STATE OF NEW YORK

1761

2021-2022 Regular Sessions

IN SENATE

January 15, 2021

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

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

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

Section 1. Subdivisions (g), (i) 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 and four new subdivisions (p), (q), (r) and (s) are added to read as follows:

(g) "Project" shall mean work at an existing school building site that involves the design, reconstruction, or rehabilitation of **all or a portion 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 acquisition 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**; and/or (4) the acquisition of additional real property by the city to facilitate the project**.

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

LBD05197-01-1

(i) "Program manager" shall mean an independent program management firm hired by the RJSCB to **oversee the implementation of the facilities modernization plan, and to** assist it in: (i) developing and implementing procedures for the projects undertaken and contracted for by the RJSCB; (ii) reviewing plans and specifications for projects; (iii) developing and implementing policies and procedures to utilize employment resources to provide sufficient skilled employees for such projects including developing and implementing training programs, if required; (iv) managing such projects; and (v) providing such planning, design, financing, and other services as may be appropriate to implement one or more construction or reconstruction projects pursuant to this act.

(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 support facilities modernization phase three program and the program manager by developing and implementing 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 applicable.**

(p) "Capital improvement plan" shall mean the city school district's ongoing, annually updated five-year capital financing plan for the construction and reconstruction of facilities, the acquisition and replacement of vehicles and equipment and the completion of other long-term capital projects undertaken and financed by the issuance of general obligation bonds by the city on behalf of the city school district pursuant to existing state law applicable to all school districts.

(q) "Comprehensive school facilities modernization plan" or "facilities modernization plan" or "facilities modernization program" shall mean the comprehensive, strategic plan developed by the city school district and the RJSCB to be implemented in several phases for the construction, renovation, rehabilitation and equipping of new and existing educational facilities, and athletic and recreational facilities located in the city, which plan shall be included in a special section of the city school district's ongoing five-year capital improvement plan, as required by subdivision 6 of section 3602 of the education law and the regulations of the commissioner, and such other matters set forth in this section; which plan shall identify by the number of buildings to be constructed or reconstructed to the satisfaction of SED and include a district wide technology plan and related incidental expenses as adopted by the RJSCB after a public hearing.

(r) "MWBE/DBE outreach and utilization plan" shall mean a plan prepared by the independent compliance officer and the program manager to the satisfaction of the RJSCB to meet the goals set forth in the RJSCB approved diversity plan.

(s) "SED" shall mean the New York state department of education.

§ 2. Subdivision (b) of section 3 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, is amended to read as follow:

(b) Such board shall be composed of seven voting members: three of whom shall be appointed by**, and serve at the pleasure of** the mayor of

the city; three of whom shall be appointed by, and serve at the pleasure of the superintendent of the board of education of the city school district; and one of whom shall be independent from both the city school district and the city but who shall have been agreed upon by the mayor and the superintendent; and one non-voting member who shall be the independent compliance officer, or the representative of the independent compliance officer. One of the voting members shall be chosen, by such voting members, to serve as chair of the board. Members of the board shall not receive a salary or other compensation for such board duties, but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of his or her board duties. Members of the board shall not be disqualified from holding public office or employment, nor shall they forfeit any office or employment by reason of their appointment, notwithstanding the provisions of any general, special, or local law, ordinance or city charter to the contrary. [~~The board will be reconstituted~~] To provide for the continuing functioning of the multiphase facilities modernization program, on the effective date of the chapter of the laws of [~~2014~~] 2021 that amended this subdivision [~~and the term of each prior board member shall automatically expire on such date provided however that nothing shall preclude the reappointment of an existing board member~~], the board in its constituted form shall continue to exist for the accomplishment of any of the purposes specified in this act and the board, its members, officers and employees and its operations and activities shall in all respects be governed by the provisions of this act.

§ 3. Sections 4, 5, 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 follow:

§ 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) 15 school building projects, plus a district-wide technology project, up to a total cost of five hundred fifty million dollars in phase three shall be authorized and undertaken pursuant to this act, unless otherwise authorized by law. Moneys within such limits may be applied for the planning costs associated with the subsequent phase of the RSMP.

§ 5. Comprehensive school facilities modernization plan. The superintendent shall submit to the RJSCB [~~a~~] comprehensive draft [~~plan~~] plans 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 $550,000,000 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 **for phase three either** extend the contracts of the providers of professional services for phase [~~one~~] **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 provided further that the program manager and the independent compliance officer and any new~~] or [~~different providers of~~] **re-bid such** professional services [~~shall be engaged~~] **contracts** 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 **for each phase authorized pursuant to this act**, the RJSCB and **the city school** 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~~] **plans** 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~~] **plans** 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.

§ 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~~] **three**, contingent upon the completion of a supplemental project labor agreement benefit analysis **and other requirements of the RJSCB in regards to diversity goals, direct admission, pre-apprenticeship, and apprenticeship participation**.

(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.

(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 contrac-

tors 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**, which use apprentice-able and construction-related trade classifications, that are also subject to the apprenticeship requirements of this paragraph** that each contractor [~~and subcontractor~~] shall**:** **(1)** 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**; and (2) employ one or more apprentices in connection with its contract with the RJSCB. If a prime contract is subject to the foregoing apprenticeship requirements, any subcontractors let by the prime contractor over five hundred thousand dollars, which use apprentice-able and construction-related trade classifications, are also subject to the apprenticeship requirements of this paragraph**.

§ 10. Program managers. (a) All contracts entered into by resolution of the RJSCB for projects for phase **one, phase** two **and phase three** undertaken pursuant to this act shall be managed by [~~an~~] **the** independent program manager. The [~~selection of~~] **RJSCB may elect to either extend the existing contract of** the **phase two** program manager [~~shall~~] **for phase three upon the adoption of findings that doing so would** be **in the public interest or select a phase three program manager** 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 **construction,** 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.

§ 11. Independent compliance officers. All contracts entered into by resolution of the RJSCB for projects for phase **one, phase** two **and phase three** undertaken by this act shall be monitored by an independent compliance officer **(ICO)**. **The RJSCB may elect to either extend the existing contract of the phase two independent compliance officer for phase three upon the adoption of findings that doing so would be in the public interest or select a phase three independent compliance officer**

pursuant to the competitive process established in section eight of this act. 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 outreach and 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 applicable requirements for each project including site visits as necessary, at least twice monthly; 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~~] 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~~] 14 projects, including district-wide technology, 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 16 school building projects, including district-wide technology, 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.

§ 4. 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, is amended by adding a new section 21-a to read as follows:

§ 21-a. Any person who knowingly files a false written report or other false written instrument with the RJSCB, the independent compliance officer or program manager may be subject to criminal penalties pursuant to the applicable provisions of the penal law in addition to any other penalties authorized by law.

§ 5. This act shall take effect immediately.