

3508

2009-2010 Regular Sessions

I N S E N A T E

March 20, 2009

Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, in relation to subcontracting by public authorities

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

1 Section 1. Article 9 of the public authorities law is amended by  
2 adding a new title 4-A to read as follows:

3 TITLE 4-A  
4 SUBCONTRACTING BY PUBLIC AUTHORITIES

5 SECTION 2883. CONTRACTS FOR PROFESSIONAL, MAINTENANCE, CLERICAL, OR  
6 TECHNICAL SERVICES.

7 S 2883. CONTRACTS FOR PROFESSIONAL, MAINTENANCE, CLERICAL, OR TECHNICAL  
8 SERVICES. 1. DEFINITIONS. AS USED IN THIS TITLE, THE FOLLOWING TERMS  
9 HAVE THE FOLLOWING MEANINGS, UNLESS OTHERWISE SPECIFIED:

10 (A) "PUBLIC AUTHORITY" MEANS (1) ANY PUBLIC AUTHORITY, PUBLIC BENEFIT  
11 CORPORATION, OR COMMISSION CREATED BY OR EXISTING UNDER THIS CHAPTER;  
12 (2) ANY PUBLIC AUTHORITY OR A PUBLIC BENEFIT CORPORATION, AT LEAST ONE  
13 OF WHOSE MEMBERS IS APPOINTED BY THE GOVERNOR OR WHO SERVES AS A MEMBER  
14 BY VIRTUE OF HOLDING A CIVIL OFFICE OF THE STATE; (3) A NOT-FOR-PROFIT  
15 CORPORATION AFFILIATED WITH, SPONSORED BY, OR CREATED BY A STATE AGENCY;  
16 (4) A NOT-FOR-PROFIT CORPORATION CREATED BY OR EXISTING UNDER ARTICLE  
17 TWO OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW AND OPERATING  
18 UNDER AN EXCLUSIVE FRANCHISE GRANTED BY THE STATE; (5) A MUNICIPAL  
19 INDUSTRIAL DEVELOPMENT AGENCY OR OTHER LOCAL PUBLIC BENEFIT CORPORATION;  
20 OR (6) A SUBSIDIARY OR AFFILIATE OF A PUBLIC AUTHORITY.

21 (B) "CONTRACT" MEANS AN ENFORCEABLE AGREEMENT, ENTERED INTO BY A  
22 CONTRACTOR AND A PUBLIC AUTHORITY, WHICH EXCEEDS TWO HUNDRED FIFTY THOU-

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

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1 SAND DOLLARS. A SINGLE CONTRACT WHICH IS DIVIDED INTO SEPARATE CONTRACTS  
2 SOLELY TO AVOID THE APPLICATION OF THIS TITLE SHALL BE DEEMED A SINGLE  
3 CONTRACT FOR PURPOSES OF THIS TITLE.

4 (C) "CONTRACTOR" MEANS ANY PERSON, PARTNERSHIP, FIRM, CORPORATION,  
5 ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER ENTITY RENDERING OR  
6 PROVIDING PROFESSIONAL, MAINTENANCE, CLERICAL, OR TECHNICAL SERVICES  
7 PURSUANT TO A CONTRACT WITH A PUBLIC AUTHORITY.

8 (D) "SERVICES" MEANS ANY PROFESSIONAL, MAINTENANCE, CLERICAL, OR TECH-  
9 NICAL SERVICES CURRENTLY PERFORMED BY MEMBERS OF THE PROFESSIONAL, MAIN-  
10 TENANCE, CLERICAL, AND TECHNICAL BARGAINING UNIT OF A PUBLIC AUTHORITY  
11 OR WHICH COME WITHIN THE SCOPE OF THE PROFESSIONAL PRACTICE OF THE  
12 MEMBERS OF SUCH BARGAINING UNIT.

13 (E) "CHANGE ORDER" MEANS A WRITTEN ORDER BY A PUBLIC AUTHORITY DIRECT-  
14 ING THE CONTRACTOR TO MAKE CHANGES IN A CONTRACT.

15 (F) "CONTRACT MODIFICATION" MEANS ANY WRITTEN ALTERATION TO SPECIFICA-  
16 TIONS, DELIVERY POINT, RATE OF DELIVERY, PERIOD OF PERFORMANCE, PRICE,  
17 QUALITY, OR OTHER PROVISIONS OF ANY CONTRACT ACCOMPLISHED BY MUTUAL  
18 ACTION OF THE PARTIES TO THE CONTRACT.

19 2. GUIDELINES FOR CONTRACTING FOR SERVICES. NO CONTRACT WITH A  
20 CONTRACTOR FOR SERVICES SHALL BE ENTERED INTO BY A PUBLIC AUTHORITY  
21 UNLESS CONTRACTING FOR SUCH SERVICES IS:

22 (A) COST EFFECTIVE WHEN COMPARED TO THE COST OF HAVING A PUBLIC  
23 AUTHORITY PERFORM THE WORK; OR

24 (B) REQUIRED FOR A SHORT DURATION, MAKING IT IMPRACTICAL TO HIRE  
25 BARGAINING UNIT EMPLOYEES TO PERFORM THE SERVICE; OR

26 (C) REQUIRED FOR SPECIAL EXPERTISE NOT CURRENTLY AVAILABLE IN THE  
27 BARGAINING UNIT; OR

28 (D) REQUIRED DUE TO AN URGENT NEED SUCH THAT THE DELAY IN HIRING  
29 EMPLOYEES WOULD FRUSTRATE THE PUBLIC INTEREST; OR

30 (E) REQUIRED TO AVOID A CONFLICT OF INTEREST; OR

31 (F) OTHERWISE REQUIRED TO BE SO CONTRACTED; OR

32 (G) IN COMPLIANCE WITH THE PUBLIC AUTHORITY'S AFFIRMATIVE ACTION  
33 EFFORTS AND WILL NOT CAUSE THE PUBLIC AUTHORITY TO FAIL TO MEET ITS  
34 AFFIRMATIVE ACTION GOALS. A CONTRACTOR MUST ALSO MEET OR EXCEED THE  
35 PUBLIC AUTHORITY'S GOALS FOR AFFIRMATIVE ACTION; OR

36 (H) IN COMPLIANCE WITH THE REQUIREMENTS OF APPLICABLE STATE, LOCAL,  
37 AND FEDERAL LAW.

38 3. COST BENEFIT ANALYSIS. IN DETERMINING IF A CONTRACT IS COST EFFEC-  
39 TIVE, THE PUBLIC AUTHORITY SHALL PERFORM A COST BENEFIT ANALYSIS WHICH  
40 SHALL EVALUATE, BUT NOT BE LIMITED TO, THE FOLLOWING FACTORS:

41 (A) REIMBURSEMENT FROM OTHER SOURCES;

42 (B) BOTH THE DIRECT AND INDIRECT COSTS OF PERFORMING THE WORK;

43 (C) WHETHER OR NOT THE CONTRACTOR PROVIDES WAGES AND SUPPLEMENTS TO  
44 ITS EMPLOYEES WHICH ARE COMPARABLE TO THOSE PAID TO SIMILAR EMPLOYEES  
45 PERFORMING SIMILAR WORK IN THE GEOGRAPHIC AREA WHERE THE WORK IS TO BE  
46 PERFORMED. A CONTRACT MAY NOT BE CONSIDERED COST EFFECTIVE IF SUCH WAGES  
47 AND SUPPLEMENTS ARE SUBSTANTIALLY BELOW THOSE CUSTOMARILY PAID IN THE  
48 AREA; AND

49 (D) THE QUALITY OF SERVICE BEING PROVIDED.

50 4. REVIEW OF CONTRACTS FOR SERVICES. (A) PRIOR TO EXECUTING A CONTRACT  
51 FOR SERVICES, A PUBLIC AUTHORITY SHALL PREPARE A SPECIFIC STATEMENT  
52 WHICH SETS FORTH THE OBJECTIVE DATA SUPPORTING THE REASONS WHY THE  
53 PROPOSED CONTRACT MEETS THE REQUIREMENTS SET FORTH IN SUBDIVISION TWO OF  
54 THIS SECTION.

55 (B) (1) PRIOR TO THE SCHEDULED AWARD OF A CONTRACT FOR SERVICES, A  
56 PUBLIC AUTHORITY SHALL PROVIDE TO THE EMPLOYEE ORGANIZATION THAT REPRES-

1 ENTS PUBLIC AUTHORITY EMPLOYEES WHO WOULD OTHERWISE PERFORM SUCH  
2 SERVICES WITH COPIES OF THE STATEMENT RENDERED PURSUANT TO PARAGRAPH (A)  
3 OF THIS SUBDIVISION AND THE PROPOSED CONTRACT SO THAT SUCH EMPLOYEE  
4 ORGANIZATION SHALL HAVE AT LEAST FIFTEEN DAYS TO OBJECT TO THE PROPOSED  
5 CONTRACT. AN EMPLOYEE ORGANIZATION WHICH PROVIDES TIMELY WRITTEN NOTICE  
6 OF OBJECTION AND THE REASONS THEREFOR SHALL, UNLESS THE PUBLIC AUTHORITY  
7 AGREES IN WRITING TO WITHDRAW THE PROPOSED CONTRACT, BE PERMITTED TO BE  
8 HEARD BY THE PUBLIC AUTHORITY ON ITS OBJECTIONS PRIOR TO THE AWARD OF  
9 THE CONTRACT. WITHIN FIFTEEN DAYS OF RECEIPT OF ANY SUCH OBJECTIONS, THE  
10 PUBLIC AUTHORITY, AFTER CONSIDERING THE OBJECTIONS OF THE EMPLOYEE  
11 ORGANIZATION, SHALL NOTIFY THE EMPLOYEE ORGANIZATION WHETHER THE PUBLIC  
12 AUTHORITY WILL WITHDRAW THE PROPOSED CONTRACT OR ENTER INTO THE  
13 CONTRACT. IF THE PUBLIC AUTHORITY DECIDES TO ENTER INTO THE CONTRACT,  
14 AND THE EMPLOYEE ORGANIZATION STILL BELIEVES THAT THE CONTRACT IS IN  
15 VIOLATION OF THE GUIDELINES IN SUBDIVISION TWO OF THIS SECTION, THE  
16 EMPLOYEE ORGANIZATION SHALL HAVE THE RIGHT TO BRING A PROCEEDING PURSU-  
17 ANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES TO  
18 DETERMINE WHETHER OR NOT THE APPROVAL WAS IN ACCORDANCE WITH THE  
19 PROVISIONS OF THIS SECTION.

20 (2) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH ONE OF THIS PARA-  
21 GRAPH, THE EMPLOYEE ORGANIZATION MAY BE PROVIDED LESS THAN THE REQUIRED  
22 FIFTEEN DAYS TO OBJECT TO THE PROPOSED CONTRACT WHEN THE CONTRACT IS  
23 REQUIRED TO RESPOND TO AN EMERGENCY WITHIN THE SCOPE OF PARAGRAPH (D) OF  
24 SUBDIVISION TWO OF THIS SECTION.

25 5. CHANGE ORDERS AND CONTRACT MODIFICATIONS. IF A PUBLIC AUTHORITY  
26 INTENDS TO CHANGE, BY USE OF A CHANGE ORDER OR CONTRACT MODIFICATION, A  
27 CONTRACT FOR SERVICES, AND SUCH CHANGE RESULTS IN CAUSING THE AMOUNT OF  
28 THE CONTRACT TO EXCEED ONE HUNDRED TWENTY-FIVE PERCENT OF THE ORIGINAL  
29 CONTRACT AMOUNT, THEN APPROVAL OF SUCH CHANGES SHALL BE SUBJECT TO THE  
30 PROVISIONS OF SUBDIVISION FOUR OF THIS SECTION.

31 S 2. This act shall take effect on the first of April next succeeding  
32 the date on which it shall have become a law.