§ 1734. Contracts of the authority. 1. a. All contracts for the construction, reconstruction, improvement, rehabilitation, maintenance, repair, furnishing, equipping of or otherwise providing for educational facilities for the city board may be awarded in accordance with the provisions of this section, notwithstanding the provisions of section eight of the public buildings law, section one hundred three of the general municipal law, section one hundred thirty-five of the state finance law, section seven of the New York state financial emergency act for the city of New York or of any other provision of general, special or local law, charter or administrative code.

b. The authority shall be subject to the provisions of section one hundred one of the general municipal law.

2. a. Except as otherwise provided in this section, all purchase contracts for supplies, materials or equipment involving an estimated expenditure in excess of ten thousand dollars and all contracts for public work involving an estimated expenditure in excess of fifty thousand dollars shall be awarded by the authority to the lowest responsible bidder after obtaining sealed bids in the manner hereinafter set forth. For purposes hereof, contracts for public work shall exclude contracts for personal, engineering and architectural, or professional services.

b. The authority may reject all bids and obtain new bids in the manner provided by this section when it deems it in the public interest to do so or, in cases where two or more responsible bidders submit identical bids which are the lowest bids, award the contract to any of such bidders or obtain new bids from such bidders. Nothing herein shall obligate the authority to seek new bids after the rejection of bids or after cancellation of an invitation to bid. Nothing in this section shall prohibit the evaluation of bids on the basis of costs or savings including life cycle costs of the item to be purchased, discounts, and inspection services so long as the invitation to bid reasonably sets forth the criteria to be used in evaluating such costs or savings. Life cycle costs may include but shall not be limited to costs or savings associated with installation, energy use, maintenance, operation and

salvage or disposal.

3. a. Notwithstanding the provisions of paragraph a of subdivision two of this section, the authority shall establish guidelines governing the qualifications of bidders entering into contracts for the construction, reconstruction, improvement, rehabilitation, maintenance, repair, furnishing, equipping of or otherwise providing for educational facilities for the city board. The bidding may be restricted to those who have qualified prior to the receipt of bids according to standards fixed by the authority; provided, however, that the award of contracts shall, to the extent not inconsistent with this paragraph, be in accordance with paragraph b of subdivision two of this section.

b. In determining whether a prospective bidder qualifies for inclusion on a list of pre-qualified bidders, the authority shall consider (1) the experience and past performance of the prospective bidder; (2) the prospective bidder's ability to undertake work; and (3) the financial capability, responsibility and reliability of prospective bidders. The authority may also consider such other factors as it deems appropriate.

c. The authority shall, not less than twice each year, publish, in a newspaper of general circulation in the city of New York, an advertisement requesting prospective bidders to submit qualification statements. Lists of pre-qualified bidders shall be reviewed and updated not less than annually by the authority. The authority shall delete from the list of pre-qualified bidders any bidder who has failed to perform adequately or satisfactorily for the authority, the city board or any other city or state agency or authority.

d. Lists of pre-qualified bidders may be established on a project-specific basis; provided, however, that any such list shall have no less than five bidders.

4. a. Advertisement for bids, when required by this section, shall be published at least once in a newspaper of general circulation in the city of New York. Publication in such a newspaper shall not be required (i) if bids for contracts for supplies, materials or equipment are of a

type regularly purchased by the authority and are to be solicited from a list of potential suppliers, if such list is or has been developed consistent with the provisions of subdivision six of this section or (ii) if bids are to be solicited from a list of pre-qualified bidders pursuant to the provisions of paragraph d of subdivision three of this section. Any such advertisement shall contain a statement of the time and place where all bids received pursuant to such notice will be publicly opened and read. At least fourteen days shall elapse between the first publication of such advertisement or the solicitation of bids, as the case may be, and the date of opening and reading of bids.

b. The authority may designate any officer or employee to open the bids at the time and place bids are to be opened and may designate an officer to award the contract to the lowest responsible bidder. Such designee shall make a record of all bids in such form and detail as the authority shall prescribe. All bids received shall be publicly opened and read at the time and place specified in the advertisement or at the time of solicitation, or to which the opening and reading have been adjourned by the authority. All bidders shall be notified of the time and place of any such adjournment.

5. Notwithstanding the foregoing, the authority may by resolution approved by a vote of its members declare (i) that competitive bidding for non-construction contracts is impractical or inappropriate because of the existence of any of the circumstances hereinafter set forth or (ii) that competitive bidding for construction contracts is impractical or inappropriate because of the existence of the circumstances set forth in paragraph a of this subdivision. Thereafter the authority may proceed to award contracts without complying with the requirements of subdivision two or three of this section. In each case where the authority declares competitive bidding impractical or inappropriate, it shall state the reason therefor in writing and summarize any negotiations that have been conducted and shall be made available upon request. Except for contracts awarded pursuant to paragraphs a, b and c of this subdivision, the authority shall not award any contract pursuant to this subdivision earlier than thirty days from the date on which the authority declares that competitive bidding is impractical or

inappropriate. Competitive bidding may only be declared impractical or inappropriate where:

a. the existence of an emergency involving danger to life, safety or property requires immediate action and cannot await competitive bidding or the item to be purchased is essential to efficient operation or the adequate provision of service by the city board or the authority and as a consequence of unforeseen circumstance such purchase cannot await competitive bidding;

b. the authority receives no responsive bids or only a single responsive bid in response to an invitation for competitive bids;

c. the item is available through an existing contract between a vendor and (i) another public authority provided that such other authority utilized a process of competitive bidding or a process of competitive requests for proposals to award such contracts, or (ii) the city board, or (iii) the state of New York, or (iv) the city of New York, provided that in any case when under this paragraph the authority determines that obtaining such item thereby would be in the public interest and sets forth the reason for such determination. The authority shall accept sole responsibility for any payment due the vendor as a result of the authority's order; or

d. the authority determines that it is in the public interest to award contracts pursuant to a process for competitive requests for proposals as hereinafter set forth. For purposes of this section, a process for competitive requests for proposals shall mean a method of soliciting proposals and awarding a contract on the basis of a formal evaluation of the characteristics, such as quality, cost, delivery schedule and financing of such proposals against stated selection criteria. Public notice of the requests for proposals shall be given in the same manner as provided in subdivision three of this section and shall include the selection criteria. In the event the authority makes a material change in the selection criteria from those previously stated in the notice, it will inform all proposers of such change and permit proposers to modify their proposals.

(i) The authority may award a contract pursuant to this paragraph only after a resolution approved by a vote of its members at a public meeting of the authority with such resolution (A) disclosing the other proposers and the substance of their proposals, (B) summarizing the negotiation process including the opportunities, if any, available to proposers to present and modify their proposals, and (C) setting forth the criteria upon which the selection was made.

(ii) Nothing in this paragraph shall require or preclude (A) negotiations with any proposers following the receipt of responses to the request for proposals or (B) the rejection of any or all proposals at any time. Upon the rejection of all proposals, the authority may solicit new proposals or bids in any manner prescribed in this section.

6. Upon the adoption of a resolution by the authority stating, for reasons of efficiency, economy, compatibility or maintenance reliability, that there is a need for standardization, the authority may establish procedures whereby particular supplies, materials or equipment are identified on a qualified products list. Such procedures shall provide for products or vendors to be added to or deleted from such list and shall include provisions for public advertisement of the manner in which such lists are compiled. The authority shall review such list no less than twice a year for the purpose of making such modifications. Contracts for particular supplies, materials or equipment identified on a qualified products list may be awarded by the authority to the lowest responsible bidder after obtaining sealed bids in accordance with this section or without competitive sealed bids in instances when the item is available from only a single source, except that the authority may dispense with advertising provided that it mails copies of the invitation to bid to all vendors of the particular item on the qualified products list.

7. The authority shall compile a list of potential sources of supplies, materials or equipment regularly purchased. The authority shall, by resolution, set forth the procedures it has established to identify new sources and to notify such new sources of the opportunity to bid for contracts for the purchase of supplies, materials or equipment. Such procedures shall include, but not be limited to

advertising in trade journals.

8. The authority shall be subject to the provisions of section twenty-eight hundred seventy-nine of this chapter in awarding contracts for personal services.

9. The board shall, by resolution, establish procedures for the fair and equitable resolution of contract disputes. Prior to the establishment of such policy, the board shall publish in appropriate publications a notice of such policy and invite comment from interested parties, including, but not limited to representatives of construction organizations. Such notice shall also state that the authority will hold a public hearing to consider the policy at a specified time and place on a date not less than ten days after such publication, and the authority shall conduct the public hearing pursuant to such notice.

10. The provisions of article eight of the labor law shall be applicable to all contracts entered into directly or indirectly by the authority.

11. The provisions of subdivision one of section one hundred six-b of the general municipal law shall apply to the authority, provided, however, that the authority may retain up to four times the value of any remaining items to be completed.