

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

4810--A

2009-2010 Regular Sessions

I N A S S E M B L Y

February 6, 2009

Introduced by M. of A. BRODSKY, PERRY, CLARK, GORDON -- Multi-Sponsored by -- M. of A. WRIGHT -- read once and referred to the Committee on Governmental Operations -- committed to Governmental Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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
9 AND ENTERPRISE ASSISTANCE PROGRAMS PURSUANT TO SUBDIVISIONS SEVEN,
10 EIGHT, NINE AND TEN OF SECTION ONE HUNDRED EIGHTEEN OF THIS ARTICLE.
11 S 2. Subdivision 2 of section 313 of the executive law, as added by
12 chapter 261 of the laws of 1988, is amended to read as follows:
13 2. Contracting agencies shall include or require to be included with
14 respect to state contracts [for the acquisition, construction, demoli-
15 tion, replacement, major repair or renovation of real property and
16 improvements thereon,] such provisions as may be necessary to effectuate
17 the provisions of this section in every bid specification and state

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

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1 contract, including, but not limited to: (a) provisions requiring
2 contractors to make a good faith effort to solicit active participation
3 by enterprises KNOWN TO BE CERTIFIED MINORITY OR WOMEN-OWNED BUSINESS
4 ENTERPRISES OR identified in the directory of certified businesses
5 provided to the contracting agency by the office; (b) requiring the
6 parties to agree as a condition of entering into such contract, to be
7 bound by the provisions of section three hundred sixteen of this arti-
8 cle; and (c) requiring the contractor to include the provisions set
9 forth in paragraphs (a) and (b) [above] OF THIS SUBDIVISION in every
10 subcontract in a manner that the provisions will be binding upon each
11 subcontractor as to work in connection with such contract. Provided,
12 however, that no such provisions shall be binding upon contractors or
13 subcontractors in the performance of work or the provision of services
14 that are unrelated, separate or distinct from the state contract as
15 expressed by its terms, and nothing in this section shall authorize the
16 director or any contracting agency to impose any requirement on a
17 contractor or subcontractor except with respect to a state contract.

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

21 (a) Contracting agencies shall administer the rules and regulations
22 promulgated by the director to ensure compliance with the provisions of
23 this section. Such rules and regulations: shall require a contractor to
24 submit a utilization plan after bids are opened, when bids are required,
25 but prior to the award of a state contract; shall require the contract-
26 ing agency to review the utilization plan submitted by the contractor
27 and to post the utilization plan and any waivers of compliance issued
28 pursuant to subdivision five of this section on the website of the
29 contracting agency within a reasonable period of time as established by
30 the director; shall require the contracting agency to notify the
31 contractor in writing within a period of time specified by the director
32 as to any deficiencies contained in the contractor's utilization plan;
33 shall require remedy thereof within a period of time specified by the
34 director; shall require the contractor to submit periodic compliance
35 reports relating to the operation and implementation of any utilization
36 plan; shall NOT ALLOW ANY AUTOMATIC WAIVERS, BUT SHALL allow a contrac-
37 tor to apply for a partial or total waiver of the minority and women-
38 owned business enterprise participation requirements pursuant to subdivi-
39 sions five and six of this section; shall allow a contractor to file a
40 complaint with the director pursuant to subdivision seven of this
41 section in the event a contracting agency has failed or refused to issue
42 a waiver of the minority and women-owned business enterprise partic-
43 ipation requirements or has denied such request for a waiver; and shall
44 allow a contracting agency to file a complaint with the director pursu-
45 ant to subdivision eight of this section in the event a contractor is
46 failing or has failed to comply with the minority and women-owned busi-
47 ness enterprise participation requirements set forth in the state
48 contract where no waiver has been granted.

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

51 3. Each contracting agency shall report to the director with respect
52 to activities undertaken to promote employment of minority group members
53 and women and promote and increase participation by certified businesses
54 with respect to state contracts and subcontracts. [Such reports shall be
55 submitted periodically as required by the director.] SUCH REPORTS SHALL
56 BE SUBMITTED ON AN ANNUAL BASIS WITH QUARTERLY UPDATES, AND SHALL

1 INCLUDE SUCH INFORMATION AS IS NECESSARY FOR THE DIRECTOR TO DETERMINE
2 SUCH CONTRACTING AGENCIES AND ITS CONTRACTORS' COMPLIANCE WITH THE
3 PURPOSES OF THIS ARTICLE AND SUCH SPECIFIC INFORMATION AS THE DIRECTOR
4 MAY REQUEST, INCLUDING, WITHOUT LIMITATION, A SUMMARY OF ALL WAIVERS OF
5 THE REQUIREMENTS OF SUBDIVISIONS FIVE AND SIX OF SECTION THREE HUNDRED
6 THIRTEEN OF THIS ARTICLE ALLOWED BY SUCH CONTRACTING AGENCY DURING THE
7 PERIOD COVERED BY THE REPORT, INCLUDING A DESCRIPTION OF THE BASIS OF
8 THE WAIVER REQUEST AND THE CONTRACTING AGENCIES RATIONALE FOR GRANTING
9 ANY SUCH WAIVER.

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

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

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

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

53 S 316. Enforcement. Upon receipt by the director of a complaint by a
54 contracting agency that a contractor has violated the provisions of a
55 state contract which have been included to comply with the provisions of
56 this article or of a contractor that a contracting agency has violated

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

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

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

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

43 K. "DIVERSITY PRACTICES" MEANS THE OFFERER'S PRACTICES WITH RESPECT
44 TO: (I) APPOINTING, HIRING AND RETAINING MINORITY GROUP MEMBERS (AS
45 DEFINED IN ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW) AND WOMEN IN SENIOR
46 MANAGEMENT POSITIONS OF THE OFFERER, INCLUDING AT THE LEVEL OF BOARD OF
47 DIRECTORS OR ITS COMPARABLE MANAGEMENT LEVEL BODY, AND AS SENIOR EXECU-
48 TIVE OFFICERS WITHIN THE OFFERER'S ORGANIZATION; (II) HIRING, TRAINING
49 DEVELOPING, PROMOTING AND RETAINING MINORITY GROUP MEMBERS AND WOMEN
50 EMPLOYEES; (III) UTILIZING CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS
51 ENTERPRISES, AS DEFINED IN ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW OR ANY
52 OTHER STATUTES OR REGULATIONS GOVERNING THE PARTICIPATION OF MINORITY
53 AND WOMEN-OWNED BUSINESS ENTERPRISES IN CONTRACTS AWARDED BY A STATE
54 AGENCY OR OTHER PUBLIC CORPORATION, AS SUBCONTRACTORS AND SUPPLIERS;
55 (IV) ENTERING INTO PARTNERSHIPS, JOINT VENTURES OR OTHER SIMILAR
56 ARRANGEMENTS WITH CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTER-

1 PRISES AS DEFINED IN ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW OR OTHER
2 APPLICABLE STATUTE OR REGULATION GOVERNING AN ENTITY'S UTILIZATION OF
3 MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES; AND (V) UTILIZING SUBCON-
4 TRACTORS OR OTHER PARTNERS THAT DEMONSTRATE A SIGNIFICANT COMMITMENT TO
5 AND PROGRESS IN ATTRACTING, RETAINING AND PROMOTING DIVERSE TEAMS,
6 INCLUDING MINORITY GROUP MEMBERS AND WOMEN WITH RELEVANT DOMAIN EXPERI-
7 ENCE IN SENIOR MANAGEMENT OR STAFFING POSITIONS.

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

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

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

21 6. Discretionary buying thresholds. Pursuant to guidelines established
22 by the state procurement council: the commissioner may purchase services
23 and commodities in an amount not exceeding eighty-five thousand dollars
24 without a formal competitive process; state agencies may purchase
25 services and commodities in an amount not exceeding fifty thousand
26 dollars without a formal competitive process; and state agencies may
27 purchase commodities or services from small business concerns or those
28 certified AS MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES pursuant to
29 article fifteen-A of the executive law, or commodities or technology
30 that are recycled or remanufactured, in an amount not exceeding [one]
31 TWO hundred FIFTY thousand dollars without a formal competitive process.

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

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

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

45 (F) REQUIREMENTS FOR THE APPOINTMENT OF ONE OR MORE SENIOR STAFF OF
46 THE CORPORATION TO OVERSEE THE CORPORATION'S PROGRAMS ESTABLISHED TO
47 PROMOTE AND ASSIST: (I) PARTICIPATION BY MINORITY OR WOMEN-OWNED BUSI-
48 NESS ENTERPRISES IN THE CORPORATION'S PROCUREMENT OPPORTUNITIES AND
49 FACILITATION OF THE AWARD OF A FAIR SHARE OF PROCUREMENT CONTRACTS TO
50 SUCH ENTERPRISES; (II) THE UTILIZATION OF CERTIFIED MINORITY AND WOMEN-
51 OWNED BUSINESS ENTERPRISES AS SUBCONTRACTORS AND SUPPLIERS BY ENTITIES
52 HAVING PROCUREMENT CONTRACTS WITH THE CORPORATION; AND (III) THE UTILI-
53 ZATION OF PARTNERSHIPS, JOINT VENTURES OR OTHER SIMILAR ARRANGEMENTS
54 BETWEEN CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND
55 OTHER ENTITIES HAVING PROCUREMENT CONTRACTS WITH THE CORPORATION. SUCH
56 STAFF SHALL HAVE A BACKGROUND IN THE TYPES OF GOODS OR SERVICES, INCLUD-

1 ING, WITHOUT LIMITATION, CONSTRUCTION, REAL ESTATE, FINANCIAL, INSUR-
2 ANCE, LEGAL, ACCOUNTING OR OTHER PROFESSIONAL SERVICES, AS APPLICABLE,
3 TO BE PROCURED BY THE CORPORATION AND SHALL REPORT DIRECTLY TO THE
4 CORPORATION'S EXECUTIVE DIRECTOR, PRESIDENT OR CHIEF EXECUTIVE OFFICER.

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

10 (H) PROCEDURES FOR MAINTAINING LISTS OF QUALIFIED MINORITY AND WOMEN-
11 OWNED BUSINESS ENTERPRISES AND OTHER PROFESSIONAL FIRMS THAT HAVE
12 EXPRESSED AN INTEREST IN DOING BUSINESS WITH THE CORPORATION AND ENSUR-
13 ING THAT SUCH LISTS ARE UPDATED REGULARLY. THE CORPORATION SHALL ALSO
14 CONSULT THE LISTS OF CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTER-
15 PRISES MAINTAINED BY THE DEPARTMENT OF ECONOMIC DEVELOPMENT PURSUANT TO
16 ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW.

17 (I) THE ESTABLISHMENT OF APPROPRIATE GOALS FOR PARTICIPATION BY MINOR-
18 ITY AND WOMEN-OWNED BUSINESS ENTERPRISES IN PROCUREMENT CONTRACTS
19 AWARDED BY THE CORPORATION AND FOR THE UTILIZATION OF MINORITY AND WOMAN
20 ENTERPRISES AS SUBCONTRACTORS AND SUPPLIERS BY ENTITIES HAVING PROCURE-
21 MENT CONTRACTS WITH THE CORPORATION.

22 (J) THE CONDUCT OF PROCUREMENTS IN A MANNER THAT WILL ENABLE THE
23 CORPORATION TO ACHIEVE THE GOALS ESTABLISHED PURSUANT TO PARAGRAPH (G)
24 OF THIS SUBDIVISION AND THAT ELIMINATES BARRIERS TO PARTICIPATION BY
25 MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES IN THE CORPORATION'S
26 PROCUREMENTS.

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

52 IN THE CASE OF CONTRACTS REQUIRED BY LAW TO BE AWARDED TO THE LOWEST
53 RESPONSIBLE BIDDER PURSUANT TO SEALED BIDS, IN THE EVENT OF DETERMI-
54 NATION THAT TWO OR MORE BIDDERS HAVE PROVIDED BIDS THAT ARE ROUGHLY
55 EQUAL ANY DETERMINATION OF RESPONSIBILITY OR OTHER "TIE BREAKING"
56 FACTORS SHALL TAKE INTO ACCOUNT THE RESPECTIVE BIDDERS RECORD OF COMPLI-

1 ANCE UNDER ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW OR OTHER APPLICABLE
2 STATUTES OR REGULATIONS GOVERNING THE PARTICIPATION OF MINORITY AND
3 WOMEN-OWNED BUSINESS ENTERPRISES IN CONTRACTS AWARDED BY A STATE AGENCY
4 OR OTHER PUBLIC CORPORATION.

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

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

29 S 14. Severability clause. If any clause, sentence, paragraph, subdi-
30 vision, section or part of this act shall be adjudged by any court of
31 competent jurisdiction to be invalid, such judgment shall not affect,
32 impair, or invalidate the remainder thereof, but shall be confined in
33 its operation to the clause, sentence, paragraph, subdivision, section
34 or part thereof directly involved in the controversy in which such judg-
35 ment shall have been rendered. It is hereby declared to be the intent of
36 the legislature that this act would have been enacted even if such
37 invalid provision had not been included herein.

38 S 15. This act shall take effect on the ninetieth day after it shall
39 have become a law; provided that the amendments to article 15-A of the
40 executive law made by sections two, three, four, five and six of this
41 act shall not affect the expiration of such article and shall be deemed
42 expired therewith; and provided further that the amendments to section
43 163 of the state finance law made by sections seven, eight, and ten of
44 this act shall not affect the repeal of such section and shall expire
45 and be deemed repealed therewith.