSCB shall issue a report to the city, the city school district, the governor, the commissioner, the comptroller, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate, the minority leader of the assembly, the state board of regents, and the chairs and ranking minority members of the New York state senate and assembly committees on education, the finance committee of the New York state senate, and the ways and means committee of the New York state assembly. Such report shall identify the fiscal and pedagogical results of the projects undertaken pursuant to this act, along with recommendations for its continuance, amendments, or discontinuance.

(c) On or before June 30, 2031, or upon completion of the 12 projects authorized in phase three pursuant to this act, whichever shall first occur, the RJSCB shall issue a report to the city, the city school district, the governor, the commissioner, the comptroller, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate, the minority leader of the assembly, the state board of regents, and the chairs and ranking minority members of the New York state senate and assembly committees on education, the finance committee of the New York state senate, and the ways and means committee of the New York state assembly. Such report shall identify the fiscal and pedagogical results of the projects undertaken pursuant to this act, along with recommendations for its continuance, amendments, or discontinuance.

(d) Reporting requirements and state aid. Where the commissioner has determined that the RJSCB has not complied with any reporting requirement prescribed in section 21 of this act, the commissioner may temporarily withhold the allotment, apportionment and payment of state aid and assistance pursuant to the education law from the city school district until such time that the RJSCB has complied with such requirements. Provided further that in the event state aid is temporarily with-

held from the city school district due to reporting deficiencies as provided in this section, state aid payments shall continue to be subject to withholding pursuant to section 99-b of the state finance law should the city school district default in the payment of the principal of its bonds or notes issued for purposes of this act or the payment of interest on such bonds or notes or in the payment of both principal of and interest on such bonds or notes.

§ 3. Paragraph a of subdivision 6 of section 3602 of the education law is amended by adding a new subparagraph 9 to read as follows:

(9) Notwithstanding any other provision of law to the contrary, for the purpose of computation of building aid for reconstruction or modernizing of no more than six projects pursuant to chapter four hundred sixteen of the laws of two thousand seven, as amended, enacting the third phase of the city of Rochester school facilities modernization program act, multi-year cost allowances for each project shall be established and utilized two times in the first five-year period. Subsequent multi-year cost allowances shall be established no sooner than ten years after establishment of the first maximum cost allowance authorized pursuant to this subparagraph.

§ 4. This act shall take effect immediately and shall apply to all contracts entered into, renewed, modified or amended on or after such effective date.