*** § 1735. Certain contracts of the authority.** 1. Notwithstanding the provisions of paragraph b of subdivision one of section seventeen hundred thirty-four of this title, the award of construction contracts by the authority between July first, nineteen hundred eighty-nine and June thirtieth, two thousand twenty-eight, shall not be subject to the provisions of section one hundred one of the general municipal law.

2. Notice of the invitation for bids for contracts to be awarded pursuant to this section shall state the time and place of the receipt and opening of bids.

3. All bidders shall submit to the authority, prior to the opening of a bid for the award of a contract under this section, a sealed list identifying the names of each subcontractor each contractor proposes to utilize under the contract for the performance of the following subdivisions of work:

a. Plumbing and gas fitting;

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

c. Electric wiring and standard illuminating fixtures.

The low bidder shall specify in such list the estimated value to be paid each such subcontractor for the work to be performed by such subcontractor. After the authority has announced the low bidder at the bid opening, the authority shall open only such low bidder's separate sealed list and shall read aloud such subcontractors listed therein. All such sealed lists except those of the low bidder shall be returned unopened to their respective contractors following the awarding of a contract.

4. The authority shall establish a committee to review and report on contracts issued pursuant to this section and on the procedures and methodology of the authority in awarding such contracts. The review shall include, but not be limited to, the degree to which contractors

awarded contracts pursuant to such paragraph, and the subcontractors utilized by them, utilize employees who are represented by labor organizations, comply with existing labor standards, maintain harmonious labor relations and recognize state approved apprentice programs. The committee shall, from time to time, issue economic and statistical reports dealing with the costs of construction under this article. Such reports shall deal with the costs of labor, material, equipment and profit. The committee shall have no authority to approve or disapprove contracts. The committee shall be composed of two representatives from the authority, one representative from the board, two representatives from construction-related labor organizations and two representatives from the construction industry, at least one of whom shall be involved in the subdivisions of work described in subdivision three of this section. The president of the authority shall designate the members of the committee, provided, however, that the president shall designate the representatives of labor organizations from a list of names submitted by the New York state AFL-CIO.

5. In awarding contracts pursuant to this section the authority shall, in addition to the factors set forth in subdivision three of section seventeen hundred thirty-four of this title, consider the following factors when establishing a list of pre-qualified bidders for construction work: (a) the degree to which a contractor or subcontractor utilizes employees who are represented by a labor organization; (b) the absence of any intentional misrepresentation with regard to lists of subcontractors previously submitted pursuant to the provisions of subdivision two of this section; and (c) the record of the bidder in complying with existing labor standards, maintaining harmonious labor relations and recognizing state approved apprentice programs.

6. The authority shall provide in its construction, erection or alteration contracts which implement a five year educational facilities capital plan a provision that shall require each contractor to make prompt payment to its subcontractors performing each subdivision of work listed in subdivision three of this section. Within seven calendar days of the receipt of any payment from the authority, the contractor shall pay to each such subcontractor that portion of the proceeds of such

payment representing the value of the work performed by such subcontractor, based upon the actual value of the subcontract, which has been approved and paid for by the authority, less an amount necessary to satisfy any claims, liens or judgments against the subcontractor which have not been suitably discharged and less any amount retained by the contractor as provided herein. For such purpose, the subcontract may provide that the contractor may retain not more than five per centum of each payment to the subcontractor or not more than ten per centum of each such payment if prior to entering into the subcontract the subcontractor is unable or unwilling to provide, at the request of the contractor, a performance bond and a labor and material bond both in the amount of the subcontract.

At the time of making a payment to the contractor for work performed by the subcontractors set forth in subdivision three of this section, the authority shall file in its office for review a record of such payment. If any such subcontractor shall notify the authority and the contractor in writing that the contractor has failed to make a payment to it as provided herein and the contractor shall fail, within five calendar days after receipt of such notice, to furnish either proof of such payment or notice that the amount claimed by the subcontractor is in dispute, the authority shall withhold from amounts then or thereafter becoming due and payable to the contractor, other than from amounts becoming due and payable to the contractor representing the value of work approved by the authority and performed by other subcontractors and which the contractor is required to pay to such subcontractors within seven calendar days as herein provided, an amount equal to one hundred fifty percent of that portion of the authority's prior payment to the contractor which the subcontractor claims to be due it, shall remit the amount when and so withheld to the subcontractor and deduct such payment from the amounts then otherwise due and payable to the contractor, which payment shall, as between the contractor and the authority, be deemed a payment by the authority to the contractor. In the event the contractor shall notify the authority as above provided that the claim of the subcontractor is in dispute, the authority shall withhold from amounts then or thereafter becoming due and payable to the contractor, other than from amounts becoming due and payable to the contractor

representing the value of work approved by the authority and performed by other subcontractors and which the contractor is required to pay to such subcontractors within seven calendar days as herein provided, an amount equal to one hundred fifty percent of that portion of the authority's prior payment to the contractor which the subcontractor claims to be due it and deposit such amount when and so withheld in a separate interest-bearing account pending resolution of the dispute, and the amount so deposited together with the interest thereon shall be paid to the party or parties ultimately determined to be entitled thereto, or until the contractor and subcontractor shall otherwise agree as to the disposition thereof. In the event the authority shall be required to withhold amounts from a contractor for the benefit of more than one subcontractor, the amounts so withheld shall be applied to or for such subcontractors in the order in which the written notices of nonpayment have been received by the authority, and if more than one such notice was received on the same day, proportionately based upon the amount of the subcontractor claims received on such day. Notwithstanding the foregoing, in lieu of withholding such amount or amounts in dispute, the contractor may post a bond or other form of undertaking guaranteeing payment of such disputed amounts. Nothing herein contained shall prevent the authority from commencing an interpleader action to determine entitlement to a disputed payment in accordance with section one thousand six of the civil practice law and rules, or any successor provision thereto. In the event the authority does not withhold the required amounts within sixty days after the written notification from the subcontractor regarding failure of the contractor to make payment, the subcontractor may file a lien under article two of the lien law as the sole remedy in lieu of the remedy provided under this subdivision.

Payment to a subcontractor shall not relieve the contractor from responsibility for the work covered by the payment. Except as otherwise provided, nothing contained herein shall create any obligation on the part of the authority to pay any subcontractor, nor shall anything provided herein serve to create any relationship in contract or otherwise, implied or expressed, between the subcontractor and the authority.

The provisions of this subdivision shall not be applicable to the subcontractors of a contractor whose contract is limited to the performance of a single subdivision of work listed in subdivision three of this section.

7. The provisions of this section shall cease to be in effect in the event any of the provisions of this section shall be adjudged to be invalid by the final judgment of a court of competent jurisdiction from which judgment all appeals or applications for relief have been exhausted or the time therefor has expired, provided, however, that such appeals or applications are pursued promptly.

* NB Repealed June 30, 2028