§ 3603. Clifton-Fine health care corporation. 1. (a) There is hereby created a board to be known as the Clifton-Fine health care corporation which shall be a body corporate and politic constituting a public benefit corporation.

(b) The corporation shall be governed by eight voting directors to be appointed in the following manner as follows: (i) four directors shall be appointed by the town supervisor of the town of Fine; and (ii) four directors shall be appointed by the town supervisor of the town of Clifton, the governing body of each town shall make recommendations to their respective town supervisor pursuant to the recommendations of the board of the hospital for the initial directors, and pursuant to the recommendations of the board of the corporation for subsequent directors; provided, however, the town supervisors may appoint persons other than those so recommended. Any director absent for three successive regular meetings shall be deemed to have resigned from the board of directors unless said director has submitted in writing to the chairperson of the board of directors an acceptable reason for said absences. The first directors shall be appointed for the following terms from the first day of January, two thousand as follows: one from each town for a term of one year, one from each town for a term of two years, one from each town for a term of three years and one from each town for a term of four years. Subsequent appointments of directors shall be made in the same manner as set forth in this paragraph and for a term of five years. All directors shall continue to hold office until their successors are appointed and qualified. The resignation of any director shall be filed with the appointing authority and shall be effective when so filed. Vacancies occurring otherwise than by expiration of term of office, shall be filled in the same manner as set forth in this paragraph by the supervisor of the respective town for the unexpired term. Directors of the board may be removed from office for the same reasons and in the same manner as may be provided by law for the removal of officers of a town. The powers of the board shall be vested in and exercised by the directors as heretofore set forth and the board formed at a meeting called for said purpose by the chairperson of the existing board of managers of the Clifton-Fine Hospital.

(c) Each voting director should possess a high degree of experience or knowledge in relevant fields or a high degree of interest in the

corporation and should reside in either the town of Clifton or the town of Fine. 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 three non-voting members: one non-voting member shall be the chief executive officer of the corporation as appointed by the voting directors of the board; and two other non-voting members who shall be the town supervisors of the towns of Clifton and Fine. Such members 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, provided, however, when the board is acting pursuant to its authority under subdivision four of this section such chief executive officer may be excluded from such meeting and access to any information regarding actions of the board pursuant to such subdivision may be denied to him or her.

3. (a) The voting directors shall by majority vote elect from among its members annually a chairperson, a vice-chair to serve in the absence of the chairperson, a secretary and an assistant-secretary to serve in the absence of the secretary. The first election shall be held at the time of the first meeting of the members of the board.

(b) The members shall receive no compensation for their services, but may be reimbursed for their actual and necessary expenses incurred in connection with the performance of their official duties if the corporation shall so provide by resolution for such cases.

(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 five voting directors is present. No action shall be taken by the corporation except pursuant to the favorable vote of at least five voting directors present at the meeting at which such action is taken.

4. 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 contractual rights, if any, of the chief executive officer.

5. 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 employee of the corporation or public officer elected to his or her office pursuant to the laws of the state or any municipality thereof may serve as a voting member of the governing body of the corporation during his or her term of office.

6. 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 as the corporation and the towns may agree, and such terms and conditions may include reversion of said property and rights to the towns.

7. Contracts for work, 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 eight and nine 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.

7-a. For the purposes of article fifteen-A of the executive law only, the authority shall be deemed a state agency as that term is used in such article, and all contracts for procurement, design, construction, services, and materials shall be deemed state contracts within the meaning of that term as set forth in such article.

8. It is the intent of the legislature that overall costs should in all cases by a major criterion in the selection of project developers for the 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. 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, a contract for a medical project entered into between the corporation and any project developer pursuant to this article 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 costs which would become charges to the corporation, in whatever form, in return for the fulfillment by the project developer for the full life-time of a proposed contract including, as appropriate, but not limited to the cost of 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 paragraph.

(b) 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 is complying with existing labor standards and recognizing state and federally

approved apprentice training programs.

(c) 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.

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.

9. Every contract entered into between the corporation and a project developer, pursuant to the provisions of paragraph (c) of subdivision eight 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 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 five hundred thousand dollars.

(a) The project developer shall advertise for bids for such construction contracts in the official newspaper or newspapers, if any, or otherwise in a newspaper or newspapers designated for such purpose. Such advertisements 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 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 subdivisions of such work set forth in subparagraphs (i), (ii) and (iii) of paragraph (b) of this subdivision, 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 contract 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) 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.

10. (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.