§ 3303. Westchester county health care corporation. 1. (a) There is hereby created a state board to be known as the Westchester county health care corporation which shall be a body corporate and politic constituting a public benefit corporation.

(b) The corporation shall be governed by fifteen voting directors of which eight directors shall be appointed by the governor and seven directors shall be appointed by the legislature of the county of Westchester subject to approval by the county executive. The governor shall make appointments to the corporation as follows: three directors from a recommendation submitted by the county executive; three directors from a recommendation submitted by the legislature of the county of Westchester; one director, who shall be a resident of Westchester county, from a recommendation submitted by the speaker of the assembly; one director, who shall be a resident of Westchester county, from a recommendation submitted by the temporary president of the senate.

The terms of the initial voting directors appointed by the governor shall be five years for such directors appointed upon recommendation of the temporary president of the senate and the speaker of the assembly. The terms of the initial voting directors appointed by the governor upon the recommendation of the county executive shall be five years for one, four years for one and three years for one. The terms of the initial voting directors appointed by the governor upon the recommendation of the legislature of the county shall be four years for two and three years for one. The terms of the initial voting directors appointed by the legislature of the county with the approval of the county executive shall be one year for three of such directors, two years for three of such directors and three years for one of such directors.

(c) Each voting director should possess a high degree of experience and knowledge in relevant fields and a high degree of interest in the corporation. The appointment of any voting director to the corporation shall be based in part on the objective of ensuring that the corporation includes diverse and beneficial perspectives and experience, including, but not limited to, those of business management, law, finance, medical and/or other health professionals, health sector workers, and the patient or consumer perspective.

2. There shall be four non-voting representatives which shall include the chief executive officer of the corporation as appointed by the voting directors of the board, one representative selected by the county executive, one selected by the majority leader of the county board of legislators and one selected by the minority leader of the county board of legislators. Such representatives shall have all of the rights and powers of the voting directors other than the right and power to vote including, but not limited to, the right to equal access to information.

3. (a) All voting directors shall continue to hold office until their successors are appointed and qualify. All subsequent appointments shall be for a term of five years and may be eligible for reappointment.

(b) Vacancies occurring otherwise than by expiration of term of office shall be filled for the unexpired terms in the manner provided for original appointment. All directors and non-voting representatives shall continue to hold office until their successors are appointed and have qualified. Vacancies shall be filled in the same manner as provided for original appointment. Vacancies occurring otherwise than by expiration of terms of office, shall be filled by appointment for unexpired terms. Members may be removed from office by the board for inefficiency, neglect of duty or misconduct in office, after the board has given such member a copy of the charges against him or her or opportunity to be heard in person or by counsel in his or her defense, upon not less than ten days notice.

4. (a) The voting directors shall by majority vote select one of the fifteen voting directors as the chairperson of the board. The chairperson shall preside over all meetings of the board and shall have such other duties as the voting directors may direct.

(b) The voting directors, non-voting representatives of the corporation shall receive no compensation for their services, but shall be reimbursed for all their actual and necessary expenses incurred in connection with the carrying out of the purposes of this title.

(c) The powers of the corporation shall be vested in and shall be exercised by the board at a meeting duly called and held where a quorum of eight voting directors is present. No action shall be taken by the corporation except pursuant to the favorable vote of at least eight

voting directors present at the meeting at which such action is taken.

5. The voting directors shall select and shall determine the salary and benefits of the chief executive officer of the corporation. The voting directors shall have the authority to discharge the chief executive officer with or without cause; provided, however, that removal without cause shall not prejudice the contract rights, if any, of the chief executive officer.

6. Notwithstanding any inconsistent provision of any general, special or local law, ordinance, resolution or charter, no officer, member or employee of the state or of any public corporation shall forfeit his or her office or employment by reason of his or her acceptance of appointment as a director, non-voting representative, officer or employee of the corporation, nor shall service as such a director, non-voting representative, officer or employee be deemed incompatible or in conflict with such office, or employment, and provided further, however, that no public officer elected to his or her office pursuant to the laws of the state or any municipality thereof may serve as a member of the governing body of the corporation during his or her term of office.

7. The corporation and its corporate existence shall continue until terminated by law, provided, however, that no such termination shall take effect so long as the corporation shall have bonds or other obligations outstanding, unless adequate provision has been made for the payment or satisfaction thereof. Upon termination of the existence of the corporation, all of the rights and properties of the corporation then remaining shall pass to and vest in the county in such manner as prescribed by law.

8. Contracts for works, construction or purchases to which the corporation is a party shall be subject to the provisions of article five-A of the general municipal law except as provided in subdivisions nine and ten of this section. In addition to the procedures prescribed under section one hundred four of the general municipal law for the utilization of the terms of state contracts, the corporation may utilize

the terms of a federal government general services contract where the terms are to the advantage of the corporation and have been offered to the corporation by the contractor. When bids have already been received by the corporation no purchase under a federal government general services contract shall be made unless the purchase may be made upon the same terms, conditions and specifications at a lower price through such contractor.

9. It is the intent of the legislature that overall cost should in all cases be a major criterion in the selection of project developers for award of contracts pursuant to this section and that, wherever practical, such contracts should be entered into through competitive bidding procedures as prescribed by sections one hundred one and one hundred three of the general municipal law. It is further the intent of the legislature to acknowledge the highly complex and innovative nature of medical technology, diagnostic and treatment devices, the relative newness of a variety of devices, processes and procedures now available, the desirability of a single point of responsibility for the development of medical treatment and diagnostic facilities and the economic and technical utility of contracts for medical projects which include in their scope various combinations of design, construction, operation, management and/or maintenance responsibility over prolonged periods of time and that in some instances it may be beneficial to the corporation to award a contract for a medical project on the basis of factors other than cost alone, including but not limited to facility design, system reliability, efficiency, safety, and compatibility with other elements of patient care. Accordingly, and notwithstanding the provisions of any general, special or local law or chapter, a contract for a medical project entered into between the corporation and any project developer pursuant to this section may be awarded pursuant to public bidding in compliance with sections one hundred one and one hundred three of the general municipal law or pursuant to the following provisions for the award of a contract based on evaluation of proposals submitted in response to a request for proposals prepared by or for the corporation:

(a) The corporation shall require that each proposal to be submitted by a project developer shall include:

(i) information relating to the experience and expertise of the

project developer on the basis of which said project developer purports to be qualified to carry out all work required by a proposed contract; the ability of the project developer to secure adequate financing; and proposals for project staffing, implementation of work tasks, and the carrying out of all responsibilities by a proposed contract;

(ii) a proposal clearly identifying and specifying all elements of cost which would become charges to the corporation, in whatever form, in return for the fulfillment by the project developer for the full lifetime of a proposed contract, including, as appropriate, but not limited to the cost planning, design, construction, operation, management and/or maintenance of any facility, and clearly identifying and specifying all elements of revenue which would accrue to the corporation from the operation of the facility or device or from any other source; provided, that the corporation may prescribe the form and content of such proposal and that, in any event, the project developer must submit sufficiently detailed information to permit a fair and equitable evaluation by the corporation of such proposal; and provided, further, that the corporation may set maximum allowable cost limits in any form in the request for proposals; and

(iii) such other information as the corporation may determine to have a material bearing on its ability to evaluate any proposal in accordance with this subparagraph;

(b) Prior to the issuance of a request for proposals pursuant to this paragraph, the corporation shall publish notice of such issuance in at least one newspaper of general circulation. Concurrent with the publication of such notice a draft request for proposals shall be filed with the county commissioner of health.

(c) Proposals received in response to such request for proposals shall be evaluated by the corporation as to net cost or, if a net revenue is projected, net revenue, and in a manner consistent with provisions set forth in the request for proposals, and may be evaluated on the basis of additional factors, including but not limited to the technical evaluation of the medical project including medical facility, facility design, system reliability, energy balance and efficiency. The evaluation of such proposals and the determination of whether a project developer is "responsible" may include, but shall not be limited to, consideration, in a manner consistent with provisions set forth in the

request for proposals, the record of the project developer in complying with existing labor standards and recognizing state and federally approved apprentice training programs, and the willingness of the project developer to provide for meaningful participation of minority group persons and business enterprises in the conduct of the work;

(d) The corporation may make a contract award to any responsible project developer based on a determination by the corporation that the selected proposal is most responsive to the request for proposals and may negotiate with any project developer, provided, however, that if any award is made to any project developer whose total proposal does not provide either the lowest net cost, or if a net revenue is projected, the greatest net revenue, of any proposal received, the corporation shall adopt a resolution which includes particularized findings relevant to factors pursuant to such subparagraph indicating that the corporation's requirements are met by such award and that such action is in the public interest.

Whenever the corporation enters into a contract pursuant to this section for a medical project which involves construction the provisions of section two hundred twenty of the labor law shall be applicable to such construction work.

10. Every contract entered into between the corporation and a project developer, pursuant to the provisions of paragraph (d) of subdivision nine of this section, for a medical project involving construction of a medical building by the project developer, shall contain provisions that such building shall be constructed through construction contracts awarded through competitive bidding in accordance with paragraphs (a) through (g) of this subdivision; that the project developer or the project developer's construction subcontractor shall furnish a bond guaranteeing prompt payment of moneys that are due to all persons furnishing labor and materials pursuant to the requirements of such construction contracts, and that a copy of such payment bond shall be kept by the corporation and shall be open to public inspection; provided, however, that the requirements of this subdivision shall not apply when the cost of such construction, exclusive of the cost of medical equipment and devices, is less than one million five hundred

thousand dollars.

(a) The project developer shall advertise for bids for such construction contracts in a daily newspaper having general circulation in the county. 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. An employee of the corporation shall be designated to open the bids at the time and place specified in the notice. All bids received shall be publicly opened and read at the time and place so specified. At least five days shall elapse between the publication of such advertisement and date on which the bids are opened.

(b) Except as otherwise provided in section two hundred twenty-two of the labor law, when the entire cost of constructing such building, exclusive of any medical equipment, apparatus or devices, shall exceed one million five hundred thousand dollars, the project developer shall prepare separate specifications for the following subdivisions of such work, so as to permit separate and independent bidding upon each subdivision:

(i) plumbing and gas fittings;

(ii) steam heating, hot water heating, ventilating and air conditioning apparatus; and

(iii) electric wiring and standard illuminating fixtures.

(c) After public competitive bidding, the project developer shall award one or more separate contracts for each of the above subdivisions of such work, whenever separate specifications are required pursuant to paragraph (b) of this subdivision, and one or more contracts for the remainder of such work. The project developer may award such contracts at different times. Contracts awarded pursuant to this subdivision shall be awarded by the project developer to the lowest responsible and responsive bidder and shall be contracts of the project developer and not of the corporation which shall have no obligation or liabilities, whatsoever, thereunder. The project developer shall have the responsibility for the supervision, coordination, and termination of such contracts, unless otherwise specified in contractual terms between the project developer and the corporation.

(c-1) 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: (i) plumbing and gas fitting, (ii) steam heating, hot water heating, ventilating and air conditioning apparatus and (iii) 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.

(d) In determining whether a prospective contractor is responsible and responsive, the project developer may require that prospective contractors:

(i) have adequate financial resources or the ability to obtain such resources;

(ii) be able to comply with the required or proposed delivery or performance schedule;

(iii) have a satisfactory record of performance;

(iv) have the necessary organization, experience, operational controls, and technical skills, or the ability to obtain them;

(v) have the necessary production, construction and technical equipment and facilities, or the ability to obtain them; and

(vi) be eligible to receive an award under applicable laws and regulations and be otherwise qualified.

(e) The project developer may reject any bid of a bidder which the project developer determines to be nonresponsible or nonresponsive to the advertisement for bids.

(f) The project developer may, in its discretion, reject all bids, and may revise bid specifications and may readvertise for bids as provided

herein.

(g) Only as used in this section:

(i) "project developer" means any private corporation, partnership, limited liability company, or individual, or combination thereof which has submitted a proposal in response to a request for proposals;

(ii) "construction" shall include reconstruction, rehabilitation or improvement exclusive of the installation and assembly of any medical equipment, apparatus or device;

(iii) "medical building" means that component of a medical project constituting appurtenant structures or facilities necessary to house or render the remaining components of the medical project operational. Medical building shall not include apparatus, equipment, devices, systems, supplies or any combination thereof;

(iv) "medical project" means any substantial durable apparatus, equipment, device or system, or any combination of the foregoing, including services necessary to install, erect, or assemble the foregoing and any appurtenant structures or facilities necessary to house or render the foregoing operational, to be used for the purpose of care, treatment or diagnosis of disease or injury or the relief of pain and suffering of sick or injured persons. Medical projects shall not include ordinary supplies and equipment expended or utilized in the customary care and treatment of patients.

11. (a) For purposes of applying section eighty-seven of the public officers law, to the corporation, the term "trade secrets" shall include marketing strategy or strategic marketing plans, analyses, evaluations and pricing strategies or pricing commitments of the corporation, relating to business development, which, if disclosed, would be likely to injure the competitive position of the corporation.

(b) In addition to the matters listed in section one hundred five of the public officers law, the corporation may conduct an executive session for the purpose of considering marketing strategy or strategic marketing plans, analyses, evaluations and pricing strategies of the corporation, relating to business development, which, if disclosed, would be likely to injure the competitive position of the corporation.