§ 458. Letting of construction contracts. 1. Any contract let by the fund or by any letting agency on behalf of the fund for the construction, reconstruction, rehabilitation or improvement of a combined occupancy structure or of the school portion thereof, shall be in conformity with the provisions of section one hundred one of the general municipal law.

2. Except as otherwise provided in section two hundred twenty-two of the labor law, every contract, lease or other agreement entered into by or on behalf of the fund for the acquisition, lease, construction, reconstruction, rehabilitation or improvement of the school portion of the work in any combined occupancy structure shall contain a provision that, when the entire cost of any such contemplated construction, reconstruction, rehabilitation or improvement for the school portion of the work shall exceed three million dollars in the counties of the Bronx, Kings, New York, Queens, and Richmond; one million five hundred thousand dollars in the counties of Nassau, Suffolk and Westchester; and five hundred thousand dollars in all other counties within the state, separate specifications shall be prepared for the following three subdivisions of the work on the school portion to be performed:

a. Plumbing and gas fitting;

b. Steam heating, hot water heating, ventilating and air conditioning apparatus; and

c. Electric wiring and standard illuminating fixtures.

Such specifications shall be drawn so as to permit the letting of separate and independent contracts for each of the above three subdivisions of work. Within the above three subdivisions of work, any equipment, apparatus and/or installations which shall be designed to service the entire combined occupancy structure shall be included within the school portion of the work or let as separate and independent contracts even if physically located within the non-school portion of the work. Except as otherwise provided by the public housing law, the provisions of which shall apply when the developer is the New York city

housing authority, every developer or general contractor undertaking the construction, reconstruction, rehabilitation or improvement of any such combined occupancy structure pursuant to or in furtherance of the provisions of this article shall let separate contracts to the lowest responsible bidder for the three subdivisions of the above specified work to persons, firms or corporations approved by the chairman of the fund as being qualified, responsible and reliable bidders engaged in these classes of work. All such qualified bidders engaged in the above specified work shall be entitled to bid and to receive, upon request, a copy of the plans and specifications. All such bids shall be submitted to the fund and shall be opened publicly at a stated time and place.

2-a. Each bidder on a public work contract, where the preparation of separate specifications is not required, shall submit with its bid a separate sealed list that names each subcontractor that the bidder will use to perform work on the contract, and the agreed-upon amount to be paid to each, for: a. plumbing and gas fitting, b. steam heating, hot water heating, ventilating and air conditioning apparatus and c. electric wiring and standard illuminating fixtures. After the low bid is announced, the sealed list of subcontractors submitted with such low bid shall be opened and the names of such subcontractors shall be announced, and thereafter any change of subcontractor or agreed-upon amount to be paid to each shall require the approval of the public owner, upon a showing presented to the public owner of legitimate construction need for such change, which shall be open to public inspection. Legitimate construction need shall include, but not be limited to, a change in project specifications, a change in construction material costs, a change to subcontractor status as determined pursuant to paragraph (e) of subdivision two of section two hundred twenty-two of the labor law, or the subcontractor has become otherwise unwilling, unable or unavailable to perform the subcontract. The sealed lists of subcontractors submitted by all other bidders shall be returned to them unopened after the contract award.

3. a. In addition to other bond or bonds, if any, required by law for the completion of the school portion of a combined occupancy structure, or in the absence of any such requirement, the fund shall nevertheless

require, prior to the approval of any lease or other agreement providing for the construction, reconstruction, rehabilitation or improvement of any combined occupancy structure, that the developer, if other than the New York city housing authority, or general contractor, furnish a bond guaranteeing prompt payment of moneys due to all persons furnishing labor or materials to or for the person furnishing said bond or to his subcontractors in the prosecution of the entire work provided for in such lease or other agreement. Whenever the developer is the New York city housing authority, it shall require each of its contractors to furnish such bonds to said authority and fund with respect to the work to be performed and materials supplied by such contractor, and no separate or other payment bond shall be required to be furnished to the fund. In those instances where the developer or general contractor is an agency of the state or a public-benefit corporation created by an act of the state legislature and in instances where said developer or general contractor or the guarantor of payment of the construction costs of the non-school portion of the combined "occupancy structure" is a public utility corporation or a bank, trust company or savings bank as defined in section two of the banking law, or a national bank having its office and principal place of business in this state, or a subsidiary of such a bank or trust company of which at least eighty (80%) percent of whose stock is owned by it, the said developer or general contractor shall only be required to furnish said payment bond with respect to the school portion of the combined occupancy structure. In such instances, the said payment bond shall not be required by the fund with respect to the non-school portion of the combined occupancy structure, but, in lieu thereof, such fund shall require said agency, public benefit corporation, public utility corporation or banking institution, as the case may be to guarantee payment of all construction costs with respect to the non-school portion of the combined occupancy structure.

b. A copy of such payment bond shall be kept in the office of the chairman of the fund and a copy shall also be kept in the office of the board of education; such copies shall be open to public inspection.

c. Every person who has furnished labor or material, to or for the developer or contractor furnishing such payment bond or to his or her

subcontractors in the prosecution of the work provided for in the lease or other agreement for which said bond is furnished and who has not been paid in full therefor before the expiration of a period of ninety days after the day on which the last of the labor was performed or material was furnished by him or her for which the claim is made, shall have the right to sue on such payment bond in his or her own name for the amount, or the balance thereof, unpaid at the time of commencement of the action; provided, however, that a person having a direct contractual relationship with a subcontractor of the developer or contractor furnishing the payment bond but no contractual relationship express or implied with such developer or contractor shall not have a right of action upon the bond unless he or she shall have given written notice to such developer or contractor furnishing the bond within ninety days from the date on which the last of the labor was performed or the last of the material was furnished, for which his or her claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or for whom the labor was performed. The notice shall be served by delivering the same personally to the developer or contractor furnishing said bond or by mailing the same by registered mail, postage prepaid, in an envelope addressed to such developer or contractor at any place where he maintains an office or conducts his or her business or at his or her residence.