

4297

2009-2010 Regular Sessions

I N   A S S E M B L Y

February 3, 2009

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Introduced by M. of A. BRODSKY -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, in relation to oversight of public authority contracts

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

1     Section 1. Section 2824 of the public authorities law is amended by  
2 adding a new subdivision 8 to read as follows:

3     8. THE GOVERNING BODY OF EVERY STATE AUTHORITY SHALL ESTABLISH A  
4 PROCUREMENT POLICY COMMITTEE THAT SHALL CONSIST OF AT LEAST THREE INDE-  
5 PENDENT MEMBERS, UNLESS THERE ARE INSUFFICIENT SEATS ON THE GOVERNING  
6 BODY ITSELF TO ALLOW FOR THE APPOINTMENT OF AT LEAST THREE INDEPENDENT  
7 MEMBERS, IN WHICH CASE THE PROCUREMENT POLICY COMMITTEE SHALL CONSIST OF  
8 ALL THE INDEPENDENT MEMBERS OF THE GOVERNING BODY, AND SUCH COMMITTEE  
9 SHALL BE RESPONSIBLE FOR ISSUING APPROPRIATE RULES OR GUIDELINES FOR  
10 OVERSIGHT OF ALL CONTRACTING MATTERS IN ACCORDANCE WITH RULES OR GUIDE-  
11 LINES ADOPTED BY THE GOVERNING BODY PURSUANT TO SECTION TWENTY-EIGHT  
12 HUNDRED SEVENTY-NINE OF THIS ARTICLE.

13     S 2. Section 2879 of the public authorities law, as amended by chapter  
14 564 of the laws of 1988, paragraph (b) of subdivision 3 as amended by  
15 chapter 45 of the laws of 1994, subparagraph (iv) of paragraph (b) of  
16 subdivision 3 as amended by chapter 383 of the laws of 1994, paragraph  
17 (h) of subdivision 3 as added by chapter 862 of the laws of 1990, para-  
18 graph (i) of subdivision 3 and paragraph (a) of subdivision 5 as amended  
19 by chapter 531 of the laws of 1993, paragraphs (j) and (k) of subdivi-  
20 sion 3 and subdivision 5 as added, subdivision 6 and paragraph (a) of  
21 subdivision 8 as amended, subdivisions 7, 8 and 9 as renumbered by chap-  
22 ter 844 of the laws of 1992, paragraph (b) of subdivision 5 as amended  
23 by chapter 684 of the laws of 1994, subparagraph (iii) of paragraph (b)  
24 and paragraphs (c) and (d) of subdivision 5 as amended by chapter 383 of  
25 the laws of 2000, is amended to read as follows:

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

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1 S 2879. Procurement, PUBLIC WORK, CONSTRUCTION AND REVENUE contracts.  
2 1. (A) Every [public] STATE authority [and public benefit corporation, a  
3 majority of the members of which consist of persons either appointed by  
4 the governor or who serve as members by virtue of holding a civil office  
5 of the state, or a combination thereof, (such entities to be hereinafter  
6 in this section referred to as "corporation")] shall adopt by resolution  
7 comprehensive RULES OR guidelines which (I) detail the [corporation's]  
8 STATE AUTHORITY'S operative policy and instructions regarding the use,  
9 awarding, monitoring and reporting of procurement, PUBLIC WORK,  
10 CONSTRUCTION AND REVENUE contracts[. Guidelines], AND (II) DESIGNATE A  
11 CONTRACTING OFFICER WHO SHALL BE RESPONSIBLE FOR THE PUBLIC AUTHORITY'S  
12 COMPLIANCE WITH, AND ENFORCEMENT OF, SUCH RULES OR GUIDELINES. SUCH  
13 RULES OR GUIDELINES SHALL BE CONSISTENT WITH, AND SHALL REQUIRE A STATE  
14 AUTHORITY'S CONTRACTING ACTIVITIES TO COMPLY WITH THE PROVISIONS OF THE  
15 STATE FINANCE LAW OR ANY OTHER LAW APPLICABLE TO CONTRACTS OF THE STATE,  
16 EXCEPT THAT SUCH RULES OR GUIDELINES MAY BE STRICTER THAN THE PROVISIONS  
17 OF THE STATE FINANCE LAW OR OTHER LAW APPLICABLE TO STATE CONTRACTS IF A  
18 STATE AUTHORITY DETERMINES THAT ADDITIONAL SAFEGUARDS ARE NECESSARY TO  
19 ASSURE THE INTEGRITY OF ITS OPERATIONS. RULES OR GUIDELINES approved by  
20 the [corporation] STATE AUTHORITY shall be annually reviewed and  
21 approved by the [corporation.] GOVERNING BODY OF THE STATE AUTHORITY.  
22 NOT MORE THAN NINETY DAYS AFTER THE CLOSE OF THE STATE AUTHORITY'S  
23 FISCAL YEAR, THE STATE AUTHORITY SHALL FILE WITH THE COMPTROLLER A COPY  
24 OF THE RULES OR GUIDELINES MOST RECENTLY REVIEWED AND APPROVED BY THE  
25 STATE AUTHORITY, INCLUDING THE NAME OF THE STATE AUTHORITY'S DESIGNATED  
26 CONTRACTING OFFICER. AT THE TIME OF FILING SUCH RULES OR GUIDELINES WITH  
27 THE COMPTROLLER, EVERY STATE AUTHORITY SHALL ALSO POST SUCH RULES OR  
28 GUIDELINES ON THE STATE AUTHORITY'S INTERNET WEBSITE. PROCUREMENT RULES  
29 OR GUIDELINES POSTED ON THE STATE AUTHORITY'S INTERNET WEBSITE SHALL BE  
30 MAINTAINED ON SUCH WEBSITE AT LEAST UNTIL THE PROCUREMENT RULES OR  
31 GUIDELINES FOR THE FOLLOWING YEAR ARE POSTED ON SUCH WEBSITE.

32 (B) THE PROCUREMENT, PUBLIC WORK, CONSTRUCTION, AND REVENUE CONTRACTS  
33 OF A STATE AUTHORITY SHALL BE SUBJECT TO PRIOR REVIEW AND APPROVAL BY  
34 THE COMPTROLLER, IF THE COMPTROLLER, IN HIS OR HER DISCRETION, DETER-  
35 MINES THAT SUCH REVIEW AND APPROVAL SHALL BE REQUIRED. IF THE COMP-  
36 TROLLER DETERMINES THAT ANY CONTRACT OR CATEGORY OF CONTRACTS OF A STATE  
37 AUTHORITY OR CATEGORY OF STATE AUTHORITIES REQUIRES DIRECT SUPERVISION  
38 IN THE FORM OF PRE-APPROVAL OF CONTRACTS AND THE COMPTROLLER SO NOTIFIES  
39 ANY STATE AUTHORITY OF SUCH DETERMINATION, THEN NO SUCH CONTRACT OR  
40 AGREEMENT BY SUCH STATE AUTHORITY SHALL BE A VALID ENFORCEABLE CONTRACT  
41 UNLESS SUCH CONTRACT SHALL FIRST BE APPROVED BY THE COMPTROLLER. IN THE  
42 EVENT THAT THE COMPTROLLER NOTIFIES ANY STATE AUTHORITY THAT APPROVAL  
43 SHALL BE REQUIRED THEN THE STATE AUTHORITY SHALL (I) INCLUDE IN ALL SUCH  
44 CONTRACTS A PROVISION INFORMING THE OTHER PARTIES TO SUCH CONTRACTS THAT  
45 THE SAME ARE NOT VALID AND ENFORCEABLE WITHOUT THE COMPTROLLER'S  
46 APPROVAL, AND (II) PUBLISH A NOTICE ON SUCH STATE AUTHORITY'S INTERNET  
47 WEBSITE DISCLOSING THAT SUCH CONTRACTS SHALL NOT BE VALID AND ENFORCEA-  
48 BLE WITHOUT THE COMPTROLLER'S APPROVAL. NOTHING IN THIS PARAGRAPH SHALL  
49 BE DEEMED TO LIMIT THE COMPTROLLER'S EXISTING AUTHORITY TO SUPERVISE THE  
50 ACCOUNTS OF PUBLIC AUTHORITIES.

51 2. For purposes of this section, procurement, PUBLIC WORK,  
52 CONSTRUCTION OR REVENUE contracts shall mean any written agreement OF A  
53 STATE AUTHORITY for the acquisition of goods or services of any kind OR  
54 THE CONSTRUCTION OF A PROJECT OF ANY KIND, in the actual or estimated  
55 [amount of five thousand dollars or more] AMOUNTS PROVIDED FOR CONTRACTS  
56 OF THE STATE IN SECTION ONE HUNDRED TWELVE OF THE STATE FINANCE LAW.

1 3. The RULES OR guidelines approved by [the corporation] EACH STATE  
2 AUTHORITY shall include, but not be limited to the following:

3 (a) A description of the types of goods purchased OR THE TYPES OF  
4 PROJECTS CONSTRUCTED, [and] for procurement contracts for services, a  
5 description of those areas of responsibility and oversight requiring the  
6 use of personal services and the reasons for the use of personal  
7 services in such areas, AND FOR REVENUE CONTRACTS, A DESCRIPTION OF THE  
8 TYPES OF CONSIDERATIONS GIVEN BY THE PUBLIC AUTHORITY, AND THE REVENUES  
9 EXPECTED TO BE GENERATED.

10 (b) Requirements regarding the [selection of contractors] AWARD OF  
11 CONTRACTS, which shall include provisions:

12 (i) for the [selection of such contractors] AWARD OF CONTRACTS on a  
13 competitive basis, and provisions relating to the circumstances under  
14 which the [board] GOVERNING BODY may by resolution waive competition,  
15 BUT ONLY IF SUCH WAIVER WOULD BE PERMISSIBLE UNDER THE LIMITED CIRCUM-  
16 STANCES PERMITTED BY THE STATE FINANCE LAW, AND ONLY IF SUCH A WAIVER IS  
17 APPROVED BY A TWO-THIRDS MAJORITY OF THE ENTIRE GOVERNING BODY OF THE  
18 STATE AUTHORITY;

19 (ii) describing when the award of procurement, PUBLIC WORK,  
20 CONSTRUCTION OR REVENUE contracts shall require approval of the [board]  
21 GOVERNING BODY by resolution, provided that any contract involving  
22 services to be rendered, A PROJECT TO BE CONSTRUCTED, OR CONSIDERATIONS  
23 TO BE GIVEN over a period in excess of one year shall require the  
24 approval of the [board] GOVERNING BODY by resolution and an annual  
25 review of the contract by the [board] GOVERNING BODY;

26 (iii) setting forth responsibilities of contractors;

27 (iv) as used in this subparagraph, the term "professional firm" shall  
28 be defined as any individual or sole proprietorship, partnership, corpo-  
29 ration, association, or other legal entity permitted by law to practice  
30 the professions of architecture, engineering or surveying.

31 [The corporation] A STATE AUTHORITY shall not refuse to negotiate with  
32 a professional firm solely because the ratio of the "allowable indirect  
33 costs" to direct labor costs of the professional firm or the hourly  
34 labor rate in any labor category of the professional firm exceeds a  
35 limitation generally set by the [corporation] STATE AUTHORITY in the  
36 determination of the reasonableness of the estimated cost of services to  
37 be rendered by the professional firm, but rather the [corporation] STATE  
38 AUTHORITY should also consider the reasonableness of cost based on the  
39 total estimated cost of the service of the professional firm which  
40 should include, among other things, all the direct labor costs of the  
41 professional firm for such services plus all "allowable indirect costs,"  
42 other direct costs, and negotiated profit of the professional firm.  
43 "Allowable indirect costs" of a professional firm are defined as those  
44 costs generally associated with overhead which cannot be specifically  
45 identified with a single project or contract and are considered reason-  
46 able and allowable under specific state contract or allowability limits.

47 (c) An identification of those areas or types of contracts for which  
48 minority or women-owned business enterprises may best bid so as to  
49 promote and assist participation by such enterprises and facilitate a  
50 fair share of the awarding of contracts to such enterprises. For the  
51 purposes of this section, a minority business enterprise means any busi-  
52 ness enterprise, including a sole proprietorship, partnership or corpo-  
53 ration that is:

54 (i) at least fifty-one percent owned by one or more minority group  
55 members or in the case of a publicly-owned business at least fifty-one

1 percent of the common stock or other voting interests of which is owned  
2 by one or more minority group members;

3 (ii) an enterprise in which the minority ownership is real, substan-  
4 tial and continuing;

5 (iii) an enterprise in which the minority ownership has and exercises  
6 the authority to control independently the day-to-day business decisions  
7 of the enterprise; and

8 (iv) an enterprise authorized to do business in New York state, inde-  
9 pendently owned and operated, and not dominant in its field.

10 (d) For the purposes of this section, a minority group member means a  
11 United States citizen or permanent resident alien who is and can demon-  
12 strate membership in one of the following groups:

13 (i) Black persons having origins in any of the Black African racial  
14 groups not of Hispanic origin;

15 (ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban,  
16 Central or South American of either Indian or Hispanic origin, regard-  
17 less of race;

18 (iii) Asian and Pacific Islander persons having origins in any of the  
19 Far East, Southeast Asia, the Indian sub-continent or the Pacific  
20 Islands; or

21 (iv) Native American persons having origins in any of the original  
22 peoples of North America.

23 (e) For the purposes of this section, a women-owned business enter-  
24 prise means a business enterprise, including a sole proprietorship,  
25 partnership or corporation which is:

26 (i) at least fifty-one percent owned by one or more United States  
27 citizens or permanent resident aliens who are women or in the case of a  
28 publicly-owned business at least fifty-one percent of the common stock  
29 or other voting interests of which is owned by United States citizens or  
30 permanent resident aliens who are women;

31 (ii) an enterprise in which the ownership interest of women is real,  
32 substantial and continuing;

33 (iii) an enterprise in which the women ownership has and exercises the  
34 authority to control independently the day-to-day business decisions of  
35 the enterprise; and

36 (iv) an enterprise authorized to do business in New York state, inde-  
37 pendently owned and operated, and not dominant in its field.

38 (f) A listing of the types of provisions to be contained in procure-  
39 ment contracts, including provisions concerning the nature and monitor-  
40 ing of the work to be performed, the use of corporate supplies and  
41 facilities, the use of corporate personnel and any other provisions.

42 (g) Provisions regarding procurement contracts which involve former  
43 officers or employees of the [corporation] STATE AUTHORITY.

44 (h) Procedures regarding procurement contracts which are exempt from  
45 the publication requirements of article four-C of the economic develop-  
46 ment law; PROVIDED THAT SUCH PROCEDURES SHALL NOT PERMIT ANY EXEMPTION  
47 BEYOND THE EXEMPTIONS SPECIFICALLY PERMITTED BY ARTICLE FOUR-C OF THE  
48 ECONOMIC DEVELOPMENT LAW.

49 (i) Policies to promote the participation by New York state business  
50 enterprises and New York state residents in procurement contracts,  
51 including, but not limited to:

52 (i) providing for the [corporation] STATE AUTHORITY to collect and to  
53 consult the specifications of New York state business enterprises in  
54 developing specifications for any procurement contract for the purchase  
55 of goods where possible, practicable, feasible and consistent with open  
56 bidding, except for procurement contracts for which the [corporation]

1 STATE AUTHORITY would be expending funds received from another state.  
2 The [corporation] STATE AUTHORITY shall, where feasible, make use of the  
3 stock item specification forms prepared by the commissioner of general  
4 services, and where necessary, consult with the commissioner of the  
5 office of general services, in developing such specifications and make  
6 such determinations; and

7 (ii) with the cooperation of the department of economic development  
8 and through cooperative efforts with contractors, providing for the  
9 notification of New York state business enterprises of opportunities to  
10 participate as subcontractors and suppliers on procurement contracts let  
11 by the [corporation] STATE AUTHORITY in an amount estimated to be equal  
12 to or greater than one million dollars and promulgating procedures which  
13 will assure compliance by contractors with such notification. Once  
14 awarded the contract such contractors shall document their efforts to  
15 encourage the participation of New York state business enterprises as  
16 suppliers and subcontractors on procurement contracts equal to or great-  
17 er than one million dollars. Documented efforts by a successful contrac-  
18 tor shall consist of and be limited to showing that such contractor has  
19 (a) solicited bids, in a timely and adequate manner, from New York state  
20 business enterprises including certified minority and women-owned busi-  
21 ness, or (b) contacted the New York state department of economic devel-  
22 opment to obtain listings of New York state business enterprises, or (c)  
23 placed notices for subcontractors and suppliers in newspapers, journals  
24 and other trade publications distributed in New York state, or (d)  
25 participated in bidder outreach conferences. If the contractor deter-  
26 mines that New York state business enterprises are not available to  
27 participate on the contract as subcontractors or suppliers, the contrac-  
28 tor shall provide a statement indicating the method by which such deter-  
29 mination was made. If the contractor does not intend to use subcontract-  
30 ors on the contract, the contractor shall provide a statement verifying  
31 such intent; and

32 (iii) except for procurement contracts for which the [corporation]  
33 STATE AUTHORITY would be expending funds received from another state,  
34 the [corporation] STATE AUTHORITY shall include in all bid documents  
35 provided to potential bidders a statement that information concerning  
36 the availability of New York state subcontractors and suppliers is  
37 available from the New York state department of economic development,  
38 which shall include the directory of certified minority and women-owned  
39 businesses, and it is the policy of New York state to encourage the use  
40 of New York state subcontractors and suppliers, and to promote the  
41 participation of minority and women-owned businesses where possible, in  
42 the procurement of goods and services; and

43 (iv) with the cooperation of the community services division of the  
44 department of labor and through cooperative efforts with contractors,  
45 providing for the notification of New York state residents of employment  
46 opportunities arising in New York state out of procurement contracts let  
47 by the [corporation] STATE AUTHORITY in an amount estimated to be equal  
48 to or greater than one million dollars; and promulgating procedures  
49 which will assure compliance by contractors with such notification by  
50 requiring contractors to submit post-award compliance reports document-  
51 ing their efforts to provide such notification through listing any such  
52 positions with the community services division, or providing for such  
53 notification in such manner as is consistent with existing collective  
54 bargaining contracts or agreements; and

55 (v) including in each set of documents soliciting bids on procurement  
56 contracts to let by the [corporation] STATE AUTHORITY a statement noti-

1 fying potential bidders located in foreign countries that the [corpo-  
2 ration] STATE AUTHORITY may assign or otherwise transfer offset credits  
3 created by such procurement contract to third parties located in New  
4 York state; providing for the assignment or other form of transfer of  
5 offset credits created by such procurement contracts, directly or indi-  
6 rectly, to third parties located in New York state, in accordance with  
7 the written directions of the commissioner of economic development; and  
8 providing for the [corporation] STATE AUTHORITY to otherwise cooperate  
9 with the department of economic development in efforts to get foreign  
10 countries to recognize offset credits assigned or transferred to third  
11 parties located in New York state created by such procurement contracts;  
12 and

13 (vi) promulgating procedures which will assure compliance with the  
14 federal equal employment opportunity act of 1972 (P.L. 92-261), as  
15 amended, by contractors of the [corporation] STATE AUTHORITY.

16 (j) For the purposes of this section, a "New York state business  
17 enterprise" means a business enterprise, including a sole proprietor-  
18 ship, partnership, or corporation, which offers for sale or lease or  
19 other form of exchange, goods which are sought by the [corporation]  
20 STATE AUTHORITY and which are substantially manufactured, produced or  
21 assembled in New York state, or services which are sought by the [corpo-  
22 ration] STATE AUTHORITY and which are substantially performed within New  
23 York state.

24 (k) For the purposes of this section, a "New York resident" means a  
25 natural person who maintains a fixed, permanent and principal home  
26 located within New York state and to which such person, whenever tempo-  
27 rarily located, always intends to return.

28 4. Each [corporation] STATE AUTHORITY shall have the power from time  
29 to time to amend such procurement, PUBLIC WORK, CONSTRUCTION AND REVENUE  
30 contract RULES OR guidelines in accordance with the provisions of this  
31 section.

32 5. (a) Each [corporation] STATE AUTHORITY shall notify the commission-  
33 er of economic development of the award of a procurement, PUBLIC WORK,  
34 CONSTRUCTION OR REVENUE contract for the purchase of goods or services  
35 from a foreign business enterprise in an amount equal to or greater than  
36 one million dollars simultaneously with notifying the successful bidder  
37 therefor. No [corporation] STATE AUTHORITY shall thereafter enter into a  
38 procurement, PUBLIC WORK, CONSTRUCTION OR REVENUE contract for said  
39 goods or services until at least fifteen days has elapsed, except for  
40 procurement contracts awarded on an emergency or critical basis, or  
41 where the commissioner of economic development waives the provisions of  
42 this sentence. The notification to the commissioner of economic develop-  
43 ment shall include the name, address and telephone and facsimile number  
44 of the foreign business enterprise, a brief description of the goods or  
45 services to be obtained pursuant to the proposed procurement contract,  
46 the amount of the proposed procurement contract, the term of the  
47 proposed procurement, PUBLIC WORK, CONSTRUCTION OR REVENUE contract, and  
48 the name of the individual at the foreign business enterprise or acting  
49 on behalf of the same who is principally responsible for the proposed  
50 procurement, PUBLIC WORK, CONSTRUCTION OR REVENUE contract. Such notifi-  
51 cation shall be used by the commissioner of economic development solely  
52 to provide notification to New York state business enterprises of oppor-  
53 tunities to participate as subcontractors and suppliers on such procure-  
54 ment, PUBLIC WORK, CONSTRUCTION OR REVENUE contracts, to promote and  
55 encourage the location and development of new business in the state, to  
56 assist New York state business enterprises in obtaining offset credits

1 from foreign countries, and to otherwise investigate, study and under-  
2 take means of promoting and encouraging the prosperous development and  
3 protection of the legitimate interest and welfare of New York state  
4 business enterprises, industry and commerce.

5 (b) As used in this section, the following terms shall have the  
6 following meanings, unless a different meaning appears from the context:

7 (i) "Foreign business enterprise" shall mean a business enterprise,  
8 including a sole proprietorship, partnership or corporation, which  
9 offers for sale, lease or other form of exchange, goods which are sought  
10 by the [corporation] STATE AUTHORITY and which are substantially  
11 produced outside New York state, or services, other than construction  
12 services, sought by the [corporation] STATE AUTHORITY which are substan-  
13 tially performed outside New York state. For purposes of construction  
14 services, foreign business enterprise shall mean a business enterprise,  
15 including a sole proprietorship, partnership or corporation, which has  
16 its principal place of business outside New York state.

17 (ii) "New York state business enterprise" shall mean a business enter-  
18 prise, including a sole proprietorship, partnership or corporation,  
19 which offers for sale or lease or other form of exchange, goods which  
20 are sought by the [corporation] STATE AUTHORITY and which are substan-  
21 tially manufactured, produced or assembled in New York state, or  
22 services, other than construction services, which are sought by the  
23 [corporation] STATE AUTHORITY and which are substantially performed  
24 within New York state. For purposes of construction services, a New York  
25 state business enterprise shall mean a business enterprise, including a  
26 sole proprietorship, partnership, or corporation, which has its princi-  
27 pal place of business in New York state.

28 (iii) "Discriminatory jurisdiction" shall mean any other country,  
29 nation, province, state or political subdivision thereof which employs a  
30 preference or price distorting mechanism to the detriment of or other-  
31 wise discriminates against a New York state business enterprise in the  
32 procurement of goods and services by the same or a non-governmental  
33 entity influenced by the same. Such discrimination may include, but is  
34 not limited to, any law, regulation, procedure or practice, terms or  
35 license, authorization, or funding or bidding rights which requires or  
36 encourages any agency or instrumentality of the state or political  
37 subdivision thereof or non-governmental entity influenced by the same to  
38 discriminate against a New York state business enterprise.

39 (c) In including any additional business enterprises on invitations to  
40 bid for the procurement of goods or services, PUBLIC WORK, CONSTRUCTION  
41 PROJECTS OR REVENUE OR OTHER CONSIDERATIONS, the chief executive officer  
42 of the [corporation] STATE AUTHORITY shall not include any foreign busi-  
43 ness enterprise which has its principal place of business located in a  
44 discriminatory jurisdiction contained on the list prepared by the  
45 commissioner of economic development pursuant to subdivision six of  
46 section one hundred sixty-five of the state finance law, except, howev-  
47 er, business enterprises which are New York state business enterprises  
48 as defined by this section. The [corporation] STATE AUTHORITY may waive  
49 the application of the provisions of this section whenever the chief  
50 executive officer of the [corporation] STATE AUTHORITY determines in  
51 writing that it is in the best interests of the state to do so. The  
52 chief executive officer of the [corporation] STATE AUTHORITY shall  
53 deliver each such waiver to the COMPTROLLER AND THE commissioner of  
54 economic development.

55 (d) A [corporation] STATE AUTHORITY shall not enter into a contract  
56 with a foreign business enterprise which has its principal place of

1 business located in a discriminatory jurisdiction contained on the list  
2 prepared by the commissioner of economic development pursuant to subdi-  
3 vision six of section one hundred sixty-five of the state finance law.  
4 The provisions of this section may be waived by the chief executive  
5 officer of the [corporation] STATE AUTHORITY if the chief executive  
6 officer of the [corporation] STATE AUTHORITY determines in writing that  
7 it is in the best interests of the state to do so. The chief executive  
8 officer of the [corporation] STATE AUTHORITY shall deliver each such  
9 waiver to the COMPTROLLER AND THE commissioner of economic development.

10 6. Each [corporation] STATE AUTHORITY, as part of the RULES OR guide-  
11 lines established pursuant to subdivision three of this section, shall  
12 establish policies regarding the preparation of publicly available  
13 reports on procurement, PUBLIC WORK, CONSTRUCTION AND REVENUE contracts  
14 entered into by such [corporation] STATE AUTHORITY. Such policies shall  
15 provide, at the minimum, for the preparation of a report no less  
16 frequently than annually, summarizing procurement, PUBLIC WORK,  
17 CONSTRUCTION AND REVENUE CONTRACT activity by such [corporation] STATE  
18 AUTHORITY for the period of the report, including a listing of all  
19 procurement, PUBLIC WORK, CONSTRUCTION AND REVENUE contracts entered  
20 into, all contracts entered into with New York state business enter-  
21 prises and the subject matter and value thereof, all contracts entered  
22 into with foreign business enterprises, and the subject matter and value  
23 thereof, the selection process used to select such contractors, all  
24 procurement, PUBLIC WORK, CONSTRUCTION AND REVENUE contracts which were  
25 exempt from the publication requirements of article four-C of the  
26 economic development law, the basis for any such exemption and the  
27 status of existing procurement, PUBLIC WORK, CONSTRUCTION AND REVENUE  
28 contracts.

29 7. Each [corporation] STATE AUTHORITY shall annually prepare and  
30 approve a report on procurement, PUBLIC WORK, CONSTRUCTION AND REVENUE  
31 contracts which shall include the RULES OR guidelines, as specified in  
32 subdivision three of this section, an explanation of the RULES OR guide-  
33 lines and any amendments thereto since the last annual report. Such  
34 report on procurement, PUBLIC WORK, CONSTRUCTION AND REVENUE contracts  
35 may be a part of any other annual report that the [corporation] STATE  
36 AUTHORITY is required to make.

37 8. (a) [Each corporation] NOT MORE THAN NINETY DAYS AFTER THE CLOSE OF  
38 A STATE AUTHORITY'S FISCAL YEAR, EACH STATE AUTHORITY shall [annually]  
39 submit its ANNUAL report on procurement, PUBLIC WORK, CONSTRUCTION AND  
40 REVENUE contracts to the division of the budget and copies thereof to  
41 the [department of audit and control] OFFICE OF THE STATE COMPTROLLER,  
42 the department of economic development, the senate finance committee and  
43 the assembly ways and means committee.

44 (b) Each [corporation] STATE AUTHORITY shall make available to the  
45 public copies of its report on procurement, PUBLIC WORK, CONSTRUCTION  
46 AND REVENUE contracts upon reasonable request therefor AND SHALL POST  
47 SUCH REPORT ON THE STATE AUTHORITY'S INTERNET WEBSITE AT THE SAME TIME  
48 AS SUCH REPORT IS SUBMITTED AS REQUIRED BY THIS SECTION. EACH REPORT ON  
49 PROCUREMENT, PUBLIC WORK, CONSTRUCTION AND REVENUE CONTRACTS POSTED ON  
50 THE STATE AUTHORITY'S INTERNET WEBSITE SHALL BE MAINTAINED ON SUCH  
51 WEBSITE AT LEAST UNTIL THE REPORT FOR THE FOLLOWING YEAR IS POSTED ON  
52 SUCH WEBSITE.

53 [9. Nothing contained in this section shall be deemed to alter, affect  
54 the validity of, modify the terms of or impair any contract or agreement  
55 made or entered into in violation of, or without compliance with, the  
56 provisions of this section.]



1 S 3. Paragraph (a) of subdivision 1 and subdivisions 5 and 12 of  
2 section 2880 of the public authorities law, as added by chapter 183 of  
3 the laws of 1987, are amended to read as follows:

4 (a) "Corporation" means every [public] STATE authority [and public  
5 benefit corporation a majority of the governing board members of which  
6 are either appointed by the governor or serve as members by virtue of  
7 their service as an officer of a state department, division, agency,  
8 board or bureau, or combination thereof], AS DEFINED IN SECTION TWO OF  
9 THIS CHAPTER.

10 5. Statement filing. Each corporation shall, within thirty days after  
11 the statement's adoption, file a copy of such statement, and amendments  
12 thereto, with the state comptroller, the state director of the budget,  
13 the [chairman] CHAIRPERSON of the senate finance committee, and the  
14 [chairman] CHAIRPERSON of the assembly ways and means committee. AT THE  
15 TIME OF FILING SUCH STATEMENT, EVERY CORPORATION SHALL ALSO POST SUCH  
16 STATEMENT ON THE CORPORATION'S INTERNET WEBSITE. EACH STATEMENT POSTED  
17 ON THE CORPORATION'S INTERNET WEBSITE SHALL BE UPDATED TO REFLECT ANY  
18 AMENDMENTS THERETO, AND, AS AMENDED, SHALL BE MAINTAINED PERMANENTLY ON  
19 SUCH WEBSITE.

20 12. Public access. (a) Each corporation shall make available to the  
21 public, upon a reasonable request therefor, copies of its statement and  
22 annual report AND SHALL POST SUCH STATEMENT AND ANNUAL REPORT ON THE  
23 CORPORATION'S INTERNET WEBSITE AT THE SAME TIME AS SUCH STATEMENT AND  
24 ANNUAL REPORT ARE FILED AS REQUIRED BY THIS SECTION. EACH STATEMENT  
25 POSTED ON THE CORPORATION'S INTERNET WEBSITE SHALL BE UPDATED TO REFLECT  
26 ANY AMENDMENTS THERETO, AND, AS AMENDED, SHALL BE MAINTAINED PERMANENTLY  
27 ON SUCH WEBSITE, AND EACH ANNUAL REPORT POSTED ON THE CORPORATION'S  
28 INTERNET WEBSITE SHALL BE MAINTAINED ON SUCH WEBSITE AT LEAST UNTIL THE  
29 ANNUAL REPORT FOR THE FOLLOWING YEAR IS POSTED ON SUCH WEBSITE.

30 (b) Each contractor doing business with a corporation shall be given a  
31 copy of that corporation's statement.

32 S 4. The public authorities law is amended by adding a new section  
33 2898 to read as follows:

34 S 2898. CONTRACT APPROVAL BY THE COMPTROLLER. ANY CONTRACT OF SALE OF  
35 PROPERTY MADE FOR OR BY ANY STATE AUTHORITY SHALL BE SUBJECT TO THE  
36 PRIOR REVIEW AND APPROVAL OF THE COMPTROLLER IN ACCORDANCE WITH THE  
37 PROVISIONS OF SECTION TWENTY-EIGHT HUNDRED SEVENTY-NINE OF THIS ARTICLE,  
38 IF THE COMPTROLLER, IN HIS OR HER DISCRETION, DETERMINES THAT SUCH  
39 REVIEW AND APPROVAL SHALL BE REQUIRED. NOTHING IN THIS SECTION SHALL BE  
40 DEEMED TO LIMIT THE COMPTROLLER'S EXISTING AUTHORITY TO SUPERVISE THE  
41 ACCOUNTS OF PUBLIC AUTHORITIES.

42 S 5. This act shall take effect immediately.