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

5607

2009-2010 Regular Sessions

I N A S S E M B L Y

February 13, 2009

Introduced by M. of A. BOYLAND -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to requiring that certain state contracts provide for the employment of homeless persons

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

Section 1. The executive law is amended by adding a new article 15-D to read as follows:

ARTICLE 15-D

PARTICIPATION BY HOMELESS PERSONS WITH RESPECT TO STATE CONTRACTS

SECTION 328-B. DEFINITIONS.
328-C. EQUAL EMPLOYMENT OPPORTUNITIES FOR HOMELESS PERSONS.
328-D. RESPONSIBILITIES OF CONTRACTING AGENCIES.
328-E. ENFORCEMENT.

S 328-B. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "CONTRACTING AGENCY" SHALL MEAN A STATE AGENCY WHICH IS A PARTY OR A PROPOSED PARTY TO A STATE CONTRACT OR, IN THE CASE OF A STATE CONTRACT DESCRIBED IN PARAGRAPH (C) OF SUBDIVISION SEVEN OF THIS SECTION, SHALL MEAN THE NEW YORK STATE HOUSING FINANCE AGENCY, HOUSING TRUST FUND CORPORATION OR AFFORDABLE HOUSING CORPORATION, WHICHEVER HAS MADE OR PROPOSES TO MAKE THE GRANT OR LOAN FOR THE STATE ASSISTED HOUSING PROJECT.

2. "CONTRACTOR" 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 STATE CONTRACT, OR A BIDDER IN CONJUNCTION WITH THE AWARD OF A STATE CONTRACT OR A PROPOSED PARTY TO A STATE CONTRACT.

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

LBD08850-01-9

3. "DIRECTOR" SHALL MEAN THE DIRECTOR OF THE DIVISION OF MINORITY AND WOMEN'S BUSINESS DEVELOPMENT ESTABLISHED BY ARTICLE FOUR-A OF THE ECONOMIC DEVELOPMENT LAW.

4. "HOMELESS PERSON" SHALL HAVE THE MEANING PRESCRIBED IN SUBDIVISION TWO OF SECTION FORTY-TWO OF THE SOCIAL SERVICES LAW.

5. "DIVISION" SHALL MEAN THE DIVISION OF MINORITY AND WOMEN'S BUSINESS DEVELOPMENT CREATED BY ARTICLE FOUR-A OF THE ECONOMIC DEVELOPMENT LAW.

6. "STATE AGENCY" SHALL MEAN (A) (I) ANY STATE DEPARTMENT, OR (II) ANY DIVISION, BOARD, COMMISSION OR BUREAU OF ANY STATE DEPARTMENT, OR (III) THE STATE UNIVERSITY OF NEW YORK AND THE CITY UNIVERSITY OF NEW YORK, INCLUDING ALL THEIR CONSTITUENT UNITS EXCEPT COMMUNITY COLLEGES AND THE INDEPENDENT INSTITUTIONS OPERATING STATUTORY OR CONTRACT COLLEGES ON BEHALF OF THE STATE, OR (IV) A BOARD, A MAJORITY OF WHOSE MEMBERS ARE APPOINTED BY THE GOVERNOR OR WHO SERVE BY VIRTUE OF BEING STATE OFFICERS OR EMPLOYEES AS DEFINED IN SUBPARAGRAPH (I), (II) OR (III) OF PARAGRAPH (I) OF SUBDIVISION ONE OF SECTION SEVENTY-THREE OF THE PUBLIC OFFICERS LAW:

(B) THE FOLLOWING:

ALBANY PORT DISTRICT COMMISSION;
BATTERY PARK CITY AUTHORITY;
(NELSON A. ROCKEFELLER) EMPIRE STATE PLAZA PERFORMING ARTS CENTER CORPORATION;
INDUSTRIAL EXHIBIT AUTHORITY;
LONG ISLAND POWER AUTHORITY;
LONG ISLAND RAIL ROAD;
MANHATTAN AND BRONX SURFACE TRANSIT OPERATING AUTHORITY;
METRO-NORTH COMMUTER RAILROAD;
METROPOLITAN SUBURBAN BUS AUTHORITY;
METROPOLITAN TRANSPORTATION AUTHORITY;
NATURAL HERITAGE TRUST;
NEW YORK CITY TRANSIT AUTHORITY;
NEW YORK CONVENTION CENTER OPERATING CORPORATION;
NEW YORK STATE BRIDGE AUTHORITY;
NEW YORK STATE OLYMPIC REGIONAL DEVELOPMENT AUTHORITY;
NEW YORK STATE THRUWAY AUTHORITY.

7. "STATE CONTRACT" SHALL MEAN: (A) A WRITTEN AGREEMENT OR PURCHASE ORDER INSTRUMENT, PROVIDING FOR A TOTAL EXPENDITURE IN EXCESS OF ONE HUNDRED THOUSAND DOLLARS, WHEREBY A CONTRACTING AGENCY IS COMMITTED TO EXPEND OR DOES EXPEND FUNDS IN RETURN FOR LABOR, 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. FOR THE PURPOSES OF THIS ARTICLE THE TERM "SERVICES" SHALL NOT INCLUDE BANKING RELATIONSHIPS, THE ISSUANCE OF INSURANCE POLICIES OR CONTRACTS, OR CONTRACTS WITH A CONTRACTING AGENCY FOR THE SALE OF BONDS, NOTES OR OTHER SECURITIES.

8. "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.

S 328-C. EQUAL EMPLOYMENT OPPORTUNITIES FOR HOMELESS PERSONS. 1. ALL STATE CONTRACTS AND ALL DOCUMENTS SOLICITING BIDS OR PROPOSALS FOR STATE CONTRACTS FOR PROJECTS COSTING ONE HUNDRED THOUSAND DOLLARS OR MORE SHALL PROVIDE FOR THE EMPLOYMENT OF AT LEAST TEN HOMELESS PERSONS. THE CONTRACTOR SHALL EMPLOY ONLY THOSE HOMELESS PERSONS WHO ARE QUALIFIED TO PERFORM THE WORK REQUIRED PURSUANT TO THE CONTRACT IN A SAFE AND COMPETENT MANNER.

2. THE CONTRACTOR WILL INCLUDE THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION IN EVERY SUBCONTRACT, EXCEPT AS PROVIDED IN SUBDIVISION SIX OF THIS SECTION, IN SUCH A MANNER THAT THE PROVISIONS WILL BE BINDING UPON EACH SUBCONTRACTOR AS TO WORK IN CONNECTION WITH THE STATE CONTRACT.

3. THE PROVISIONS OF THIS SECTION SHALL NOT BE BINDING UPON CONTRACTORS OR SUBCONTRACTORS IN THE PERFORMANCE OF WORK OR THE PROVISION OF SERVICES OR ANY OTHER ACTIVITY THAT ARE UNRELATED, SEPARATE OR DISTINCT FROM THE STATE CONTRACT AS EXPRESSED BY ITS TERMS.

4. IN THE IMPLEMENTATION OF THIS SECTION, THE CONTRACTING AGENCY SHALL CONSIDER COMPLIANCE BY A CONTRACTOR OR SUBCONTRACTOR WITH THE REQUIREMENTS OF ANY FEDERAL LAW CONCERNING EQUAL EMPLOYMENT OPPORTUNITY WHICH EFFECTUATES THE PURPOSE OF THIS SECTION. THE CONTRACTING AGENCY SHALL DETERMINE WHETHER THE IMPOSITION OF THE REQUIREMENTS OF THE PROVISIONS HEREOF DUPLICATE OR CONFLICT WITH ANY SUCH LAW AND IF SUCH DUPLICATION OR CONFLICT EXISTS, THE CONTRACTING AGENCY SHALL WAIVE THE APPLICABILITY OF THIS SECTION TO THE EXTENT OF SUCH DUPLICATION OR CONFLICT.

5. THE DIRECTOR SHALL PROMULGATE RULES AND REGULATIONS TO ENSURE THAT CONTRACTORS AND SUBCONTRACTORS UNDERTAKE PROGRAMS OF EQUAL EMPLOYMENT OPPORTUNITY AS REQUIRED BY THIS SECTION. SUCH RULES AND REGULATIONS AS THEY PERTAIN TO ANY PARTICULAR AGENCY SHALL BE DEVELOPED AFTER CONSULTATION WITH CONTRACTING AGENCIES. THE CONTRACTING AGENCY SHALL BE RESPONSIBLE FOR MONITORING COMPLIANCE WITH THIS SECTION.

6. THE REQUIREMENTS OF THIS SECTION SHALL NOT APPLY TO ANY EMPLOYMENT OUTSIDE THIS STATE OR APPLICATION FOR EMPLOYMENT OUTSIDE THIS STATE OR SOLICITATIONS OR ADVERTISEMENTS THEREFOR, OR ANY EXISTING PROGRAMS OF AFFIRMATIVE ACTION REGARDING EMPLOYMENT OUTSIDE THIS STATE AND THE EFFECT OF CONTRACT PROVISIONS REQUIRED BY SUBDIVISION ONE OF THIS SECTION SHALL BE SO LIMITED.

S 328-D. RESPONSIBILITIES OF CONTRACTING AGENCIES. 1. EACH CONTRACTING AGENCY SHALL BE RESPONSIBLE FOR MONITORING STATE CONTRACTS UNDER ITS JURISDICTION, AND RECOMMENDING MATTERS TO THE DIVISION RESPECTING NON-COMPLIANCE WITH THE PROVISIONS OF THIS ARTICLE SO THAT THE OFFICE MAY TAKE SUCH ACTION AS IS APPROPRIATE TO INSURE COMPLIANCE WITH THE PROVISIONS OF THIS ARTICLE, THE RULES AND REGULATIONS OF THE DIRECTOR ISSUED HEREUNDER AND THE CONTRACTUAL PROVISIONS REQUIRED PURSUANT TO THIS ARTICLE. ALL CONTRACTING AGENCIES SHALL COMPLY WITH THE RULES AND REGULATIONS OF THE DIVISION AND ARE DIRECTED TO COOPERATE WITH THE DIVISION AND TO FURNISH TO THE DIVISION SUCH INFORMATION AND ASSISTANCE AS MAY BE REQUIRED IN THE PERFORMANCE OF ITS FUNCTIONS UNDER THIS ARTICLE.

2. EACH CONTRACTING AGENCY SHALL REPORT TO THE DIRECTOR WITH RESPECT TO ACTIVITIES UNDERTAKEN TO PROMOTE EMPLOYMENT OF HOMELESS PERSONS WITH

RESPECT TO STATE CONTRACTS AND SUBCONTRACTS. SUCH REPORT SHALL BE SUBMITTED PERIODICALLY AS REQUIRED BY THE DIRECTOR.

S 328-E. ENFORCEMENT. UPON RECEIPT BY THE DIRECTOR OF A COMPLAINT BY A CONTRACTING AGENCY THAT A CONTRACTOR HAS VIOLATED THE PROVISIONS OF A STATE CONTRACT WHICH HAVE BEEN INCLUDED TO COMPLY WITH THE PROVISIONS OF THIS ARTICLE, THE DIRECTOR SHALL ATTEMPT TO RESOLVE THE MATTER GIVING RISE TO SUCH COMPLAINT. IF EFFORTS TO RESOLVE SUCH MATTER TO THE SATISFACTION OF ALL PARTIES ARE UNSUCCESSFUL, THE DIRECTOR SHALL REFER THE MATTER, WITHIN THIRTY DAYS OF THE RECEIPT OF THE COMPLAINT, TO THE AMERICAN ARBITRATION ASSOCIATION FOR PROCEEDING THEREON. UPON CONCLUSION OF THE ARBITRATION PROCEEDINGS, THE ARBITRATOR SHALL SUBMIT TO THE DIRECTOR HIS OR HER AWARD REGARDING THE ALLEGED VIOLATION OF THE CONTRACT AND RECOMMENDATIONS REGARDING THE IMPOSITION OF SANCTIONS, FINES OR PENALTIES. THE DIRECTOR SHALL EITHER: (1) ADOPT THE RECOMMENDATION OF THE ARBITRATOR; OR (2) DETERMINE THAT NO SANCTIONS, FINES OR PENALTIES SHOULD BE IMPOSED; OR (3) MODIFY THE RECOMMENDATION OF THE ARBITRATOR, PROVIDED THAT SUCH MODIFICATION SHALL NOT EXPAND UPON ANY SANCTION RECOMMENDED OR IMPOSE ANY NEW SANCTION, OR INCREASE THE AMOUNT OF ANY RECOMMENDED FINE OR PENALTY. THE DIRECTOR, WITHIN TEN DAYS OF RECEIPT OF THE ARBITRATOR'S AWARD AND RECOMMENDATIONS, SHALL FILE A DETERMINATION OF SUCH MATTER AND SHALL CAUSE A COPY OF SUCH DETERMINATION ALONG WITH A COPY OF THIS ARTICLE TO BE SERVED UPON THE RESPONDENT BY PERSONAL SERVICE OR BY CERTIFIED MAIL RETURN RECEIPT REQUESTED. THE AWARD OF THE ARBITRATOR SHALL BE FINAL AND MAY ONLY BE VACATED OR MODIFIED AS PROVIDED IN ARTICLE SEVENTY-FIVE OF THE CIVIL PRACTICE LAW AND RULES UPON AN APPLICATION MADE WITHIN THE TIME PROVIDED BY SECTION SEVENTY-FIVE HUNDRED ELEVEN OF THE CIVIL PRACTICE LAW AND RULES. THE DETERMINATION OF THE DIRECTOR AS TO THE IMPOSITION OF ANY FINES, SANCTIONS OR PENALTIES SHALL BE REVIEWABLE PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

S 2. Paragraphs (g), (h) and (i) of subdivision 3 of section 311 of the executive law are relettered paragraphs (h), (i) and (j) and a new paragraph (g) is added to read as follows:

(G) TO PROMULGATE RULES AND REGULATIONS TO ENSURE THAT THE PROVISIONS OF ARTICLE FIFTEEN-D OF THIS CHAPTER RELATED TO EMPLOYMENT OF HOMELESS PERSONS ARE MET, AND TO CARRY OUT SUCH OTHER POWERS AND DUTIES AS ARE NECESSARY TO ENSURE AND ENFORCE THE PROVISIONS OF SUCH ARTICLE;

S 3. This act shall take effect on the one hundred twentieth day after it shall have become a law. Any rules and regulations necessary for the timely implementation of this act on its effective date shall be promulgated on or before such date, and provided further that the amendments to subdivision 3 of section 311 of the executive law made by section two of this act shall not affect the expiration of such section as provided by chapter 261 of the laws of 1988 and shall expire therewith.