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

S. 6889 A. 9975

S E N A T E - A S S E M B L Y

February 22, 2010

IN SENATE -- Introduced by Sens. THOMPSON, STEWART-COUSINS -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

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

AN ACT to amend the executive law, in relation to expanding the process to reform state contracting requirements to expand prime contract and subcontract opportunities for minority and women-owned business enterprises; and to repeal certain provisions of such law relating thereto

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

Section 1. Subdivision 13 of section 310 of the executive law, as added by chapter 261 of the laws of 1988, is amended to read as follows:

13. "State contract" shall mean: (a) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, INCLUDING WITHOUT LIMITATION ASSET MANAGEMENT, INVESTMENT BANKING, BROKERAGE SERVICES, INSURANCE, BANKING, OTHER FINANCIAL ADVISORY, LEGAL, ACCOUNTING AND OTHER PROFESSIONAL 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.

S 2. Subdivision 13 of section 310 of the executive law, as amended by chapter 506 of the laws of 2009, 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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13. "State contract" shall mean: (a) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars, whereby a contracting agency is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, ASSET MANAGEMENT, INVESTMENT BANKING, BROKERAGE SERVICES, INSURANCE, BANKING, OTHER FINANCIAL ADVISORY, LEGAL, ACCOUNTING AND OTHER PROFESSIONAL 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.

S 3. Subdivision 2 of section 313 of the executive law is REPEALED and a new subdivision 2 is added to read as follows:

2. CONTRACTING AGENCIES SHALL INCLUDE OR REQUIRE TO BE INCLUDED WITH RESPECT TO STATE CONTRACTS, SUCH PROVISIONS AS MAY BE NECESSARY TO EFFECTUATE THE PROVISIONS OF THIS SECTION IN EVERY BID SPECIFICATION AND STATE CONTRACT, INCLUDING, BUT NOT LIMITED TO: (A) PROVISIONS REQUIRING CONTRACTORS TO MAKE A GOOD FAITH EFFORT TO SOLICIT ACTIVE PARTICIPATION BY ENTERPRISES KNOWN TO SUCH CONTRACTING AGENCIES AS BEING MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES OR IDENTIFIED IN THE DIRECTORY OF CERTIFIED BUSINESSES PROVIDED TO THE CONTRACTING AGENCY BY THE OFFICE; (B) REQUIRING THE PARTIES TO AGREE AS A CONDITION OF ENTERING INTO SUCH CONTRACT, TO BE BOUND BY THE PROVISIONS OF SECTION THREE HUNDRED SIXTEEN OF THIS ARTICLE; AND (C) REQUIRING THE CONTRACTOR TO INCLUDE THE PROVISIONS SET FORTH IN PARAGRAPHS (A) AND (B) OF THIS SUBDIVISION IN EVERY SUBCONTRACT IN A MANNER THAT THE PROVISIONS WILL BE BINDING UPON EACH SUBCONTRACTOR AS TO WORK IN CONNECTION WITH SUCH CONTRACT. PROVIDED, HOWEVER, THAT NO SUCH PROVISIONS SHALL BE BINDING UPON CONTRACTORS OR SUBCONTRACTORS IN THE PERFORMANCE OF WORK OR THE PROVISION OF SERVICES THAT ARE UNRELATED, SEPARATE OR DISTINCT FROM THE STATE CONTRACT AS EXPRESSED BY ITS TERMS, AND NOTHING IN THIS SECTION SHALL AUTHORIZE THE DIRECTOR OR ANY CONTRACTING AGENCY TO IMPOSE ANY REQUIREMENT ON A CONTRACTOR OR SUBCONTRACTOR EXCEPT WITH RESPECT TO A STATE CONTRACT. FOR PURPOSES OF THIS SECTION, "STATE CONTRACTS" SHALL INCLUDE, WITHOUT LIMITATION, LEASES OF REAL PROPERTY BY A STATE AGENCY TO A LESSEE WHERE THE TERMS OF SUCH LEASES PROVIDE FOR THE CONSTRUCTION, DEMOLITION, REPLACEMENT, MAJOR REPAIR OR RENOVATION OF REAL PROPERTY AND IMPROVEMENTS THEREON BY SUCH LESSEE. REPORTS TO THE DIRECTOR PURSUANT TO SECTION THREE HUNDRED FIFTEEN OF THIS TITLE SHALL INCLUDE ACTIVITIES WITH RESPECT TO ALL STATE CONTRACTS.

S 4. This act shall take effect immediately; provided, however, that section two of this act shall take effect on the same date and in the same manner as section 21-a of chapter 506 of the laws of 2009 takes effect when upon such date the provisions of section one of this act shall be deemed repealed; and provided, further, that the amendments to sections 310 and 313 of the executive law made by this act shall not affect the expiration of such sections and shall be deemed to expire therewith.