§ 376. Letting of construction contracts. 1. After May first, nineteen hundred sixty-two, the fund as agent for the state university shall construct, acquire, reconstruct, rehabilitate and improve, or cause to be constructed, acquired, reconstructed, rehabilitated and improved, all academic buildings, dormitories and other facilities to be constructed, acquired, reconstructed, rehabilitated or improved at state-operated institutions or statutory or contract colleges under the jurisdiction of the state university, provided that legislation or appropriations authorizing the same (i) have been requested by the state university trustees, (ii) have been recommended by the governor in a budget bill relating to a state fiscal year commencing on or after April first, nineteen hundred sixty-two which specifies the facilities to be constructed, acquired, reconstructed, rehabilitated or improved and the total estimated cost for each such facility, and (iii) have been approved by the legislature for such state fiscal year. With respect to state fiscal years commencing on or after April first, nineteen hundred sixty-three, the budget bill referred to in the preceding sentence shall include in addition to the items stated the date when it is desired that the construction, acquisition, reconstruction, rehabilitation or improvement of each facility referred to therein be completed, and all work for such purposes shall be performed in such manner as to assure completion, so far as practicable, by the dates specified.

2. The fund may construct, acquire, reconstruct, rehabilitate and improve such facilities, other than dormitories, by its own employees, by agreement with a state retirement system or any state agency authorized to perform such work, or by contract awarded pursuant to subdivision eight of this section.

3. The fund may construct, acquire, reconstruct, rehabilitate and improve dormitories only by agreement with the dormitory authority established under title four of the public authorities law, except that if the dormitory authority indicates its unwillingness to enter into such an agreement with the fund for such purpose, the fund may construct, acquire, reconstruct, rehabilitate and improve such dormitories by its own employees, by agreement with a state retirement system or any state agency (other than the dormitory authority)

authorized to perform such work, or by contract awarded pursuant to subdivision eight of this section, subject, however, to the rights of holders of outstanding bonds and notes of the dormitory authority with respect to existing dormitories.

4. In the event that the dormitory authority enters into an agreement with the fund for construction, acquisition, reconstruction, rehabilitation or improvement of a facility for the state university, it shall perform the work required or cause the work required to be performed in accordance with the terms of such agreement either by its own employees or by contract awarded pursuant to the provisions of title four of the public authorities law. In the event any state agency other than the dormitory authority enters into an agreement with the fund for such work it shall perform the same either by its own employees or by contract awarded pursuant to subdivision eight of this section.

5. No contract for the construction, acquisition, reconstruction, rehabilitation or improvement of academic buildings, dormitories and other facilities shall be awarded by any letting agency unless the state university trustees shall have approved the architectural concept of the facility to be constructed, acquired, reconstructed, rehabilitated or improved and unless the fund shall have approved the proposed terms of such contract, including the detailed plans and specifications for such facility.

6. Each contract for the construction, acquisition, reconstruction, rehabilitation or improvement of academic buildings, dormitories and other facilities shall include a provision that the architect who designed the facility, or an architect or engineer, or, for projects authorized by section three hundred seventy-two-a of this article a construction manager or other consultant, retained specifically for the purpose of supervision, shall supervise the work to be performed through to completion and shall see to it that the materials furnished and the work performed are in accordance with the drawings, plans, specifications and contract therefor.

7. Any letting agency may in its discretion award one contract for all

the work to be performed in construction, acquisition, reconstruction, rehabilitation or improvement without separate and independent bidding or letting on subdivisions of work to be performed.

8. * All contracts which are to be awarded pursuant to this subdivision shall be awarded by public letting in accordance with the following provisions, notwithstanding any contrary provision of section one hundred thirty-five, one hundred thirty-six, one hundred thirty-nine or one hundred forty of the state finance law or any other law, provided, however, that where the estimated expense of any contract which may be awarded pursuant to this subdivision is less than two hundred fifty thousand dollars, a performance bond and a bond for the payment of labor and material may, in the discretion of the fund, not be required, and except that in the discretion of the fund, a contract may be entered into for such purposes without public letting where the estimated expense thereof is less than one hundred fifty thousand dollars, or where in the judgment of the fund an emergency condition exists as a result of damage to an existing academic building, dormitory or other facility which has been caused by an act of God, fire or other casualty, or any other unanticipated, sudden and unexpected occurrence, that has resulted in damage to or a malfunction in an existing academic building, dormitory or other facility and involves a pressing necessity for immediate repair, reconstruction or maintenance in order to permit the safe continuation of the use or function of such facility, or to protect the facility or the life, health or safety of any person, and the nature of the work is such that in the judgment of the fund it would be impractical and against the public interest to have public letting; provided, however, that the fund, prior to awarding a contract hereunder because of an emergency condition notify the comptroller of its intent to award such a contract:

* NB Effective until June 30, 2031

* All contracts which are to be awarded pursuant to this subdivision shall be awarded by public letting in accordance with the following provisions, notwithstanding any contrary provision of section one hundred thirty-five, one hundred thirty-six, one hundred thirty-nine or one hundred forty of the state finance law, provided, however, that where the estimated expense of any contract which may be awarded

pursuant to this subdivision is less than fifty thousand dollars, a performance bond and a bond for the payment of labor and material may, in the discretion of the fund, not be required, and except that in the discretion of the fund, a contract may be entered into for such purposes without public letting where the estimated expense thereof is less than twenty thousand dollars, or where in the judgment of the fund an emergency condition exists as a result of damage to an existing academic building, dormitory or other facility which has been caused by an act of God, fire or other casualty, or any other unanticipated, sudden and unexpected occurrence, that has resulted in damage to or a malfunction in an existing academic building, dormitory or other facility and involves a pressing necessity for immediate repair, reconstruction or maintenance in order to permit the safe continuation of the use or function of such facility, or to protect the facility or the life, health or safety of any person, and the nature of the work is such that in the judgment of the fund it would be impractical and against the public interest to have public letting; provided, however, that the fund, prior to awarding a contract hereunder because of an emergency condition notify the comptroller of its intent to award such a contract:

* NB Effective June 30, 2031

a. If contracts are to be publicly let, the letting agency shall advertise the invitation to bid in a newspaper published in the city of Albany and in such other newspapers as will be most likely in its opinion to give adequate notice to contractors of the work required and of the invitation to bid provided, however, that where the estimated expense of any contract which may be awarded pursuant to this subdivision is less than one hundred fifty thousand dollars, the letting agency may advertise the invitation to bid solely through the procurement opportunities newsletter published pursuant to section one hundred forty-two of the economic development law. The invitation to bid shall contain such information as the letting agency shall deem appropriate and a statement of the time and place where all bids received pursuant to such notice will be publicly opened and read.

b. The letting agency shall not award any contract after public bidding except to the lowest bidder who in its opinion is qualified to

perform the work required and is responsible and reliable. The letting agency may, however, reject any or all bids, again advertise for bids, or waive any informality in a bid if it believes that the public interest will be promoted thereby.

c. The invitation to bid and the contract awarded shall contain such other terms and conditions, and such provisions for penalties, as the letting agency may deem desirable.

* d. Any contract awarded pursuant to this subdivision shall contain a clause that the contract shall be deemed executory to the extent of the moneys available and that no liability shall be incurred by the fund beyond the moneys available therefor.

* NB Effective until June 30, 2031

* d. The form of any contract awarded pursuant to this subdivision shall be approved by the attorney general and by the comptroller and shall contain a clause that the contract shall be deemed executory to the extent of the moneys available and that no liability shall be incurred by the fund beyond the moneys available therefor.

* NB Effective June 30, 2031

e. The letting agency shall require such deposits, bonds and security in connection with the submission of bids, the award of contracts and the performance of work as it shall determine to be in the public interest and for the protection of the state, the state university, the fund and the letting agency.

f. Notwithstanding the provisions of any other law to the contrary, all contracts for public work awarded by the state university construction fund pursuant to this subdivision shall be in accordance with section one hundred thirty-nine-f of the state finance law.

9. No payments shall be made by the comptroller from appropriated moneys on account of any construction contract for a facility until the bills or estimates presented for such payment shall have been duly certified to be correct (i) by the chairman of the fund or by an officer of the fund duly designated for that purpose, or (ii) if the dormitory authority is the letting agency, by the chairman thereof or by an

officer or employee thereof duly designated for that purpose.

10. Whenever the fund deems it necessary as a result of or in connection with the construction, acquisition, reconstruction, rehabilitation and improvement of any academic building, dormitory, and other facility, to provide for the removal, relocation, replacement, reconstruction, repair or extension by a municipality, county, town, village or public service corporation, of water mains, sewer pipes, telephone lines and other facilities maintained for public use and owned by such municipality, county, town, village or public service corporation, it shall have the power to contract with such municipality, county, town, village or public service corporation and such municipality, county, town, village or public service corporation shall have the power to contract with the fund, for such removal, relocation, replacement, reconstruction, repair or extension. The contract for such removal, relocation, replacement, reconstruction, repair or extension may, at the discretion of the fund, be entered into by the fund without the necessity of public bidding or public letting. Upon the completion and acceptance by the fund of the performance of such removal, relocation, replacement, reconstruction, repair or extension, said water mains, sewer pipes, telephone lines and other facilities shall be maintained by the municipality, county, town, village or public service corporation, as the case may be.

11. (a) Each contract involving the awarding of a large-scale construction project shall require the use of a project labor agreement, as defined in subdivision one of section two hundred twenty-two of the labor law, for all contractors and subcontractors on the project, consistent with paragraph (a) of subdivision two of section two hundred twenty-two of the labor law, except as otherwise provided in paragraph (b) of this subdivision.

(b) The fund shall not be required to use a project labor agreement where it determines that such agreement would be inconsistent with paragraph (a) of subdivision two of section two hundred twenty-two of the labor law or state competitive bidding laws. Any such determination shall be provided in a written explanation for a particular project contract by the solicitation date. The goals and requirements of article

fifteen-A of the executive law and article three of the veteran services law shall apply to all project labor agreements.

(c) An agency may require the use of a project labor agreement on construction projects where the total cost to the fund is less than that for a large-scale construction project, if consistent with paragraph (a) of subdivision two of section two hundred twenty-two of the labor law.