S T A T E O F N E W Y O R K

4498

2009-2010 Regular Sessions

I N A S S E M B L Y

February 4, 2009

Introduced by M. of A. BRODSKY, GREENE -- Multi-Sponsored by -- M. of A. GOTTFRIED, MAGEE, MILLMAN -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, in relation to the application of the MacBride principles to contracts of public authorities

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

Section 1. Subdivisions 6, 7, 8 and 9 of section 2879 of the public authorities law, subdivisions 7, 8 and 9 as renumbered by chapter 844 of the laws of 1992, are renumbered subdivisions 7, 8, 9 and 10 and a new subdivision 6 is added to read as follows:

6. NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND. (A) FOR THE PURPOSES OF THIS SUBDIVISION, "MACBRIDE FAIR EMPLOYMENT PRINCIPLES" MEANS THOSE PRINCIPLES RELATING TO NONDISCRIMINATION IN EMPLOYMENT AND FREEDOM OF WORK PLACE OPPORTUNITY WHICH WOULD REQUIRE EMPLOYERS DOING BUSINESS IN NORTHERN IRELAND TO:

(I) INCREASE THE REPRESENTATION OF INDIVIDUALS FROM UNDERREPRESENTED RELIGIOUS GROUPS IN THE WORK FORCE, INCLUDING MANAGERIAL, SUPERVISORY, ADMINISTRATIVE, CLERICAL, AND TECHNICAL JOBS;

(II) TAKE STEPS TO PROMOTE ADEQUATE SECURITY FOR THE PROTECTION OF EMPLOYEES FROM UNDERREPRESENTED RELIGIOUS GROUPS BOTH AT THE WORKPLACE AND WHILE TRAVELING TO AND FROM WORK;

(III) BAN PROVOCATIVE RELIGIOUS OR POLITICAL EMBLEMS FROM THE WORK PLACE;

(IV) PUBLICLY ADVERTISE ALL JOB OPENINGS AND MAKE SPECIAL RECRUITMENT EFFORTS TO ATTRACT APPLICANTS FROM UNDERREPRESENTED RELIGIOUS GROUPS;

(V) ESTABLISH LAYOFF, RECALL, AND TERMINATION PROCEDURES WHICH DO NOT, IN PRACTICE, FAVOR A PARTICULAR RELIGIOUS GROUP;

(VI) ABOLISH ALL JOB RESERVATIONS, APPRENTICESHIP RESTRICTIONS, AND DIFFERENTIAL EMPLOYMENT CRITERIA WHICH DISCRIMINATE ON THE BASIS OF RELIGION;

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

LBD07535-01-9

(VII) DEVELOP TRAINING PROGRAMS THAT WILL PREPARE SUBSTANTIAL NUMBERS OF CURRENT EMPLOYEES FROM UNDERREPRESENTED RELIGIOUS GROUPS FOR SKILLED JOBS, INCLUDING THE EXPANSION OF EXISTING PROGRAMS AND THE CREATION OF NEW PROGRAMS TO TRAIN, UPGRADE, AND IMPROVE THE SKILLS OF WORKERS FROM UNDERREPRESENTED RELIGIOUS GROUPS;

(VIII) ESTABLISH PROCEDURES TO ASSESS, IDENTIFY, AND ACTIVELY RECRUIT EMPLOYEES FROM UNDERREPRESENTED RELIGIOUS GROUPS WITH POTENTIAL FOR FURTHER ADVANCEMENT; AND

(IX) APPOINT A SENIOR MANAGEMENT STAFF MEMBER TO OVERSEE AFFIRMATIVE ACTION EFFORTS AND DEVELOP A TIMETABLE TO ENSURE THEIR FULL IMPLEMENTATION.

(B) (I) A CORPORATION SHALL NOT ENTER INTO A PROCUREMENT CONTRACT WITH ANY CONTRACTOR THAT DOES NOT AGREE TO STIPULATE TO THE FOLLOWING, IF THERE IS ANOTHER CONTRACTOR WHO WILL CONTRACT TO SUPPLY THE GOODS OR SERVICES OF COMPARABLE QUALITY AT A COMPARABLE PRICE OR COST: THE CONTRACTOR AND ANY INDIVIDUAL OR LEGAL ENTITY IN WHICH THE CONTRACTOR HOLDS A TEN PERCENT OR GREATER OWNERSHIP INTEREST AND ANY INDIVIDUAL OR LEGAL ENTITY THAT HOLDS A TEN PERCENT OR GREATER OWNERSHIP INTEREST IN THE CONTRACTOR EITHER (A) HAVE NO BUSINESS OPERATIONS IN NORTHERN IRELAND OR (B) WILL TAKE LAWFUL STEPS, IN GOOD FAITH, TO CONDUCT ANY BUSINESS OPERATIONS THEY HAVE IN NORTHERN IRELAND IN ACCORDANCE WITH MACBRIDE FAIR EMPLOYMENT PRINCIPLES AND WILL PERMIT INDEPENDENT MONITORING OF THEIR COMPLIANCE WITH SUCH PRINCIPLES.

(II) IN THE CASE OF PROCUREMENT CONTRACTS LET BY A COMPETITIVE PROCESS, WHENEVER THE RESPONSIVE AND RESPONSIBLE OFFERER HAVING THE LOWEST PRICE OR BEST VALUE OFFER HAS NOT AGREED TO STIPULATE TO THE CONDITIONS SET FORTH IN THIS SUBDIVISION AND ANOTHER RESPONSIVE AND RESPONSIBLE OFFERER WHO HAS AGREED TO STIPULATE TO SUCH CONDITIONS HAS SUBMITTED AN OFFER WITHIN FIVE PERCENT OF THE LOWEST PRICE OR BEST VALUE OFFER FOR A CONTRACT TO SUPPLY GOODS OR SERVICES OF COMPARABLE QUALITY, THE CORPORATION MAY MAKE A DETERMINATION, IN ACCORDANCE WITH APPLICABLE LAW AND RULES, THAT IT IS IN THE BEST INTEREST OF THE CORPORATION THAT THE CONTRACT BE AWARDED TO OTHER THAN THE LOWEST PRICE OR BEST VALUE OFFER.

(III) IN THE CASE OF PROCUREMENT CONTRACTS LET BY OTHER THAN A COMPETITIVE PROCESS INVOLVING AN EXPENDITURE OF AN AMOUNT GREATER THAN THE THRESHOLD SPECIFIED IN SECTION ONE HUNDRED FORTY-ONE OF THE ECONOMIC DEVELOPMENT LAW, THE CORPORATION SHALL NOT AWARD TO A PROPOSED CONTRACTOR WHO HAS NOT AGREED TO STIPULATE TO THE CONDITIONS SET FORTH IN THIS SUBDIVISION UNLESS THE CORPORATION DETERMINES THAT THE GOODS OR SERVICES ARE NECESSARY FOR THE CORPORATION TO PERFORM ITS FUNCTIONS AND THERE IS NO OTHER RESPONSIBLE CONTRACTOR WHO WILL SUPPLY GOODS OR SERVICES OF COMPARABLE QUALITY AT A COMPARABLE PRICE. SUCH DETERMINATIONS SHALL BE MADE IN WRITING AND SHALL BE PUBLIC DOCUMENTS.

(C) UPON RECEIVING INFORMATION THAT A CONTRACTOR WHO HAS MADE THE STIPULATION REQUIRED BY THIS SUBDIVISION IS IN VIOLATION THEREOF, THE CORPORATION SHALL REVIEW SUCH INFORMATION AND OFFER THE CONTRACTOR AN OPPORTUNITY TO RESPOND. IF THE CORPORATION FINDS THAT A VIOLATION HAS OCCURRED, IT SHALL TAKE SUCH ACTION AS MAY BE APPROPRIATE AND PROVIDED FOR BY LAW, RULE, OR CONTRACT, INCLUDING, BUT NOT LIMITED TO, IMPOSING SANCTIONS, SEEKING COMPLIANCE, RECOVERING DAMAGES, OR DECLARING THE CONTRACTOR IN DEFAULT.

(D) AS USED IN THIS SUBDIVISION, THE TERM "CONTRACT" DOES NOT INCLUDE CONTRACTS WITH GOVERNMENTAL AND NON-PROFIT ORGANIZATIONS, CONTRACTS AWARDED PURSUANT TO EMERGENCY PROCUREMENT PROCEDURES OR CONTRACTS, RESOLUTIONS, INDENTURES, DECLARATIONS OF TRUST, OR OTHER INSTRUMENTS AUTHORIZING OR RELATING TO THE AUTHORIZATION, ISSUANCE, AWARD, SALE, OR

PURCHASE OF BONDS, CERTIFICATES OF INDEBTEDNESS, NOTES, OR OTHER FISCAL OBLIGATIONS; PROVIDED THAT THE POLICIES OF THIS SUBDIVISION SHALL BE CONSIDERED WHEN SELECTING A CONTRACTOR TO PROVIDE FINANCIAL OR LEGAL ADVICE AND WHEN SELECTING MANAGING UNDERWRITERS IN CONNECTION WITH SUCH ACTIVITIES.

(E) THE PROVISIONS OF THIS SUBDIVISION SHALL NOT APPLY TO CONTRACTS FOR WHICH THE CORPORATION RECEIVES FUNDS ADMINISTERED BY THE UNITED STATES DEPARTMENT OF TRANSPORTATION, EXCEPT TO THE EXTENT THAT CONGRESS HAS DIRECTED THAT THE DEPARTMENT OF TRANSPORTATION NOT WITHHOLD FUNDS FROM STATES AND LOCALITIES THAT CHOOSE TO IMPLEMENT SELECTIVE PURCHASING POLICIES BASED ON AGREEMENT TO COMPLY WITH THE MACBRIDE FAIR EMPLOYMENT PRINCIPLES OR TO THE EXTENT THAT SUCH FUNDS ARE NOT OTHERWISE WITHHELD BY THE DEPARTMENT OF TRANSPORTATION.

S 2. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that the provisions of this act shall in no way affect the validity of contracts entered into prior to such effective date.