

2597

2013-2014 Regular Sessions

I N   S E N A T E

January 22, 2013

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Introduced by Sen. MARTINS -- read twice and ordered printed, and when printed to be committed to the Committee on Veterans, Homeland Security and Military Affairs

AN ACT to amend the executive law, in relation to veteran-owned business enterprises

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

1     Section 1. The executive law is amended by adding a new article 17-A  
2     to read as follows:

3                                 ARTICLE 17-A

4                     PARTICIPATION BY VETERANS WITH RESPECT TO STATE  
5                                 CONTRACTS

6     SECTION 369.     DEFINITIONS.

7             369-A. OPPORTUNITIES FOR VETERAN-OWNED BUSINESS ENTERPRISES.

8             369-B. STATEWIDE CERTIFICATION PROGRAM.

9             369-C. RESPONSIBILITIES OF CONTRACTING AGENCIES.

10            369-D. ENFORCEMENT.

11            369-E. SEVERABILITY.

12     S 369. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL  
13     HAVE THE FOLLOWING MEANINGS:

14     1. "CERTIFIED BUSINESS" SHALL MEAN A BUSINESS VERIFIED AS A  
15     VETERAN-OWNED BUSINESS ENTERPRISE PURSUANT TO SECTION THREE HUNDRED  
16     SIXTY-NINE-B OF THIS ARTICLE.

17     2. "CONTRACTING AGENCY" SHALL MEAN A STATE AGENCY WHICH IS A PARTY OR  
18     A PROPOSED PARTY TO A STATE CONTRACT OR, IN THE CASE OF A STATE CONTRACT  
19     DESCRIBED IN SUBDIVISION NINE OF THIS SECTION, SHALL MEAN THE NEW YORK  
20     STATE HOUSING FINANCE AGENCY, HOUSING TRUST FUND CORPORATION OR AFFORDA-  
21     BLE HOUSING CORPORATION, WHICHEVER HAS MADE OR PROPOSES TO MAKE THE  
22     GRANT OR LOAN FOR THE STATE ASSISTED HOUSING PROJECT.

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

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1 3. "CONTRACTOR" SHALL MEAN AN INDIVIDUAL, A BUSINESS ENTERPRISE,  
2 INCLUDING A SOLE PROPRIETORSHIP, A PARTNERSHIP, A CORPORATION, A  
3 NOT-FOR-PROFIT CORPORATION, OR ANY OTHER PARTY TO A STATE CONTRACT, OR A  
4 BIDDER IN CONJUNCTION WITH THE AWARD OF A STATE CONTRACT OR A PROPOSED  
5 PARTY TO A STATE CONTRACT.

6 4. "DIRECTOR" SHALL MEAN THE DIRECTOR OF THE DIVISION OF VETERAN-OWNED  
7 BUSINESS DEVELOPMENT IN THE DEPARTMENT OF ECONOMIC DEVELOPMENT.

8 5. "VETERAN" SHALL MEAN A RESIDENT OF THIS STATE, WHO HAS SERVED ON  
9 ACTIVE DUTY IN THE UNITED STATES ARMY, NAVY, AIR FORCE, MARINES, COAST  
10 GUARD, AND/ OR RESERVES THEREOF, AND/OR THE ARMY NATIONAL GUARD, AIR  
11 NATIONAL GUARD, NEW YORK GUARD AND/OR THE NEW YORK NAVAL MILITIA, AND  
12 WHO IS CURRENTLY IN SERVICE, OR HAS BEEN RELEASED FROM SUCH SERVICE BY  
13 HONORABLE DISCHARGE, OR WHO HAS BEEN FURLOUGHED TO THE RESERVE.

14 6. "VETERAN-OWNED BUSINESS ENTERPRISE" SHALL MEAN A BUSINESS ENTER-  
15 PRISE, INCLUDING A SOLE PROPRIETORSHIP, PARTNERSHIP, CORPORATION, OR  
16 LIMITED LIABILITY COMPANY THAT IS:

17 (A) AT LEAST FIFTY-ONE PERCENT OWNED BY A VETERAN;

18 (B) AN ENTERPRISE IN WHICH SUCH VETERAN OWNERSHIP IS REAL, SUBSTANTIAL  
19 AND CONTINUING;

20 (C) AN ENTERPRISE IN WHICH SUCH VETERAN OWNERSHIP HAS AND EXERCISES  
21 THE AUTHORITY TO CONTROL INDEPENDENTLY THE DAY-TO-DAY BUSINESS DECISIONS  
22 OF THE ENTERPRISE;

23 (D) AN ENTERPRISE AUTHORIZED TO DO BUSINESS IN THIS STATE AND INDE-  
24 PENDENTLY OWNED AND OPERATED;

25 (E) AN ENTERPRISE OWNED BY AN INDIVIDUAL OR INDIVIDUALS, WHOSE OWNER-  
26 SHIP, CONTROL AND OPERATION ARE RELIED UPON FOR CERTIFICATION, WITH A  
27 PERSONAL NET WORTH THAT DOES NOT EXCEED THREE MILLION FIVE HUNDRED THOU-  
28 SAND DOLLARS, AS ADJUSTED ANNUALLY ON THE FIRST OF JANUARY FOR INFLATION  
29 ACCORDING TO THE CONSUMER PRICE INDEX OF THE PREVIOUS YEAR; AND

30 (F) AN ENTERPRISE THAT IS A SMALL BUSINESS PURSUANT TO SUBDIVISION  
31 FOURTEEN OF THIS SECTION.

32 7. "STATE AGENCY" SHALL MEAN:

33 (A) (I) ANY STATE DEPARTMENT; OR

34 (II) ANY DIVISION, BOARD, COMMISSION OR BUREAU OF ANY STATE DEPART-  
35 MENT; OR

36 (III) THE STATE UNIVERSITY OF NEW YORK AND THE CITY UNIVERSITY OF NEW  
37 YORK, INCLUDING ALL THEIR CONSTITUENT UNITS EXCEPT COMMUNITY COLLEGES  
38 AND THE INDEPENDENT INSTITUTIONS OPERATING STATUTORY OR CONTRACT  
39 COLLEGES ON BEHALF OF THE STATE; OR

40 (IV) A BOARD, A MAJORITY OF WHOSE MEMBERS ARE APPOINTED BY THE GOVER-  
41 NOR OR WHO SERVE BY VIRTUE OF BEING STATE OFFICERS OR EMPLOYEES AS  
42 DEFINED IN SUBPARAGRAPH (I), (II) OR (III) OF PARAGRAPH (I) OF SUBDIVI-  
43 SION ONE OF SECTION SEVENTY-THREE OF THE PUBLIC OFFICERS LAW; OR

44 (B) A "STATE AUTHORITY," AS DEFINED IN SUBDIVISION ONE OF SECTION TWO  
45 OF THE PUBLIC AUTHORITIES LAW.

46 8. "STATE ASSISTED HOUSING PROJECT" OR "PROJECT" SHALL MEAN, FOR SUCH  
47 PROJECTS WHICH RECEIVE FROM THE NEW YORK STATE HOUSING FINANCE AGENCY,  
48 THE AFFORDABLE HOUSING CORPORATION, THE HOUSING TRUST FUND CORPORATION  
49 OR THE DIVISION OF HOUSING AND COMMUNITY RENEWAL A GRANT OR LOAN FOR ALL  
50 OR PART OF THE TOTAL PROJECT COST:

51 (A) A "PERMANENT HOUSING PROJECT FOR HOMELESS FAMILIES" AS DEFINED IN  
52 SUBDIVISION FIVE OF SECTION SIXTY-FOUR OF THE PRIVATE HOUSING FINANCE  
53 LAW;

54 (B) A "PROJECT" AS DEFINED IN SUBDIVISION TWELVE OF SECTION ONE THOU-  
55 SAND ONE HUNDRED ONE OF THE PRIVATE HOUSING FINANCE LAW PROVIDED SAID

PROJECT IS LOCATED IN A LARGE COUNTY AND CONSISTS OF MORE THAN TWELVE RESIDENTIAL UNITS AT A SINGLE SITE;

(C) "AFFORDABLE HOME OWNERSHIP DEVELOPMENT PROGRAMS" AS DEFINED IN SUBDIVISION EIGHT OF SECTION ONE THOUSAND ONE HUNDRED ELEVEN OF THE PRIVATE HOUSING FINANCE LAW PROVIDED SAID PROJECT IS LOCATED IN A METROPOLITAN AREA AS HEREIN DEFINED AND CONSISTS OF MORE THAN TWELVE RESIDENTIAL UNITS AT A SINGLE SITE;

(D) A "TURNKEY/ENHANCED RENTAL PROJECT" AS DEFINED IN SUBDIVISION TWO OF SECTION ONE THOUSAND ONE HUNDRED SIX-A OF THE PRIVATE HOUSING FINANCE LAW;

(E) "INFRASTRUCTURE IMPROVEMENTS" AS DEFINED IN SUBDIVISION TWO OF SECTION ONE THOUSAND ONE HUNDRED THIRTY-ONE OF THE PRIVATE HOUSING FINANCE LAW, TO THE EXTENT THAT SUCH "INFRASTRUCTURE IMPROVEMENTS" ARE APPLIED FOR IN CONNECTION WITH A STATE ASSISTED HOUSING PROJECT AS DEFINED IN PARAGRAPHS (A) THROUGH (D) OF THIS SUBDIVISION AND PROVIDED FURTHER THAT THE APPLICANT FOR SUCH INFRASTRUCTURE IMPROVEMENTS AND FOR SUCH STATE ASSISTED HOUSING PROJECT ARE IDENTICAL.

9. "STATE CONTRACT" SHALL MEAN:

(A) A WRITTEN AGREEMENT OR PURCHASE ORDER INSTRUMENT, PROVIDING FOR A TOTAL EXPENDITURE IN EXCESS OF TWENTY-FIVE THOUSAND DOLLARS, WHEREBY A CONTRACTING AGENCY IS COMMITTED TO EXPEND OR DOES EXPEND FUNDS IN RETURN FOR LABOR, SERVICES INCLUDING BUT NOT LIMITED TO LEGAL, FINANCIAL AND OTHER PROFESSIONAL SERVICES, SUPPLIES, EQUIPMENT, MATERIALS OR ANY COMBINATION OF THE FOREGOING, TO BE PERFORMED FOR, OR RENDERED OR FURNISHED TO THE CONTRACTING AGENCY;

(B) A WRITTEN AGREEMENT IN EXCESS OF ONE HUNDRED THOUSAND DOLLARS WHEREBY A CONTRACTING AGENCY IS COMMITTED TO EXPEND OR DOES EXPEND FUNDS FOR THE ACQUISITION, CONSTRUCTION, DEMOLITION, REPLACEMENT, MAJOR REPAIR OR RENOVATION OF REAL PROPERTY AND IMPROVEMENTS THEREON; AND

(C) A WRITTEN AGREEMENT IN EXCESS OF ONE HUNDRED THOUSAND DOLLARS WHEREBY THE OWNER OF A STATE ASSISTED HOUSING PROJECT IS COMMITTED TO EXPEND OR DOES EXPEND FUNDS FOR THE ACQUISITION, CONSTRUCTION, DEMOLITION, REPLACEMENT, MAJOR REPAIR OR RENOVATION OF REAL PROPERTY AND IMPROVEMENTS THEREON FOR SUCH PROJECT.

10. "SUBCONTRACT" SHALL MEAN AN AGREEMENT PROVIDING FOR A TOTAL EXPENDITURE IN EXCESS OF TWENTY-FIVE THOUSAND DOLLARS FOR THE CONSTRUCTION, DEMOLITION, REPLACEMENT, MAJOR REPAIR, RENOVATION, PLANNING OR DESIGN OF REAL PROPERTY AND IMPROVEMENTS THEREON BETWEEN A CONTRACTOR AND ANY INDIVIDUAL OR BUSINESS ENTERPRISE, INCLUDING A SOLE PROPRIETORSHIP, PARTNERSHIP, CORPORATION, OR NOT-FOR-PROFIT CORPORATION, IN WHICH A PORTION OF A CONTRACTOR'S OBLIGATION UNDER A STATE CONTRACT IS UNDERTAKEN OR ASSUMED, BUT SHALL NOT INCLUDE ANY CONSTRUCTION, DEMOLITION, REPLACEMENT, MAJOR REPAIR, RENOVATION, PLANNING OR DESIGN OF REAL PROPERTY OR IMPROVEMENTS THEREON FOR THE BENEFICIAL USE OF THE CONTRACTOR.

11. "COMMISSIONER" SHALL MEAN THE COMMISSIONER OF ECONOMIC DEVELOPMENT.

12. "LESSEE" SHALL MEAN AN INDIVIDUAL, A BUSINESS ENTERPRISE, INCLUDING A SOLE PROPRIETORSHIP, A PARTNERSHIP, A CORPORATION, A NOT-FOR-PROFIT CORPORATION, OR ANY OTHER PARTY TO A LEASE WITH A STATE AGENCY AS DEFINED IN SUBDIVISION SEVEN OF THIS SECTION, OR A RESPONDENT IN CONJUNCTION WITH THE AWARD OF SUCH A LEASE OR A PROPOSED LESSEE WITH A STATE AGENCY AS DEFINED IN SUBDIVISION SEVEN OF THIS SECTION.

13. "PERSONAL NET WORTH" SHALL MEAN THE AGGREGATE ADJUSTED NET VALUE OF THE ASSETS OF AN INDIVIDUAL REMAINING AFTER TOTAL LIABILITIES ARE DEDUCTED. PERSONAL NET WORTH INCLUDES THE INDIVIDUAL'S SHARE OF ASSETS

1 HELD JOINTLY WITH SAID INDIVIDUAL'S SPOUSE AND DOES NOT INCLUDE THE  
2 INDIVIDUAL'S OWNERSHIP INTEREST IN THE VETERAN-OWNED BUSINESS ENTER-  
3 PRISE, THE INDIVIDUAL'S EQUITY IN HIS OR HER PRIMARY RESIDENCE, OR UP TO  
4 FIVE HUNDRED THOUSAND DOLLARS OF THE PRESENT CASH VALUE OF ANY QUALIFIED  
5 RETIREMENT SAVINGS PLAN OR INDIVIDUAL RETIREMENT ACCOUNT HELD BY THE  
6 INDIVIDUAL LESS ANY PENALTIES FOR EARLY WITHDRAWAL.

7 14. "SMALL BUSINESS" AS USED IN THIS SECTION, UNLESS OTHERWISE INDI-  
8 CATED, SHALL MEAN A BUSINESS WHICH HAS A SIGNIFICANT BUSINESS PRESENCE  
9 IN THE STATE, IS INDEPENDENTLY OWNED AND OPERATED, AND EMPLOYS, BASED ON  
10 ITS INDUSTRY, A CERTAIN NUMBER OF PERSONS AS DETERMINED BY THE DIRECTOR,  
11 BUT NOT TO EXCEED THREE HUNDRED, TAKING INTO CONSIDERATION FACTORS WHICH  
12 INCLUDE, BUT ARE NOT LIMITED TO, FEDERAL SMALL BUSINESS ADMINISTRATION  
13 STANDARDS. THE DIRECTOR MAY ISSUE REGULATIONS ON THE CONSTRUCTION OF THE  
14 TERMS IN THIS DEFINITION.

15 S 369-A. OPPORTUNITIES FOR VETERAN-OWNED BUSINESS ENTERPRISES. 1.  
16 GOALS AND REQUIREMENTS FOR AGENCIES AND CONTRACTORS. EACH AGENCY SHALL  
17 STRUCTURE PROCUREMENT PROCEDURES FOR CONTRACTS MADE DIRECTLY OR INDI-  
18 RECTLY TO VETERAN-OWNED BUSINESS ENTERPRISES, CONSISTENT WITH THE  
19 PURPOSES OF THIS ARTICLE, TO ATTEMPT TO ACHIEVE THE FOLLOWING RESULTS  
20 WITH REGARD TO TOTAL ANNUAL STATEWIDE PROCUREMENT:

21 (A) CONSTRUCTION INDUSTRY FOR CERTIFIED VETERAN-OWNED BUSINESS ENTER-  
22 PRISES: THREE PERCENT;

23 (B) CONSTRUCTION RELATED PROFESSIONAL SERVICES INDUSTRY FOR CERTIFIED  
24 VETERAN-OWNED BUSINESS ENTERPRISES: THREE PERCENT;

25 (C) NON-CONSTRUCTION RELATED SERVICES INDUSTRY FOR CERTIFIED VETERAN-  
26 OWNED BUSINESS ENTERPRISES: THREE PERCENT;

27 (D) COMMODITIES INDUSTRY FOR CERTIFIED VETERAN-OWNED BUSINESS ENTER-  
28 PRISES: THREE PERCENT; AND

29 (E) OVERALL AGENCY TOTAL DOLLAR VALUE OF PROCUREMENT FOR CERTIFIED  
30 VETERAN-OWNED BUSINESS ENTERPRISES: THREE PERCENT.

31 2. THE DIRECTOR SHALL PROMULGATE RULES AND REGULATIONS PURSUANT TO THE  
32 GOALS ESTABLISHED IN SUBDIVISION ONE OF THIS SECTION THAT PROVIDE MEAS-  
33 URES AND PROCEDURES TO ENSURE THAT CERTIFIED VETERAN-OWNED BUSINESSES  
34 SHALL BE GIVEN THE OPPORTUNITY FOR MAXIMUM FEASIBLE PARTICIPATION IN THE  
35 PERFORMANCE OF STATE CONTRACTS AND TO ASSIST IN THE AGENCY'S IDENTIFICA-  
36 TION OF THOSE STATE CONTRACTS FOR WHICH VETERAN-OWNED CERTIFIED BUSI-  
37 NESSES MAY BEST BID TO ACTIVELY AND AFFIRMATIVELY PROMOTE AND ASSIST  
38 THEIR PARTICIPATION IN THE PERFORMANCE OF STATE CONTRACTS SO AS TO  
39 FACILITATE THE AGENCY'S ACHIEVEMENT OF THE MAXIMUM FEASIBLE PORTION OF  
40 THE GOALS FOR STATE CONTRACTS TO SUCH BUSINESSES.

41 2-A. THE DIRECTOR SHALL PROMULGATE RULES AND REGULATIONS THAT WILL  
42 ACCOMPLISH THE FOLLOWING:

43 (A) PROVIDE FOR THE CERTIFICATION AND DECERTIFICATION OF VETERAN-OWNED  
44 BUSINESS ENTERPRISES FOR ALL AGENCIES THROUGH A SINGLE PROCESS THAT  
45 MEETS APPLICABLE REQUIREMENTS;

46 (B) REQUIRE THAT EACH CONTRACT SOLICITATION DOCUMENT ACCOMPANYING EACH  
47 SOLICITATION SET FORTH THE EXPECTED DEGREE OF VETERAN-OWNED BUSINESS  
48 ENTERPRISE PARTICIPATION BASED, IN PART, ON:

49 (I) THE POTENTIAL SUBCONTRACT OPPORTUNITIES AVAILABLE IN THE PRIME  
50 PROCUREMENT CONTRACT; AND

51 (II) THE AVAILABILITY, AS CONTAINED WITHIN THE STUDY, OF CERTIFIED  
52 VETERAN-OWNED BUSINESS ENTERPRISES TO RESPOND COMPETITIVELY TO THE  
53 POTENTIAL SUBCONTRACT OPPORTUNITIES;

54 (C) REQUIRE THAT EACH AGENCY PROVIDE A CURRENT LIST OF CERTIFIED  
55 VETERAN BUSINESS ENTERPRISES TO EACH PROSPECTIVE CONTRACTOR;

1 (D) ALLOW A CONTRACTOR THAT IS A CERTIFIED VETERAN-OWNED BUSINESS  
2 ENTERPRISE TO USE THE WORK IT PERFORMS TO MEET REQUIREMENTS FOR USE OF  
3 VETERAN-OWNED BUSINESS ENTERPRISES AS SUBCONTRACTORS;

4 (E) PROVIDE FOR JOINT VENTURES, WHICH A BIDDER MAY COUNT TOWARD MEET-  
5 ING ITS VETERAN-OWNED BUSINESS ENTERPRISE PARTICIPATION;

6 (F) CONSISTENT WITH SUBDIVISION FIVE OF THIS SECTION, PROVIDE FOR  
7 CIRCUMSTANCES UNDER WHICH AN AGENCY MAY WAIVE OBLIGATIONS OF THE  
8 CONTRACTOR RELATING TO VETERAN BUSINESS ENTERPRISE PARTICIPATION;

9 (G) REQUIRE THAT AN AGENCY VERIFY THAT VETERAN-OWNED BUSINESS ENTER-  
10 PRISES LISTED IN A SUCCESSFUL BID ARE ACTUALLY PARTICIPATING TO THE  
11 EXTENT LISTED IN THE PROJECT FOR WHICH THE BID WAS SUBMITTED;

12 (H) PROVIDE FOR THE COLLECTION OF STATISTICAL DATA BY EACH AGENCY  
13 CONCERNING ACTUAL VETERAN-OWNED BUSINESS ENTERPRISE PARTICIPATION; AND

14 3. SOLELY FOR THE PURPOSE OF PROVIDING THE OPPORTUNITY FOR MEANINGFUL  
15 PARTICIPATION BY CERTIFIED BUSINESSES IN THE PERFORMANCE OF STATE  
16 CONTRACTS AS PROVIDED IN THIS SECTION, STATE CONTRACTS SHALL INCLUDE  
17 LEASES OF REAL PROPERTY BY A STATE AGENCY TO A LESSEE WHERE: THE TERMS  
18 OF SUCH LEASES PROVIDE FOR THE CONSTRUCTION, DEMOLITION, REPLACEMENT,  
19 MAJOR REPAIR OR RENOVATION OF REAL PROPERTY AND IMPROVEMENTS THEREON BY  
20 SUCH LESSEE; AND THE COST OF SUCH CONSTRUCTION, DEMOLITION, REPLACEMENT,  
21 MAJOR REPAIR OR RENOVATION OF REAL PROPERTY AND IMPROVEMENTS THEREON  
22 SHALL EXCEED THE SUM OF ONE HUNDRED THOUSAND DOLLARS. REPORTS TO THE  
23 DIRECTOR PURSUANT TO SECTION THREE HUNDRED SIXTY-NINE-C OF THIS ARTICLE  
24 SHALL INCLUDE ACTIVITIES WITH RESPECT TO ALL SUCH STATE CONTRACTS.  
25 CONTRACTING AGENCIES SHALL INCLUDE OR REQUIRE TO BE INCLUDED WITH  
26 RESPECT TO STATE CONTRACTS FOR THE ACQUISITION, CONSTRUCTION, DEMOLI-  
27 TION, REPLACEMENT, MAJOR REPAIR OR RENOVATION OF REAL PROPERTY AND  
28 IMPROVEMENTS THEREON, SUCH PROVISIONS AS MAY BE NECESSARY TO EFFECTUATE  
29 THE PROVISIONS OF THIS SECTION IN EVERY BID SPECIFICATION AND STATE  
30 CONTRACT, INCLUDING, BUT NOT LIMITED TO: (A) PROVISIONS REQUIRING  
31 CONTRACTORS TO MAKE A GOOD FAITH EFFORT TO SOLICIT ACTIVE PARTICIPATION  
32 BY ENTERPRISES IDENTIFIED IN THE DIRECTORY OF CERTIFIED BUSINESSES  
33 PROVIDED TO THE CONTRACTING AGENCY BY THE OFFICE; (B) REQUIRING THE  
34 PARTIES TO AGREE AS A CONDITION OF ENTERING INTO SUCH CONTRACT, TO BE  
35 BOUND BY THE PROVISIONS OF SECTION THREE HUNDRED SIXTY-NINE-D OF THIS  
36 ARTICLE; AND (C) REQUIRING THE CONTRACTOR TO INCLUDE THE PROVISIONS SET  
37 FORTH IN PARAGRAPHS (A) AND (B) OF THIS SUBDIVISION IN EVERY SUBCONTRACT  
38 IN A MANNER THAT THE PROVISIONS WILL BE BINDING UPON EACH SUBCONTRACTOR  
39 AS TO WORK IN CONNECTION WITH SUCH CONTRACT. PROVIDED, HOWEVER, THAT NO  
40 SUCH PROVISIONS SHALL BE BINDING UPON CONTRACTORS OR SUBCONTRACTORS IN  
41 THE PERFORMANCE OF WORK OR THE PROVISION OF SERVICES THAT ARE UNRELATED,  
42 SEPARATE OR DISTINCT FROM THE STATE CONTRACT AS EXPRESSED BY ITS TERMS,  
43 AND NOTHING IN THIS SECTION SHALL AUTHORIZE THE DIRECTOR OR ANY  
44 CONTRACTING AGENCY TO IMPOSE ANY REQUIREMENT ON A CONTRACTOR OR SUBCON-  
45 TRACTOR EXCEPT WITH RESPECT TO A STATE CONTRACT.

46 4. (A) CONTRACTING AGENCIES SHALL ADMINISTER THE RULES AND REGULATIONS  
47 PROMULGATED BY THE DIRECTOR IN A GOOD FAITH EFFORT TO MEET THE MAXIMUM  
48 FEASIBLE PORTION OF THE AGENCY'S GOALS ADOPTED PURSUANT TO THIS ARTICLE  
49 AND THE REGULATIONS OF THE DIRECTOR. SUCH RULES AND REGULATIONS: SHALL  
50 REQUIRE A CONTRACTOR TO SUBMIT A UTILIZATION PLAN AFTER BIDS ARE OPENED,  
51 WHEN BIDS ARE REQUIRED, BUT PRIOR TO THE AWARD OF A STATE CONTRACT;  
52 SHALL REQUIRE THE CONTRACTING AGENCY TO REVIEW THE UTILIZATION PLAN  
53 SUBMITTED BY THE CONTRACTOR AND TO POST THE UTILIZATION PLAN AND ANY  
54 WAIVERS OF COMPLIANCE ISSUED PURSUANT TO SUBDIVISION FIVE OF THIS  
55 SECTION ON THE WEBSITE OF THE CONTRACTING AGENCY WITHIN A REASONABLE  
56 PERIOD OF TIME AS ESTABLISHED BY THE DIRECTOR; SHALL REQUIRE THE

1 CONTRACTING AGENCY TO NOTIFY THE CONTRACTOR IN WRITING WITHIN A PERIOD  
2 OF TIME SPECIFIED BY THE DIRECTOR AS TO ANY DEFICIENCIES CONTAINED IN  
3 THE CONTRACTOR'S UTILIZATION PLAN; SHALL REQUIRE REMEDY THEREOF WITHIN A  
4 PERIOD OF TIME SPECIFIED BY THE DIRECTOR; SHALL REQUIRE THE CONTRACTOR  
5 TO SUBMIT PERIODIC COMPLIANCE REPORTS RELATING TO THE OPERATION AND  
6 IMPLEMENTATION OF ANY UTILIZATION PLAN; SHALL NOT ALLOW ANY AUTOMATIC  
7 WAIVERS BUT SHALL ALLOW A CONTRACTOR TO APPLY FOR A PARTIAL OR TOTAL  
8 WAIVER OF THE VETERAN-OWNED BUSINESS ENTERPRISE PARTICIPATION REQUIRE-  
9 MENTS PURSUANT TO SUBDIVISIONS FIVE AND SIX OF THIS SECTION; SHALL ALLOW  
10 A CONTRACTOR TO FILE A COMPLAINT WITH THE DIRECTOR PURSUANT TO SUBDIVI-  
11 SION SIX OF THIS SECTION IN THE EVENT A CONTRACTING AGENCY HAS FAILED OR  
12 REFUSED TO ISSUE A WAIVER OF THE VETERAN-OWNED BUSINESS ENTERPRISE  
13 PARTICIPATION REQUIREMENTS OR HAS DENIED SUCH REQUEST FOR A WAIVER.

14 (B) THE RULES AND REGULATIONS PROMULGATED PURSUANT TO THIS SUBDIVISION  
15 REGARDING A UTILIZATION PLAN SHALL PROVIDE THAT WHERE ENTERPRISES HAVE  
16 BEEN IDENTIFIED WITHIN A UTILIZATION PLAN, A CONTRACTOR SHALL ATTEMPT,  
17 IN GOOD FAITH, TO UTILIZE SUCH ENTERPRISE AT LEAST TO THE EXTENT INDI-  
18 CATED. A CONTRACTING AGENCY MAY REQUIRE A CONTRACTOR TO INDICATE, WITHIN  
19 A UTILIZATION PLAN, WHAT MEASURES AND PROCEDURES HE OR SHE INTENDS TO  
20 TAKE TO COMPLY WITH THE PROVISIONS OF THIS ARTICLE, BUT MAY NOT REQUIRE,  
21 AS A CONDITION OF AWARD OF, OR COMPLIANCE WITH, A CONTRACT THAT A  
22 CONTRACTOR UTILIZE A PARTICULAR ENTERPRISE IN PERFORMANCE OF THE  
23 CONTRACT.

24 (C) WITHOUT LIMITING OTHER GROUNDS FOR THE DISQUALIFICATION OF BIDS OR  
25 PROPOSALS ON THE BASIS OF NON-RESPONSIBILITY, A CONTRACTING AGENCY MAY  
26 DISQUALIFY THE BID OR PROPOSAL OF A CONTRACTOR AS BEING NON-RESPONSIBLE  
27 FOR FAILURE TO REMEDY NOTIFIED DEFICIENCIES CONTAINED IN THE CONTRAC-  
28 TOR'S UTILIZATION PLAN WITHIN A PERIOD OF TIME SPECIFIED IN REGULATIONS  
29 PROMULGATED BY THE DIRECTOR AFTER RECEIVING NOTIFICATION OF SUCH DEFI-  
30 CIENCIES FROM THE CONTRACTING AGENCY. WHERE FAILURE TO REMEDY ANY NOTI-  
31 FIED DEFICIENCY IN THE UTILIZATION PLAN IS A GROUND FOR DISQUALIFICA-  
32 TION, THAT ISSUE AND ALL OTHER GROUNDS FOR DISQUALIFICATION SHALL BE  
33 STATED IN WRITING BY THE CONTRACTING AGENCY. WHERE THE CONTRACTING AGEN-  
34 CY STATES THAT A FAILURE TO REMEDY ANY NOTIFIED DEFICIENCY IN THE UTILI-  
35 ZATION PLAN IS A GROUND FOR DISQUALIFICATION THE CONTRACTOR SHALL BE  
36 ENTITLED TO AN ADMINISTRATIVE HEARING, ON A RECORD, INVOLVING ALL  
37 GROUNDS STATED BY THE CONTRACTING AGENCY. SUCH HEARING SHALL BE  
38 CONDUCTED BY THE APPROPRIATE AUTHORITY OF THE CONTRACTING AGENCY TO  
39 REVIEW THE DETERMINATION OF DISQUALIFICATION. A FINAL ADMINISTRATIVE  
40 DETERMINATION MADE FOLLOWING SUCH HEARING SHALL BE REVIEWABLE IN A  
41 PROCEEDING COMMENCED UNDER ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE  
42 LAW AND RULES, PROVIDED THAT SUCH PROCEEDING IS COMMENCED WITHIN THIRTY  
43 DAYS OF THE NOTICE GIVEN BY CERTIFIED MAIL RETURN RECEIPT REQUESTED  
44 RENDERING SUCH FINAL ADMINISTRATIVE DETERMINATION. SUCH PROCEEDING  
45 SHALL BE COMMENCED IN THE SUPREME COURT, APPELLATE DIVISION, THIRD  
46 DEPARTMENT AND SUCH PROCEEDING SHALL BE PREFERRED OVER ALL OTHER CIVIL  
47 CAUSES EXCEPT ELECTION CAUSES, AND SHALL BE HEARD AND DETERMINED IN  
48 PREFERENCE TO ALL OTHER CIVIL BUSINESS PENDING THEREIN, EXCEPT ELECTION  
49 MATTERS, IRRESPECTIVE OF POSITION ON THE CALENDAR. APPEALS TAKEN TO THE  
50 COURT OF APPEALS OF THE STATE OF NEW YORK SHALL BE SUBJECT TO THE SAME  
51 PREFERENCE.

52 5. WHERE IT APPEARS THAT A CONTRACTOR CANNOT, AFTER A GOOD FAITH  
53 EFFORT, COMPLY WITH THE VETERAN-OWNED BUSINESS ENTERPRISE PARTICIPATION  
54 REQUIREMENTS SET FORTH IN A PARTICULAR STATE CONTRACT, A CONTRACTOR MAY  
55 FILE A WRITTEN APPLICATION WITH THE CONTRACTING AGENCY REQUESTING A  
56 PARTIAL OR TOTAL WAIVER OF SUCH REQUIREMENTS SETTING FORTH THE REASONS

1 FOR SUCH CONTRACTOR'S INABILITY TO MEET ANY OR ALL OF THE PARTICIPATION  
2 REQUIREMENTS TOGETHER WITH AN EXPLANATION OF THE EFFORTS UNDERTAKEN BY  
3 THE CONTRACTOR TO OBTAIN THE REQUIRED VETERAN-OWNED BUSINESS ENTERPRISE  
4 PARTICIPATION. IN IMPLEMENTING THE PROVISIONS OF THIS SECTION, THE  
5 CONTRACTING AGENCY SHALL CONSIDER THE NUMBER AND TYPES OF VETERAN-OWNED  
6 BUSINESS ENTERPRISES LOCATED IN THE REGION IN WHICH THE STATE CONTRACT  
7 IS TO BE PERFORMED, THE TOTAL DOLLAR VALUE OF THE STATE CONTRACT, THE  
8 SCOPE OF WORK TO BE PERFORMED AND THE PROJECT SIZE AND TERM. IF, BASED  
9 ON SUCH CONSIDERATIONS, THE CONTRACTING AGENCY DETERMINES THERE IS NOT A  
10 REASONABLE AVAILABILITY OF CONTRACTORS ON THE LIST OF CERTIFIED BUSINESS  
11 TO FURNISH SERVICES FOR THE PROJECT, IT SHALL ISSUE A WAIVER OF COMPLI-  
12 ANCE TO THE CONTRACTOR. IN MAKING SUCH DETERMINATION, THE CONTRACTING  
13 AGENCY SHALL FIRST CONSIDER THE AVAILABILITY OF OTHER BUSINESS ENTER-  
14 PRISES LOCATED IN THE REGION AND SHALL THEREAFTER CONSIDER THE FINANCIAL  
15 ABILITY OF VETERAN-OWNED BUSINESSES LOCATED OUTSIDE THE REGION IN WHICH  
16 THE CONTRACT IS TO BE PERFORMED TO PERFORM THE STATE CONTRACT.

17 6. IN THE EVENT THAT A CONTRACTING AGENCY FAILS OR REFUSES TO ISSUE A  
18 WAIVER TO A CONTRACTOR AS REQUESTED WITHIN TWENTY DAYS AFTER HAVING MADE  
19 APPLICATION THEREFORE PURSUANT TO SUBDIVISION FIVE OF THIS SECTION OR IF  
20 THE CONTRACTING AGENCY DENIES SUCH APPLICATION, IN WHOLE OR IN PART, THE  
21 CONTRACTOR MAY FILE A COMPLAINT WITH THE DIRECTOR PURSUANT TO SECTION  
22 THREE HUNDRED SIXTY-NINE-D OF THIS ARTICLE SETTING FORTH THE FACTS AND  
23 CIRCUMSTANCES GIVING RISE TO THE CONTRACTOR'S COMPLAINT TOGETHER WITH A  
24 DEMAND FOR RELIEF. THE CONTRACTOR SHALL SERVE A COPY OF SUCH COMPLAINT  
25 UPON THE CONTRACTING AGENCY BY PERSONAL SERVICE OR BY CERTIFIED MAIL,  
26 RETURN RECEIPT REQUESTED. THE CONTRACTING AGENCY SHALL BE AFFORDED AN  
27 OPPORTUNITY TO RESPOND TO SUCH COMPLAINT IN WRITING.

28 7. IF, AFTER THE REVIEW OF A CONTRACTOR'S VETERAN-OWNED BUSINESS  
29 UTILIZATION PLAN OR REVIEW OF A PERIODIC COMPLIANCE REPORT AND AFTER  
30 SUCH CONTRACTOR HAS BEEN AFFORDED AN OPPORTUNITY TO RESPOND TO A NOTICE  
31 OF DEFICIENCY ISSUED BY THE CONTRACTING AGENCY IN CONNECTION THEREWITH,  
32 IT APPEARS THAT A CONTRACTOR IS FAILING OR REFUSING TO COMPLY WITH THE  
33 VETERAN-OWNED BUSINESS PARTICIPATION REQUIREMENTS AS SET FORTH IN THE  
34 STATE CONTRACT AND WHERE NO WAIVER FROM SUCH REQUIREMENTS HAS BEEN  
35 GRANTED, THE CONTRACTING AGENCY MAY FILE A WRITTEN COMPLAINT WITH THE  
36 DIRECTOR PURSUANT TO SECTION THREE HUNDRED SIXTY-NINE-D OF THIS ARTICLE  
37 SETTING FORTH THE FACTS AND CIRCUMSTANCES GIVING RISE TO THE CONTRACTING  
38 AGENCY'S COMPLAINT TOGETHER WITH A DEMAND FOR RELIEF. THE CONTRACTING  
39 AGENCY SHALL SERVE A COPY OF SUCH COMPLAINT UPON THE CONTRACTOR BY  
40 PERSONAL SERVICE OR BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED. THE  
41 CONTRACTOR SHALL BE AFFORDED AN OPPORTUNITY TO RESPOND TO SUCH COMPLAINT  
42 IN WRITING.

43 S 369-B. STATEWIDE CERTIFICATION PROGRAM. 1. THE DIRECTOR SHALL  
44 PROMULGATE RULES AND REGULATIONS PROVIDING FOR THE ESTABLISHMENT OF A  
45 STATEWIDE CERTIFICATION PROGRAM INCLUDING RULES AND REGULATIONS GOVERN-  
46 ING THE APPROVAL, DENIAL OR REVOCATION OF ANY SUCH CERTIFICATION.

47 2. FOR THE PURPOSES OF THIS ARTICLE, THE OFFICE SHALL BE RESPONSIBLE  
48 FOR VERIFYING BUSINESSES AS BEING OWNED, OPERATED, AND CONTROLLED BY  
49 VETERANS AND FOR CERTIFYING SUCH VERIFIED BUSINESSES. THE DIRECTOR SHALL  
50 PREPARE A DIRECTORY OF CERTIFIED BUSINESSES FOR USE BY CONTRACTING AGEN-  
51 CIES AND CONTRACTORS IN CARRYING OUT THE PROVISIONS OF THIS ARTICLE. THE  
52 DIRECTOR SHALL PERIODICALLY UPDATE THE DIRECTORY.

53 3. FOLLOWING APPLICATION FOR CERTIFICATION PURSUANT TO THIS SECTION,  
54 THE DIRECTOR SHALL PROVIDE THE APPLICANT WITH WRITTEN NOTICE OF THE  
55 STATUS OF THE APPLICATION, INCLUDING NOTICE OF ANY OUTSTANDING DEFICIEN-  
56 CIES, WITHIN THIRTY DAYS. WITHIN SIXTY DAYS OF SUBMISSION OF A FINAL

1 COMPLETED APPLICATION, THE DIRECTOR SHALL PROVIDE THE APPLICANT WITH  
2 WRITTEN NOTICE OF A DETERMINATION BY THE OFFICE APPROVING OR DENYING  
3 SUCH CERTIFICATION AND, IN THE EVENT OF A DENIAL A STATEMENT SETTING  
4 FORTH THE REASONS FOR SUCH DENIAL. UPON A DETERMINATION DENYING OR  
5 REVOKING CERTIFICATION, THE BUSINESS ENTERPRISE FOR WHICH CERTIFICATION  
6 HAS BEEN SO DENIED OR REVOKED SHALL, UPON WRITTEN REQUEST MADE WITHIN  
7 THIRTY DAYS FROM RECEIPT OF NOTICE OF SUCH DETERMINATION, BE ENTITLED TO  
8 A HEARING BEFORE AN INDEPENDENT HEARING OFFICER DESIGNATED FOR SUCH  
9 PURPOSE BY THE DIRECTOR. IN THE EVENT THAT A REQUEST FOR A HEARING IS  
10 NOT MADE WITHIN SUCH THIRTY DAY PERIOD, SUCH DETERMINATION SHALL BE  
11 DEEMED TO BE FINAL. THE INDEPENDENT HEARING OFFICER SHALL CONDUCT A  
12 HEARING AND UPON THE CONCLUSION OF SUCH HEARING, ISSUE A WRITTEN RECOM-  
13 MENDATION TO THE DIRECTOR TO AFFIRM, REVERSE OR MODIFY SUCH DETERMI-  
14 NATION OF THE DIRECTOR. SUCH WRITTEN RECOMMENDATION SHALL BE ISSUED TO  
15 THE PARTIES. THE DIRECTOR, WITHIN THIRTY DAYS, BY ORDER, MUST ACCEPT,  
16 REJECT OR MODIFY SUCH RECOMMENDATION OF THE HEARING OFFICER AND SET  
17 FORTH IN WRITING THE REASONS THEREFOR. THE DIRECTOR SHALL SERVE A COPY  
18 OF SUCH ORDER AND REASONS THEREFOR UPON THE BUSINESS ENTERPRISE BY  
19 PERSONAL SERVICE OR BY CERTIFIED MAIL RETURN RECEIPT REQUESTED. THE  
20 ORDER OF THE DIRECTOR SHALL BE SUBJECT TO REVIEW PURSUANT TO ARTICLE  
21 SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

22 4. ALL CERTIFICATIONS SHALL BE VALID FOR A PERIOD OF THREE YEARS.

23 S 369-C. RESPONSIBILITIES OF CONTRACTING AGENCIES. 1. EACH CONTRACTING  
24 AGENCY SHALL BE RESPONSIBLE FOR MONITORING STATE CONTRACTS UNDER ITS  
25 JURISDICTION, AND RECOMMENDING MATTERS TO THE OFFICE RESPECTING NON-COM-  
26 PLIANCE WITH THE PROVISIONS OF THIS ARTICLE SO THAT THE OFFICE MAY TAKE  
27 SUCH ACTION AS IS APPROPRIATE TO INSURE COMPLIANCE WITH THE PROVISIONS  
28 OF THIS ARTICLE, THE RULES AND REGULATIONS OF THE DIRECTOR ISSUED HERE-  
29 UNDER AND THE CONTRACTUAL PROVISIONS REQUIRED PURSUANT TO THIS ARTICLE.  
30 ALL CONTRACTING AGENCIES SHALL COMPLY WITH THE RULES AND REGULATIONS OF  
31 THE OFFICE AND ARE DIRECTED TO COOPERATE WITH THE OFFICE AND TO FURNISH  
32 TO THE OFFICE SUCH INFORMATION AND ASSISTANCE AS MAY BE REQUIRED IN THE  
33 PERFORMANCE OF ITS FUNCTIONS UNDER THIS ARTICLE.

34 2. EACH CONTRACTING AGENCY SHALL PROVIDE TO PROSPECTIVE BIDDERS A  
35 CURRENT COPY OF THE DIRECTORY OF CERTIFIED BUSINESSES, AND A COPY OF THE  
36 REGULATIONS REQUIRED PURSUANT TO SECTIONS THREE HUNDRED SIXTY-NINE-A OF  
37 THIS ARTICLE AT THE TIME BIDS OR PROPOSALS ARE SOLICITED.

38 3. EACH CONTRACTING AGENCY SHALL REPORT TO THE DIRECTOR WITH RESPECT  
39 TO ACTIVITIES UNDERTAKEN TO PROMOTE EMPLOYMENT OF VETERANS AND PROMOTE  
40 AND INCREASE PARTICIPATION BY CERTIFIED BUSINESSES WITH RESPECT TO STATE  
41 CONTRACTS AND SUBCONTRACTS. SUCH REPORTS SHALL BE SUBMITTED PERIOD-  
42 ICALLY, BUT NOT LESS FREQUENTLY THAN ANNUALLY, AS REQUIRED BY THE DIREC-  
43 TOR, AND SHALL INCLUDE SUCH INFORMATION AS IS NECESSARY FOR THE DIRECTOR  
44 TO DETERMINE WHETHER THE CONTRACTING AGENCY AND CONTRACTOR HAVE COMPLIED  
45 WITH THE PURPOSES OF THIS ARTICLE, INCLUDING, WITHOUT LIMITATION, A  
46 SUMMARY OF ALL WAIVERS OF THE REQUIREMENTS OF SUBDIVISIONS FIVE AND SIX  
47 OF SECTION THREE HUNDRED SIXTY-NINE-A OF THIS ARTICLE ALLOWED BY THE  
48 CONTRACTING AGENCY DURING THE PERIOD COVERED BY THE REPORT, INCLUDING A  
49 DESCRIPTION OF THE BASIS OF THE WAIVER REQUEST AND THE RATIONALE FOR  
50 GRANTING ANY SUCH WAIVER. EACH AGENCY SHALL ALSO INCLUDE IN SUCH ANNUAL  
51 REPORT WHETHER OR NOT IT HAS BEEN REQUIRED TO PREPARE A REMEDIAL PLAN,  
52 AND, IF SO, THE PLAN AND THE EXTENT TO WHICH THE AGENCY HAS COMPLIED  
53 WITH EACH ELEMENT OF THE PLAN.

54 S 369-D. ENFORCEMENT. UPON RECEIPT BY THE DIRECTOR OF A COMPLAINT BY A  
55 CONTRACTING AGENCY THAT A CONTRACTOR HAS VIOLATED THE PROVISIONS OF A  
56 STATE CONTRACT WHICH HAVE BEEN INCLUDED TO COMPLY WITH THE PROVISIONS OF



1 THIS ARTICLE OR OF A CONTRACTOR THAT A CONTRACTING AGENCY HAS VIOLATED  
2 SUCH PROVISIONS OR HAS FAILED OR REFUSED TO ISSUE A WAIVER WHERE ONE HAS  
3 BEEN APPLIED FOR PURSUANT TO SUBDIVISION FIVE OF SECTION THREE HUNDRED  
4 SIXTY-NINE-A OF THIS ARTICLE OR HAS DENIED SUCH APPLICATION, THE DIREC-  
5 TOR SHALL ATTEMPT TO RESOLVE THE MATTER GIVING RISE TO SUCH COMPLAINT.  
6 IF EFFORTS TO RESOLVE SUCH MATTER TO THE SATISFACTION OF ALL PARTIES ARE  
7 UNSUCCESSFUL, THE DIRECTOR SHALL REFER THE MATTER, WITHIN THIRTY DAYS OF  
8 THE RECEIPT OF THE COMPLAINT, TO THE DIVISION'S HEARING OFFICERS. UPON  
9 CONCLUSION OF THE ADMINISTRATIVE HEARING, THE HEARING OFFICER SHALL  
10 SUBMIT TO THE DIRECTOR HIS OR HER DECISION REGARDING THE ALLEGED  
11 VIOLATION OF THE CONTRACT AND RECOMMENDATIONS REGARDING THE IMPOSITION  
12 OF SANCTIONS, FINES OR PENALTIES. THE DIRECTOR, WITHIN TEN DAYS OF  
13 RECEIPT OF THE DECISION, SHALL FILE A DETERMINATION OF SUCH MATTER AND  
14 SHALL CAUSE A COPY OF SUCH DETERMINATION ALONG WITH A COPY OF THIS ARTI-  
15 CLE TO BE SERVED UPON THE CONTRACTOR BY PERSONAL SERVICE OR BY CERTIFIED  
16 MAIL RETURN RECEIPT REQUESTED. THE DECISION OF THE HEARING OFFICER SHALL  
17 BE FINAL AND MAY ONLY BE VACATED OR MODIFIED AS PROVIDED IN ARTICLE  
18 SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES UPON AN APPLICATION  
19 MADE WITHIN THE TIME PROVIDED BY SUCH ARTICLE. THE DETERMINATION OF THE  
20 DIRECTOR AS TO THE IMPOSITION OF ANY FINES, SANCTIONS OR PENALTIES SHALL  
21 BE REVIEWABLE PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE  
22 LAW AND RULES. THE PENALTIES IMPOSED FOR ANY VIOLATION WHICH IS PREMISED  
23 UPON EITHER A FRAUDULENT OR INTENTIONAL MISREPRESENTATION BY THE  
24 CONTRACTOR OR THE CONTRACTOR'S WILLFUL AND INTENTIONAL DISREGARD OF THE  
25 VETERAN-OWNED PARTICIPATION REQUIREMENT INCLUDED IN THE CONTRACT MAY  
26 INCLUDE A DETERMINATION THAT THE CONTRACTOR SHALL BE INELIGIBLE TO  
27 SUBMIT A BID TO ANY CONTRACTING AGENCY OR BE AWARDED ANY SUCH CONTRACT  
28 FOR A PERIOD NOT TO EXCEED ONE YEAR FOLLOWING THE FINAL DETERMINATION;  
29 PROVIDED HOWEVER, IF A CONTRACTOR HAS PREVIOUSLY BEEN DETERMINED TO BE  
30 INELIGIBLE TO SUBMIT A BID PURSUANT TO THIS SECTION, THE PENALTIES  
31 IMPOSED FOR ANY SUBSEQUENT VIOLATION, IF SUCH VIOLATION OCCURS WITHIN  
32 FIVE YEARS OF THE FIRST VIOLATION, MAY INCLUDE A DETERMINATION THAT THE  
33 CONTRACTOR SHALL BE INELIGIBLE TO SUBMIT A BID TO ANY CONTRACTING AGENCY  
34 OR BE AWARDED ANY SUCH CONTRACT FOR A PERIOD NOT TO EXCEED FIVE YEARS  
35 FOLLOWING THE FINAL DETERMINATION. THE DIVISION OF VETERAN'S BUSINESS  
36 DEVELOPMENT SHALL MAINTAIN A WEBSITE LISTING ALL CONTRACTORS THAT HAVE  
37 BEEN DEEMED INELIGIBLE TO SUBMIT A BID PURSUANT TO THIS SECTION AND THE  
38 DATE AFTER WHICH EACH CONTRACTOR SHALL ONCE AGAIN BECOME ELIGIBLE TO  
39 SUBMIT BIDS.

40 S 369-E. SEVERABILITY. IF ANY CLAUSE, SENTENCE, PARAGRAPH, SECTION OR  
41 PART OF THIS ARTICLE SHALL BE ADJUDGED BY ANY COURT OF COMPETENT JURIS-  
42 DICTION TO BE INVALID, THE JUDGMENT SHALL NOT AFFECT, IMPAIR OR INVALI-  
43 DATE THE REMAINDER THEREOF, BUT SHALL BE CONFINED IN ITS OPERATION TO  
44 THE CLAUSE, SENTENCE, PARAGRAPH, SECTION OR PART OF THIS ARTICLE DIRECT-  
45 LY INVOLVED IN THE CONTROVERSY IN WHICH THE JUDGMENT SHALL HAVE BEEN  
46 RENDERED.

47 S 2. This act shall take effect immediately.