

1799--B

Cal. No. 194

2009-2010 Regular Sessions

I N S E N A T E

February 6, 2009

Introduced by Sens. HASSELL-THOMPSON, ADAMS, DIAZ, HUNTLEY, KRUEGER, MONTGOMERY, ONORATO, OPPENHEIMER, PARKER, PERKINS, SAMPSON, SCHNEIDERMAN, SERRANO, STEWART-COUSINS, THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, substituted by Assembly Bill No. 4810, substitution reconsidered and vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading -- recommitted to the Committee on Finance in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first report, amended on first report, ordered to a second report and ordered reprinted, retaining its place in the order of second report

AN ACT to amend the economic development law, the executive law, the state finance law, and the public authorities law, in relation to funding certain mandates set forth in the economic development law, strengthening certain provisions of the executive law as it relates to increasing procurement opportunities for minority and women-owned business enterprises, and strengthening reporting and compliance by state agencies and contracts within article 15-A of the executive law

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The economic development law is amended by adding a new
2 section 118-a to read as follows:

3 S 118-A. FUNDING OF MANDATES. NOT LESS THAN FIFTEEN MILLION DOLLARS OF
4 MONIES FROM THE BUDGET OF THE EMPIRE STATE DEVELOPMENT CORPORATION,
5 FOLLOWING APPROPRIATION BY THE LEGISLATURE FOR THIS PURPOSE AND THE
6 FURTHER ALLOCATION BY THE COMMISSIONER, SHALL BE MADE AVAILABLE ANNUALLY
7 TO FUND THE MANDATES SET FORTH IN SECTION ONE HUNDRED EIGHTEEN OF THIS
8 ARTICLE, SPECIFICALLY INCLUDING THE PROVISION OF TECHNICAL ASSISTANCE

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD08189-09-0

1 AND ENTERPRISE ASSISTANCE PROGRAMS PURSUANT TO SUBDIVISIONS SEVEN,
2 EIGHT, NINE AND TEN OF SECTION ONE HUNDRED EIGHTEEN OF THIS ARTICLE.

3 S 2. Subdivision 2 of section 313 of the executive law, as added by
4 chapter 261 of the laws of 1988, is amended to read as follows:

5 2. Contracting agencies shall include or require to be included with
6 respect to state contracts [for the acquisition, construction, demoli-
7 tion, replacement, major repair or renovation of real property and
8 improvements thereon,] such provisions as may be necessary to effectuate
9 the provisions of this section in every bid specification and state
10 contract, including, but not limited to: (a) provisions requiring
11 contractors to make a good faith effort to solicit active participation
12 by enterprises KNOWN TO BE CERTIFIED MINORITY OR WOMEN-OWNED BUSINESS
13 ENTERPRISES OR identified in the directory of certified businesses
14 provided to the contracting agency by the office; (b) requiring the
15 parties to agree as a condition of entering into such contract, to be
16 bound by the provisions of section three hundred sixteen of this arti-
17 cle; and (c) requiring the contractor to include the provisions set
18 forth in paragraphs (a) and (b) [above] OF THIS SUBDIVISION in every
19 subcontract in a manner that the provisions will be binding upon each
20 subcontractor as to work in connection with such contract. Provided,
21 however, that no such provisions shall be binding upon contractors or
22 subcontractors in the performance of work or the provision of services
23 that are unrelated, separate or distinct from the state contract as
24 expressed by its terms, and nothing in this section shall authorize the
25 director or any contracting agency to impose any requirement on a
26 contractor or subcontractor except with respect to a state contract.

27 S 3. Paragraph (a) of subdivision 4 of section 313 of the executive
28 law, as amended by chapter 429 of the laws of 2009, is amended to read
29 as follows:

30 (a) Contracting agencies shall administer the rules and regulations
31 promulgated by the director to ensure compliance with the provisions of
32 this section. Such rules and regulations: shall require a contractor to
33 submit a utilization plan after bids are opened, when bids are required,
34 but prior to the award of a state contract; shall require the contract-
35 ing agency to review the utilization plan submitted by the contractor
36 and to post the utilization plan and any waivers of compliance issued
37 pursuant to subdivision five of this section on the website of the
38 contracting agency within a reasonable period of time as established by
39 the director; shall require the contracting agency to notify the
40 contractor in writing within a period of time specified by the director
41 as to any deficiencies contained in the contractor's utilization plan;
42 shall require remedy thereof within a period of time specified by the
43 director; shall require the contractor to submit periodic compliance
44 reports relating to the operation and implementation of any utilization
45 plan; shall NOT ALLOW ANY AUTOMATIC WAIVERS, BUT SHALL allow a contrac-
46 tor to apply for a partial or total waiver of the minority and women-
47 owned business enterprise participation requirements pursuant to subdi-
48 visions five and six of this section; shall allow a contractor to file a
49 complaint with the director pursuant to subdivision seven of this
50 section in the event a contracting agency has failed or refused to issue
51 a waiver of the minority and women-owned business enterprise partic-
52 ipation requirements or has denied such request for a waiver; and shall
53 allow a contracting agency to file a complaint with the director pursu-
54 ant to subdivision eight of this section in the event a contractor is
55 failing or has failed to comply with the minority and women-owned busi-

1 ness enterprise participation requirements set forth in the state
2 contract where no waiver has been granted.

3 S 4. Subdivision 3 of section 315 of the executive law, as added by
4 chapter 261 of the laws of 1988, is amended to read as follows:

5 3. Each contracting agency shall report to the director with respect
6 to activities undertaken to promote employment of minority group members
7 and women and promote and increase participation by certified businesses
8 with respect to state contracts and subcontracts. [Such reports shall be
9 submitted periodically as required by the director.] SUCH REPORTS SHALL
10 BE SUBMITTED ON AN ANNUAL BASIS WITH QUARTERLY UPDATES, AND SHALL
11 INCLUDE SUCH INFORMATION AS IS NECESSARY FOR THE DIRECTOR TO DETERMINE
12 SUCH CONTRACTING AGENCIES AND ITS CONTRACTORS' COMPLIANCE WITH THE
13 PURPOSES OF THIS ARTICLE AND SUCH SPECIFIC INFORMATION AS THE DIRECTOR
14 MAY REQUEST, INCLUDING, WITHOUT LIMITATION, A SUMMARY OF ALL WAIVERS OF
15 THE REQUIREMENTS OF SUBDIVISIONS FIVE AND SIX OF SECTION THREE HUNDRED
16 THIRTEEN OF THIS ARTICLE ALLOWED BY SUCH CONTRACTING AGENCY DURING THE
17 PERIOD COVERED BY THE REPORT, INCLUDING A DESCRIPTION OF THE BASIS OF
18 THE WAIVER REQUEST AND THE CONTRACTING AGENCIES RATIONALE FOR GRANTING
19 ANY SUCH WAIVER.

20 S 5. Section 315 of the executive law is amended by adding two new
21 subdivisions 4 and 5 to read as follows:

22 4. EACH STATE AGENCY, AUTHORITY OR MEMBER CORPORATION'S PERFORMANCE IN
23 ACHIEVING THE MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PARTICIPATION
24 AND OTHER DIVERSITY GOALS ESTABLISHED BY THIS ARTICLE SHALL BE PERIOD-
25 ICALLY REVIEWED AND EVALUATED BY THE DIRECTOR. IN THE EVENT THAT THE
26 DIRECTOR FINDS THAT A STATE AGENCY, AUTHORITY OR MEMBER CORPORATION HAS
27 NOT MADE REASONABLE, GOOD FAITH EFFORTS TO SET OR ACHIEVE REASONABLE
28 DIVERSITY GOALS FOR A PERIOD OF ONE YEAR FOLLOWING NOTICE OF NON-COMPLI-
29 ANCE BY THE DIRECTOR, THEN THE DIRECTOR SHALL HAVE THE POWER TO PARTIC-
30 IPATE IN THE CONTRACTING APPROVAL PROCESS OF SUCH STATE AGENCY, AUTHORI-
31 TY OR MEMBER CORPORATION UNTIL SUCH TIME AS THE DIRECTOR DEEMS SUCH
32 STATE AGENCY, AUTHORITY OR MEMBER CORPORATION TO BE IN COMPLIANCE WITH
33 THIS ARTICLE. SUCH POWER SHALL INCLUDE THE RIGHT TO PREVENT ANY STATE
34 AGENCY, AUTHORITY OR MEMBER CORPORATION DEEMED TO BE NON-COMPLIANT AS
35 SET FORTH ABOVE FROM MAKING CONTRACT AWARDS UNLESS THE DIRECTOR HAS
36 DEEMED SUCH AWARD TO BE IN COMPLIANCE WITH THIS ARTICLE.

37 5. THE DIVISION OF MINORITY AND WOMEN-BUSINESS DEVELOPMENT SHALL ISSUE
38 AN ANNUAL REPORT WHICH: (A) SUMMARIZES ALL REPORTS SUBMITTED TO IT BY
39 EACH CONTRACTING AGENCY PURSUANT TO SUBDIVISION THREE OF THIS SECTION;
40 (B) CONTAINS SUCH COMPARATIVE OR OTHER INFORMATION AS THE DIRECTOR DEEMS
41 APPROPRIATE TO EVALUATE THE EFFECTIVENESS OF THE ACTIVITIES UNDERTAKEN
42 BY EACH SUCH CONTRACTING AGENCY TO PROMOTE INCREASED PARTICIPATION BY
43 CERTIFIED BUSINESSES WITH RESPECT TO STATE CONTRACTS AND SUBCONTRACTS;
44 (C) CONTAINS A SUMMARY OF ALL WAIVERS OF THE REQUIREMENTS OF SUBDIVI-
45 SIONS FIVE AND SIX OF SECTION THREE HUNDRED THIRTEEN OF THIS ARTICLE
46 ALLOWED BY EACH CONTRACTING AGENCY DURING THE PERIOD COVERED BY THE
47 REPORT, INCLUDING A DESCRIPTION OF THE BASIS OF THE WAIVER REQUEST AND
48 THE CONTRACTING AGENCIES' RATIONALE FOR GRANTING ANY SUCH WAIVER; AND
49 (D) CONTAINS A SUMMARY OF (I) ALL DETERMINATIONS OF VIOLATIONS OF THIS
50 ARTICLE BY A CONTRACTOR OR A CONTRACTING AGENCY MADE DURING THE PERIOD
51 COVERED BY THE ANNUAL REPORT AND (II) THE PENALTIES OR SANCTION, IF ANY,
52 ASSESSED IN CONNECTION WITH SUCH DETERMINATION AND THE RATIONALE FOR
53 SUCH PENALTIES OR SANCTIONS. COPIES OF THE ANNUAL REPORT SHALL BE
54 PROVIDED TO THE COMMISSIONER, GOVERNOR, THE SPEAKER OF THE ASSEMBLY, THE
55 TEMPORARY PRESIDENT OF THE SENATE AND SHALL ALSO BE MADE WIDELY AVAIL-
56 ABLE TO THE PUBLIC, INCLUDING BY PUBLICATION ON A WEBSITE MAINTAINED BY

1 THE DIVISION. THE DIVISION OF MINORITY AND WOMEN-BUSINESS DEVELOPMENT
2 SHALL PUBLISH THE QUARTERLY UPDATES RECEIVED FROM STATE AGENCIES
3 REFERRED TO IN SUBDIVISION THREE OF THIS SECTION ON THE WEBSITE MAIN-
4 TAINED BY THE DIVISION.

5 S 6. Section 316 of the executive law, as added by chapter 261 of the
6 laws of 1988, is amended to read as follows:

7 S 316. Enforcement. Upon receipt by the director of a complaint by a
8 contracting agency that a contractor has violated the provisions of a
9 state contract which have been included to comply with the provisions of
10 this article or of a contractor that a contracting agency has violated
11 such provisions or has failed or refused to issue a waiver where one has
12 been applied for pursuant to subdivision five of section three hundred
13 thirteen of this article or has denied such application, the director
14 shall attempt to resolve the matter giving rise to such complaint. If
15 efforts to resolve such matter to the satisfaction of all parties are
16 unsuccessful, the director shall refer the matter, within thirty days of
17 the receipt of the complaint, to the American Arbitration Association
18 for proceeding thereon. Upon conclusion of the arbitration proceedings,
19 the arbitrator shall submit to the director his or her award regarding
20 the alleged violation of the contract and recommendations regarding the
21 imposition of sanctions, fines or penalties. The director shall either:
22 (a) adopt the recommendation of the arbitrator; or (b) determine that no
23 sanctions, fines or penalties should be imposed; or (c) modify the
24 recommendation of the arbitrator, provided that such modification shall
25 not expand upon any sanction recommended or impose any new sanction, or
26 increase the amount of any recommended fine or penalty. The director,
27 within ten days of receipt of the arbitrator's award and recommenda-
28 tions, shall file a determination of such matter and shall cause a copy
29 of such determination along with a copy of this article to be served
30 upon the respondent by personal service or by certified mail return
31 receipt requested. The award of the arbitrator shall be final and may
32 only be vacated or modified as provided in article seventy-five of the
33 civil practice law and rules upon an application made within the time
34 provided by section seventy-five hundred eleven of the civil practice
35 law and rules. The determination of the director as to the imposition of
36 any fines, sanctions or penalties shall be reviewable pursuant to arti-
37 cle seventy-eight of the civil practice law and rules. IF A CONTRACTOR
38 HAS BEEN DETERMINED TO BE IN SERIOUS VIOLATION OF THE PROVISIONS OF THIS
39 ARTICLE, THE PENALTIES IMPOSED FOR ANY SUCH VIOLATION MAY INCLUDE, WITH-
40 OUT LIMITATION, THE RESCISSION OF ANY CONTRACT AWARD BY A STATE AGENCY
41 AND DEBARMENT FROM STATE CONTRACT AWARDS FOR A PERIOD NOT TO EXCEED FOUR
42 YEARS OF THE FINAL DETERMINATION.

43 S 7. Paragraph j of subdivision 1 of section 163 of the state finance
44 law, as added by chapter 83 of the laws of 1995, is amended to read as
45 follows:

46 j. "Best value" means the basis for awarding contracts for services to
47 the offerer which optimizes quality, cost and efficiency, among respon-
48 sive and responsible offerers AND WHICH ALSO TAKES INTO ACCOUNT THE
49 DIVERSITY PRACTICES OF EACH OFFERER. Such basis shall reflect, wherever
50 possible, objective and quantifiable analysis.

51 S 8. Subdivision 1 of section 163 of the state finance law is amended
52 by adding a new paragraph k to read as follows:

53 K. "DIVERSITY PRACTICES" MEANS THE OFFERER'S PRACTICES WITH RESPECT
54 TO: (I) APPOINTING, HIRING AND RETAINING MINORITY GROUP MEMBERS (AS
55 DEFINED IN ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW) AND WOMEN IN SENIOR
56 MANAGEMENT POSITIONS OF THE OFFERER, INCLUDING AT THE LEVEL OF BOARD OF

1 DIRECTORS OR ITS COMPARABLE MANAGEMENT LEVEL BODY, AND AS SENIOR EXECU-
2 TIVE OFFICERS WITHIN THE OFFERER'S ORGANIZATION; (II) HIRING, TRAINING
3 DEVELOPING, PROMOTING AND RETAINING MINORITY GROUP MEMBERS AND WOMEN
4 EMPLOYEES; (III) UTILIZING CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS
5 ENTERPRISES, AS DEFINED IN ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW OR ANY
6 OTHER STATUTES OR REGULATIONS GOVERNING THE PARTICIPATION OF MINORITY
7 AND WOMEN-OWNED BUSINESS ENTERPRISES IN CONTRACTS AWARDED BY A STATE
8 AGENCY OR OTHER PUBLIC CORPORATION, AS SUBCONTRACTORS AND SUPPLIERS;
9 (IV) ENTERING INTO PARTNERSHIPS, JOINT VENTURES OR OTHER SIMILAR
10 ARRANGEMENTS WITH CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTER-
11 PRISES AS DEFINED IN ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW OR OTHER
12 APPLICABLE STATUTE OR REGULATION GOVERNING AN ENTITY'S UTILIZATION OF
13 MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES; AND (V) UTILIZING SUBCON-
14 TRACTORS OR OTHER PARTNERS THAT DEMONSTRATE A SIGNIFICANT COMMITMENT TO
15 AND PROGRESS IN ATTRACTING, RETAINING AND PROMOTING DIVERSE TEAMS,
16 INCLUDING MINORITY GROUP MEMBERS AND WOMEN WITH RELEVANT DOMAIN EXPERI-
17 ENCE IN SENIOR MANAGEMENT OR STAFFING POSITIONS.

18 S 9. Subparagraph (i) of paragraph (b) of subdivision 3 of section
19 2879 of the public authorities law, as amended by chapter 45 of the laws
20 of 1994, is amended to read as follows:

21 (i) for the selection of such contractors on a competitive basis, and
22 provisions relating to the circumstances under which the board may by
23 resolution waive competition; PROVIDED HOWEVER, THE CORPORATION MAY
24 PURCHASE GOODS OR SERVICES FROM SMALL BUSINESS CONCERNS OR THOSE CERTI-
25 FIED AS MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES, OR GOODS OR TECH-
26 NOLOGY THAT ARE RECYCLED OR REMANUFACTURED, IN AN AMOUNT NOT EXCEEDING
27 TWO HUNDRED FIFTY THOUSAND DOLLARS WITHOUT A FORMAL COMPETITIVE PROCESS;

28 S 10. Subdivision 6 of section 163 of the state finance law, as
29 amended by section 3 of part D of chapter 56 of the laws of 2006, is
30 amended to read as follows:

31 6. Discretionary buying thresholds. Pursuant to guidelines established
32 by the state procurement council: the commissioner may purchase services
33 and commodities in an amount not exceeding eighty-five thousand dollars
34 without a formal competitive process; state agencies may purchase
35 services and commodities in an amount not exceeding fifty thousand
36 dollars without a formal competitive process; and state agencies may
37 purchase commodities or services from small business concerns or those
38 certified AS MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES pursuant to
39 article fifteen-A of the executive law, or commodities or technology
40 that are recycled or remanufactured, in an amount not exceeding [one]
41 TWO hundred FIFTY thousand dollars without a formal competitive process.

42 S 11. The opening paragraph of subparagraph (iv) of paragraph (b) of
43 subdivision 3 of section 2879 of the public authorities law, as amended
44 by chapter 383 of the laws of 1994, is amended to read as follows:

45 as used in this subparagraph, the term "professional firm" shall be
46 defined as any individual or sole proprietorship, partnership, corpo-
47 ration, association, or other legal entity permitted by law to practice
48 the professions [of architecture, engineering or surveying] OR OFFER
49 SERVICES RELATED TO ACCOUNTING, ARCHITECTURE, ASSET MANAGEMENT, ENGI-
50 NEERING, SURVEYING, FINANCIAL, LEGAL OR OTHER PROFESSIONAL SERVICES.

51 S 12. Paragraphs (f), (g), (h), (i), (j) and (k) of subdivision 3 of
52 section 2879 of the public authorities law are renumbered paragraphs
53 (l), (m), (n), (o), (p) and (q), and six new paragraphs (f), (g), (h),
54 (i), (j) and (k) are added to read as follows:

55 (F) REQUIREMENTS FOR THE APPOINTMENT OF ONE OR MORE SENIOR STAFF OF
56 THE CORPORATION TO OVERSEE THE CORPORATION'S PROGRAMS ESTABLISHED TO

1 PROMOTE AND ASSIST: (I) PARTICIPATION BY MINORITY OR WOMEN-OWNED BUSI-
2 NESS ENTERPRISES IN THE CORPORATION'S PROCUREMENT OPPORTUNITIES AND
3 FACILITATION OF THE AWARD OF A FAIR SHARE OF PROCUREMENT CONTRACTS TO
4 SUCH ENTERPRISES; (II) THE UTILIZATION OF CERTIFIED MINORITY AND WOMEN-
5 OWNED BUSINESS ENTERPRISES AS SUBCONTRACTORS AND SUPPLIERS BY ENTITIES
6 HAVING PROCUREMENT CONTRACTS WITH THE CORPORATION; AND (III) THE UTILI-
7 ZATION OF PARTNERSHIPS, JOINT VENTURES OR OTHER SIMILAR ARRANGEMENTS
8 BETWEEN CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND
9 OTHER ENTITIES HAVING PROCUREMENT CONTRACTS WITH THE CORPORATION. SUCH
10 STAFF SHALL HAVE A BACKGROUND IN THE TYPES OF GOODS OR SERVICES, INCLUD-
11 ING, WITHOUT LIMITATION, CONSTRUCTION, REAL ESTATE, FINANCIAL, INSUR-
12 ANCE, LEGAL, ACCOUNTING OR OTHER PROFESSIONAL SERVICES, AS APPLICABLE,
13 TO BE PROCURED BY THE CORPORATION AND SHALL REPORT DIRECTLY TO THE
14 CORPORATION'S EXECUTIVE DIRECTOR, PRESIDENT OR CHIEF EXECUTIVE OFFICER.

15 (G) REQUIREMENTS FOR PROVIDING NOTICE, IN ADDITION TO ANY OTHER NOTICE
16 OF PROCUREMENT OPPORTUNITIES REQUIRED BY LAW, TO APPROPRIATE PROFES-
17 SIONAL AND OTHER ORGANIZATIONS THAT SERVE MINORITY AND WOMEN-OWNED BUSI-
18 NESS ENTERPRISES PROVIDING THE TYPES OF SERVICES PROCURED BY THE CORPO-
19 RATION.

20 (H) PROCEDURES FOR MAINTAINING LISTS OF QUALIFIED MINORITY AND WOMEN-
21 OWNED BUSINESS ENTERPRISES AND OTHER PROFESSIONAL FIRMS THAT HAVE
22 EXPRESSED AN INTEREST IN DOING BUSINESS WITH THE CORPORATION AND ENSUR-
23 ING THAT SUCH LISTS ARE UPDATED REGULARLY. THE CORPORATION SHALL ALSO
24 CONSULT THE LISTS OF CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTER-
25 PRISES MAINTAINED BY THE DEPARTMENT OF ECONOMIC DEVELOPMENT PURSUANT TO
26 ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW.

27 (I) THE ESTABLISHMENT OF APPROPRIATE GOALS FOR PARTICIPATION BY MINOR-
28 ITY AND WOMEN-OWNED BUSINESS ENTERPRISES IN PROCUREMENT CONTRACTS
29 AWARDED BY THE CORPORATION AND FOR THE UTILIZATION OF MINORITY AND WOMAN
30 ENTERPRISES AS SUBCONTRACTORS AND SUPPLIERS BY ENTITIES HAVING PROCURE-
31 MENT CONTRACTS WITH THE CORPORATION.

32 (J) THE CONDUCT OF PROCUREMENTS IN A MANNER THAT WILL ENABLE THE
33 CORPORATION TO ACHIEVE THE GOALS ESTABLISHED PURSUANT TO PARAGRAPH (G)
34 OF THIS SUBDIVISION AND THAT ELIMINATES BARRIERS TO PARTICIPATION BY
35 MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES IN THE CORPORATION'S
36 PROCUREMENTS.

37 (K) REQUIREMENTS THAT THE EVALUATION CRITERIA FOR AWARDING ANY
38 PROCUREMENT CONTRACT OTHER THAN CONTRACTS REQUIRED BY LAW TO BE AWARDED
39 TO THE LOWEST RESPONSIBLE BIDDER PURSUANT TO SEALED BIDS INCLUDE AN
40 ASSESSMENT OF THE PROPOSER'S DIVERSITY PRACTICES. FOR PURPOSES OF THIS
41 PARAGRAPH, "DIVERSITY PRACTICES" SHALL MEAN THE PROPOSER'S PRACTICES
42 WITH RESPECT TO: (I) APPOINTING, HIRING AND RETAINING MINORITY GROUP
43 MEMBERS (AS DEFINED IN ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW) AND WOMEN
44 IN SENIOR MANAGEMENT POSITIONS OF THE OFFERER, INCLUDING AT THE LEVEL OF
45 BOARD OF DIRECTORS OR ITS COMPARABLE MANAGEMENT LEVEL BODY, AND AS
46 SENIOR EXECUTIVE OFFICERS WITHIN THE OFFERER'S ORGANIZATION; (II)
47 HIRING, TRAINING DEVELOPING, PROMOTING AND RETAINING MINORITY GROUP
48 MEMBERS AND WOMEN EMPLOYEES; (III) UTILIZING CERTIFIED MINORITY AND
49 WOMEN-OWNED BUSINESS ENTERPRISES, AS DEFINED IN ARTICLE FIFTEEN-A OF THE
50 EXECUTIVE LAW OR ANY OTHER STATUTES OR REGULATIONS GOVERNING THE PARTIC-
51 IPATION OF MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES IN CONTRACTS
52 AWARDED BY A STATE AGENCY OR OTHER PUBLIC CORPORATION, AS SUBCONTRACTORS
53 AND SUPPLIERS; (IV) ENTERING INTO PARTNERSHIPS, JOINT VENTURES OR OTHER
54 SIMILAR ARRANGEMENTS WITH THE CERTIFIED MINORITY AND WOMEN-OWNED BUSI-
55 NESS ENTERPRISES AS DEFINED IN ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW OR
56 OTHER APPLICABLE STATUTE OR REGULATION GOVERNING AN ENTITY'S UTILIZATION

1 OF MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES; AND (V) UTILIZING
2 SUBCONTRACTORS OR OTHER PARTNERS THAT DEMONSTRATES A SIGNIFICANT COMMIT-
3 MENT TO AND PROGRESS IN ATTRACTING, RETAINING AND PROMOTING DIVERSE
4 TEAMS, INCLUDING MINORITY GROUP MEMBERS AND WOMEN WITH RELEVANT DOMAIN
5 EXPERIENCE IN SENIOR MANAGEMENT OR STAFFING POSITIONS.

6 IN THE CASE OF CONTRACTS REQUIRED BY LAW TO BE AWARDED TO THE LOWEST
7 RESPONSIBLE BIDDER PURSUANT TO SEALED BIDS, IN THE EVENT OF DETERMI-
8 NATION THAT TWO OR MORE BIDDERS HAVE PROVIDED BIDS THAT ARE ROUGHLY
9 EQUAL ANY DETERMINATION OF RESPONSIBILITY OR OTHER "TIE BREAKING"
10 FACTORS SHALL TAKE INTO ACCOUNT THE RESPECTIVE BIDDERS RECORD OF COMPLI-
11 ANCE UNDER ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW OR OTHER APPLICABLE
12 STATUTES OR REGULATIONS GOVERNING THE PARTICIPATION OF MINORITY AND
13 WOMEN-OWNED BUSINESS ENTERPRISES IN CONTRACTS AWARDED BY A STATE AGENCY
14 OR OTHER PUBLIC CORPORATION.

15 S 13. Subdivision 6 of section 2879 of the public authorities law, as
16 amended by chapter 844 of the laws of 1992, is amended to read as
17 follows:

18 6. Each corporation, as part of the guidelines established pursuant to
19 subdivision three of this section, shall establish policies regarding
20 the preparation of publicly available reports on procurement contracts
21 entered into by such corporation. Such policies shall provide, at the
22 minimum, for the preparation of a report [no less frequently than annu-
23 ally] TO BE PUBLISHED ON AN ANNUAL BASIS WITH QUARTERLY UPDATES, summa-
24 rizing procurement activity by such corporation for the period of the
25 report, including a listing of all procurement contracts entered into,
26 all contracts entered into with New York state business enterprises and
27 the subject matter and value thereof, ALL CONTRACTS ENTERED INTO WITH
28 MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES AND THE SUBJECT MATTER AND
29 VALUE THEREOF, ALL REFERRALS MADE PURSUANT TO SECTION THREE HUNDRED
30 SIXTEEN OF THE EXECUTIVE LAW, all contracts entered into with foreign
31 business enterprises, and the subject matter and value thereof, the
32 selection process used to select such contractors, all procurement
33 contracts which were exempt from the publication requirements of article
34 four-C of the economic development law, the basis for any such exemption
35 and the status of existing procurement contracts. WITH RESPECT TO
36 CONTRACTS ENTERED INTO WITH MINORITY OR WOMEN-OWNED BUSINESS ENTER-
37 PRISES, SUCH CORPORATION SHALL MAKE REPORTS TO THE DIVISION AS SET FORTH
38 IN SECTION THREE HUNDRED FIFTEEN OF THE EXECUTIVE LAW.

39 S 14. Severability clause. If any clause, sentence, paragraph, subdi-
40 vision, section or part of this act shall be adjudged by any court of
41 competent jurisdiction to be invalid, such judgment shall not affect,
42 impair, or invalidate the remainder thereof, but shall be confined in
43 its operation to the clause, sentence, paragraph, subdivision, section
44 or part thereof directly involved in the controversy in which such judg-
45 ment shall have been rendered. It is hereby declared to be the intent of
46 the legislature that this act would have been enacted even if such
47 invalid provision had not been included herein.

48 S 15. This act shall take effect on the ninetieth day after it shall
49 have become a law; provided that the amendments to article 15-A of the
50 executive law made by sections two, three, four, five and six of this
51 act shall not affect the expiration of such article and shall be deemed
52 expired therewith; and provided further that the amendments to section
53 163 of the state finance law made by sections seven, eight, and ten of
54 this act shall not affect the repeal of such section and shall expire
55 and be deemed repealed therewith.