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

4716--B

Cal. No. 342

2009-2010 Regular Sessions

I N A S S E M B L Y

February 5, 2009

Introduced by M. of A. JOHN, ABBATE, CUSICK, SCHROEDER -- Multi-Sponsored by -- M. of A. HEASTIE, PHEFFER -- read once and referred to the Committee on Ways and Means -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the state finance law, in relation to awarding of contracts

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

Section 1. Legislative intent. The legislature finds that it is the public policy of the state to provide a wide variety of services to the people in a cost efficient manner while assuring the quality of life for the people of this state. The legislature finds that these objectives can be maximized by establishing an orderly procedure for cost effectiveness review prior to a contract being authorized. It is necessary, therefore, to establish minimum standards of cost effectiveness and accountability for all such contracts.

S 2. The state finance law is amended by adding a new section 148 to read as follows:

S 148. AWARDING OF CONTRACTS. 1. DEFINITIONS. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS UNLESS OTHERWISE SPECIFIED:

(A) "AGENCY" SHALL MEAN ANY STATE DEPARTMENT, STATE UNIVERSITY OF NEW YORK, BOARD, BUREAU, DIVISION, COMMISSION, COMMITTEE, COUNCIL, OFFICE OR OTHER GOVERNMENTAL ENTITY PERFORMING A GOVERNMENTAL OR PROPRIETARY FUNCTION FOR THE STATE, INCLUDING ANY PUBLIC AUTHORITY OR PUBLIC BENEFIT CORPORATION; THE CITY OF NEW YORK OR A PUBLIC EMPLOYER WITHIN THE CITY OF NEW YORK, THE MAJORITY OF WHOSE BOARD ARE CITY OFFICIALS OR AN AGENCY WHOSE CHIEF EXECUTIVE OFFICER IS APPOINTED DIRECTLY OR INDIRECTLY BY

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

LBD07421-03-0

OFFICIALS OF THE CITY OF NEW YORK; PROVIDED, HOWEVER, THAT THE NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY IS EXEMPTED FROM THE PROVISIONS OF THIS SECTION AND SHALL CONTINUE TO AWARD CONTRACTS PURSUANT TO SECTIONS SEVENTEEN HUNDRED THIRTY-FOUR AND SEVENTEEN HUNDRED THIRTY-FIVE OF THE PUBLIC AUTHORITIES LAW.

(B) "CONTRACT" SHALL MEAN AN ENFORCEABLE AGREEMENT FOR PERSONAL SERVICES ENTERED INTO BY A CONTRACTOR AND AN AGENCY FOR AN AMOUNT WHICH EXCEEDS FIVE THOUSAND DOLLARS.

(C) "CONTRACTOR" SHALL MEAN ANY PERSON, PARTNERSHIP, FIRM, CORPORATION, OR ASSOCIATION RENDERING OR PROVIDING SERVICES PURSUANT TO A CONTRACT WITH AN AGENCY.

(D) "CHANGE ORDER" SHALL MEAN A CONTRACT MODIFICATION OR ANY WRITTEN ALTERATION TO SPECIFICATIONS, DELIVERY POINT, RATE OF DELIVERY, PERIOD OF PERFORMANCE, PRICE, QUALITY, OR OTHER PROVISIONS OF ANY CONTRACT AUTHORIZED BY THE AGENCY OR MUTUAL ACTION OF THE PARTIES TO THE CONTRACT.

2. COST EFFECTIVENESS AND ACCOUNTABILITY REVIEW. NO CONTRACT WITH A CONTRACTOR FOR SERVICES SHALL BE ENTERED INTO BY AN AGENCY UNLESS CONTRACTING FOR SUCH SERVICES IS:

(A) COST EFFECTIVE WHEN COMPARED TO THE COST OF HAVING AN AGENCY PERFORM THE WORK;

(I) THE CONTRACTING AGENCY MUST CLEARLY DEMONSTRATE THAT THE PROPOSED CONTRACT WILL RESULT IN ACTUAL COST SAVINGS TO THE AGENCY. IN COMPARING COSTS, THERE SHALL BE INCLUDED THE AGENCY'S COST OF PROVIDING THE SAME SERVICE AS THE PROPOSED CONTRACTOR.

(II) IN COMPUTING COSTS, THERE SHALL NOT BE INCLUDED THE AGENCY'S INDIRECT OVERHEAD COSTS UNLESS THESE COSTS CAN BE ATTRIBUTED SOLELY TO THE FUNCTIONS IN QUESTION AND WOULD NOT EXIST IF THAT FUNCTION WERE NOT PERFORMED. INDIRECT OVERHEAD COSTS SHALL INCLUDE THE PRO RATA SHARE OF EXISTING ADMINISTRATIVE SALARIES AND BENEFITS, RENT, EQUIPMENT COSTS, UTILITIES AND MATERIALS.

(III) IN COMPUTING COSTS, THERE SHALL BE INCLUDED AN ESTIMATE OF ANY COSTS THAT WILL BE INCURRED BY THE AGENCY AS A RESULT OF ENTERING INTO THE CONTRACT, INCLUDING THE COST OF CONTRACT ADMINISTRATION, THE COSTS OF ANY REGULATORY OR INSPECTION FUNCTION WHICH THE AGENCY MAY BE REQUIRED TO PERFORM IN CONNECTION WITH THE SERVICES PROVIDED PURSUANT TO THE CONTRACT, THE COST OF PERSONNEL CHANGES AS A RESULT OF THE CONTRACT, AND ANY SIMILAR COSTS WHICH THE AGENCY CAN BE REASONABLY EXPECTED TO INCUR AS A RESULT OF THE CONTRACT.

(IV) A PROPOSED CONTRACT SHALL NOT BE APPROVED SOLELY ON THE BASIS THAT SAVINGS WILL RESULT FROM LOWER CONTRACTOR PAY RATES OR BENEFITS. PROPOSALS TO CONTRACT WORK SHALL BE ELIGIBLE FOR APPROVAL PROVIDED THE CONTRACTOR'S WAGES AND BENEFITS ARE AT THE SAME RATE AS EMPLOYEES CURRENTLY PROVIDING THE SERVICE OR PERFORMING COMPARABLE WORK.

(V) A PROPOSED CONTRACT SHALL NOT BE APPROVED UNLESS IT CONTAINS A DESCRIPTION OF THE SERVICE QUALITY EXPECTATIONS PURSUANT TO THE CONTRACT AND A DESCRIPTION OF THE METHOD BY WHICH THE QUALITY OF SERVICES SHALL BE MONITORED AND EVALUATED. THE CONTRACT MUST INCLUDE SPECIFIC PROVISIONS PERTAINING TO THE QUALIFICATIONS OF THE STAFF THAT WILL PERFORM THE WORK UNDER THE CONTRACT.

(B) REQUIRED DUE TO AN EMERGENCY; "EMERGENCY" SHALL MEAN A SITUATION INVOLVING DANGER TO LIFE, SAFETY, OR PROPERTY WHICH REQUIRES IMMEDIATE ACTION, IS ESSENTIAL TO EFFICIENT OPERATION OR THE ADEQUATE PROVISION OF SERVICE BY THE AGENCY, AND IS A DIRECT CONSEQUENCE OF AN ACCIDENT OR OTHER UNFORESEEN CIRCUMSTANCE.

(C) REQUIRED FOR A SHORT DURATION WHERE CURRENT EMPLOYEES OF THE AGENCY ARE OTHERWISE ENGAGED AND CANNOT BE REASSIGNED TO PERFORM THE SERVICES AND NEW EMPLOYEES CANNOT BE HIRED WITHIN A REASONABLE TIME TO PERFORM SUCH SERVICES AND SUCH SERVICES ARE NEEDED IN CONNECTION WITH WORK UNDERTAKEN IN RESPONSE TO AN EMERGENCY.

(D) REQUIRED FOR SPECIAL EXPERTISE OF A SHORT DURATION.

(E) REQUIRED TO AVOID A CONFLICT OF INTEREST.

(F) OTHERWISE EXPRESSLY REQUIRED BY LAW TO BE SO CONTRACTED.

3. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION, NO CONTRACT SHALL BE LET WHICH IS NOT IN COMPLIANCE WITH THE REQUIREMENTS OF ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW, IN COMPLIANCE WITH THE AGENCY'S AFFIRMATIVE ACTION EFFORTS AND WILL NOT CAUSE THE AGENCY TO FAIL TO MEET ITS AFFIRMATIVE ACTION GOALS OR CAUSES THE DISPLACEMENT OF WORKERS. FOR THE PURPOSES OF THIS SUBDIVISION, THE TERM "DISPLACEMENT" SHALL INCLUDE LAYOFFS, DEMOTION, INVOLUNTARY TRANSFER TO A NEW CLASS OR TITLE, INVOLUNTARY TRANSFER OR REASSIGNMENT TO A NEW LOCATION REQUIRING A CHANGE OF RESIDENCE, AND PARTIAL DISPLACEMENT SUCH AS REDUCTION IN THE CUSTOMARY HOURS TO WORK, WAGES, OR BENEFITS.

4. DISCLOSURE. (A) PRIOR TO EXECUTING A CONTRACT FOR SERVICES, AN AGENCY SHALL PREPARE A SPECIFIC STATEMENT WHICH SETS FORTH THE OBJECTIVE DATA SUPPORTING THE REASONS WHY THE PROPOSED CONTRACT MEETS THE REQUIREMENTS SET FORTH IN SUBDIVISIONS TWO AND THREE OF THIS SECTION. THE CONTRACTOR SHALL DISCLOSE, IN WRITING, THE NAMES OF CORPORATE OFFICERS, PARTNERS OR ASSOCIATES, AND THE NAMES OF ANY STATE OR MUNICIPAL PUBLIC OFFICER OR POLITICAL PARTIES TO WHOM THE CONTRACTOR OR ITS OFFICERS, PARTNERS AND ASSOCIATES HAS MADE ONE OR MORE COMPANY CONTRIBUTIONS TOTALLING TWO HUNDRED FIFTY DOLLARS OR MORE WITHIN ANY TWELVE MONTH PERIOD DURING THE PREVIOUS THIRTY-SIX MONTH PERIOD. IN ADDITION, THE CONTRACTOR SHALL DISCLOSE ANY LABOR LAW VIOLATIONS OR CITATIONS INCLUDING BUT NOT LIMITED TO OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION VIOLATIONS, WAGE, HOUR OR BENEFITS VIOLATIONS INCURRED WITHIN THE PAST THIRTY-SIX MONTHS. THE CONTRACTOR SHALL ALSO DISCLOSE, IN WRITING, WHETHER EACH EMPLOYEE WHO SHALL BE ENGAGED IN THE SERVICES TO BE PROVIDED PURSUANT TO A CONTRACT WITH AN AGENCY OR MUNICIPALITY IS A RESIDENT OF THE STATE OR, IN THE CASE OF A CONTRACT WITH THE CITY OF NEW YORK OR A PUBLIC EMPLOYER WITHIN THE CITY OF NEW YORK, WHETHER EACH SUCH EMPLOYEE SHALL BE A RESIDENT OF SUCH CITY.

(B) PRIOR TO THE SCHEDULED AWARD OF A CONTRACT FOR SERVICES, AN AGENCY SHALL PROVIDE TO THE EMPLOYEE ORGANIZATION THAT REPRESENTS AGENCY EMPLOYEES WHO WOULD OTHERWISE PERFORM SUCH SERVICES WITH COPIES OF THE STATEMENTS RENDERED PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION AND THE PROPOSED CONTRACT SO THAT SUCH EMPLOYEE ORGANIZATION SHALL HAVE AT LEAST NINETY DAYS TO OBJECT TO THE PROPOSED CONTRACT. AN EMPLOYEE ORGANIZATION WHICH PROVIDES TIMELY WRITTEN NOTICE OF OBJECTION AND THE REASONS THEREFORE SHALL, UNLESS THE AGENCY AGREES IN WRITING TO WITHDRAW THE PROPOSED CONTRACT, BE PERMITTED TO BE HEARD BY THE AGENCY'S HEAD PRIOR TO THE AWARD OF THE CONTRACT. WITHIN FIFTEEN DAYS OF RECEIPT OF SUCH OBJECTION, THE AGENCY'S HEAD, AFTER CONSIDERING THE OBJECTIONS OF THE EMPLOYEE ORGANIZATION, SHALL NOTIFY THE EMPLOYEE ORGANIZATION WHETHER THE AGENCY WILL WITHDRAW THE PROPOSED CONTRACT OR ENTER INTO THE CONTRACT. IF THE AGENCY'S HEAD DECIDES TO ENTER INTO THE CONTRACT, AND THE EMPLOYEE ORGANIZATION STILL BELIEVES THAT THE CONTRACT IS IN VIOLATION OF THE GUIDELINES IN SUBDIVISIONS TWO AND THREE OF THIS SECTION, THE EMPLOYEE ORGANIZATION MAY FORWARD ITS COMPLAINT TO THE COMPTROLLER WITHIN FIFTEEN DAYS OF RECEIPT OF THE AGENCY HEAD'S NOTIFICATION. BEFORE APPROVING SUCH CONTRACT, THE COMPTROLLER SHALL CONSIDER

THE EMPLOYEE ORGANIZATION'S COMPLAINT, AND SHALL NOT APPROVE SUCH CONTRACT IF THE COMPTROLLER BELIEVES SUCH COMPLAINT IS VALID. THE COMPTROLLER SHALL NOTIFY THE EMPLOYEE ORGANIZATION OF THE COMPTROLLER'S DECISION TO EITHER APPROVE OR DISAPPROVE THE CONTRACT. IN CARRYING OUT THE DUTIES OF THIS SECTION, THE COMPTROLLER MAY FORM AN ADVISORY BOARD WHICH SHALL CONSIST OF REPRESENTATIVES OF THE GOVERNMENT, PUBLIC EMPLOYEE ORGANIZATIONS, AND THE PUBLIC.

5. PARAGRAPH (B) OF SUBDIVISION FOUR OF THIS SECTION SHALL NOT APPLY TO THE CITY OF NEW YORK OR A PUBLIC EMPLOYER WITHIN THE CITY OF NEW YORK (A) THE MAJORITY OF WHOSE BOARD ARE CITY OFFICIALS OR (B) AN AGENCY WHOSE CHIEF EXECUTIVE OFFICER IS APPOINTED DIRECTLY OR INDIRECTLY BY OFFICIALS OF THE CITY OF NEW YORK. THE PROCUREMENT POLICY BOARD ESTABLISHED BY SECTION THREE HUNDRED ELEVEN OF THE NEW YORK CITY CHARTER SHALL ADOPT THE STANDARDS AS DEFINED IN SUBDIVISIONS TWO AND THREE AND PARAGRAPH (A) OF SUBDIVISION FOUR OF THIS SECTION AND IMPLEMENT RULES CONSISTENT WITH THOSE STANDARDS FOR CONTRACTING FOR THE PROVISION OF SERVICES AND APPLY THOSE STANDARDS AND RULES TO ALL PROCUREMENT CONTRACTS AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION ONE OF THIS SECTION.

6. CHANGE ORDERS. IF AN AGENCY INTENDS TO CHANGE, BY USE OF A CHANGE ORDER, A CONTRACT FOR SERVICES AND SUCH CHANGE ORDER EITHER BY ITSELF OR TOGETHER WITH PREVIOUSLY AUTHORIZED CHANGE ORDERS RESULTS IN CAUSING THE AMOUNT OF THE CONTRACT TO EXCEED ONE HUNDRED FIVE PERCENT OF THE ORIGINAL CONTRACT AMOUNT, THEN APPROVAL OF SUCH CHANGE SHALL BE SUBJECT TO THE PROVISIONS OF SUBDIVISIONS TWO, THREE AND FOUR OF THIS SECTION.

7. FOR PURPOSES OF THIS SUBDIVISION THE TERM "MUNICIPALITY" SHALL MEAN A COUNTY, CITY WITHIN A POPULATION OF UNDER ONE MILLION, TOWN, VILLAGE OR SCHOOL DISTRICT AND SHALL INCLUDE ANY AND ALL AGENCIES THEREOF. SUBDIVISIONS TWO AND THREE AND PARAGRAPH (A) OF SUBDIVISION FOUR OF THIS SECTION SHALL APPLY TO A MUNICIPALITY. PRIOR TO THE SCHEDULED AWARD OF A CONTRACT FOR SERVICES, A MUNICIPALITY SHALL PROVIDE THE EMPLOYEE ORGANIZATION THAT REPRESENTS MUNICIPAL EMPLOYEES WHO WOULD OTHERWISE PERFORM SUCH SERVICES WITH COPIES OF THE STATEMENT RENDERED PURSUANT TO PARAGRAPH (A) OF SUBDIVISION FOUR OF THIS SECTION AND THE PROPOSED CONTRACT SO THAT SUCH EMPLOYEE ORGANIZATION SHALL HAVE AT LEAST NINETY DAYS TO OBJECT TO THE PROPOSED CONTRACT. AN EMPLOYEE ORGANIZATION WHICH PROVIDES TIMELY WRITTEN NOTICE OF OBJECTION AND THE REASONS THEREFOR SHALL, UNLESS THE MUNICIPALITY AGREES IN WRITING TO WITHDRAW THE PROPOSED CONTRACT, BE PERMITTED TO BE HEARD BY THE MUNICIPALITY HEAD PRIOR TO THE AWARD OF THE CONTRACT. WITHIN FIFTEEN DAYS OF RECEIPT OF SUCH OBJECTION, THE AGENCY'S HEAD, AFTER CONSIDERING THE OBJECTIONS OF THE EMPLOYEE ORGANIZATION, SHALL NOTIFY THE EMPLOYEE ORGANIZATION WHETHER THE AGENCY WILL WITHDRAW THE PROPOSED CONTRACT OR ENTER INTO THE CONTRACT.

S 3. Nothing contained in this act shall supersede or nullify any of the terms of a collective bargaining agreement and shall not be deemed to authorize any contract which is otherwise prohibited by law or regulation.

S 4. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof.

S 5. This act shall take effect on the thirtieth day after it shall have become a law.