

4262

2009-2010 Regular Sessions

I N S E N A T E

April 20, 2009

Introduced by Sen. KRUGER -- (at request of the State Comptroller) --
read twice and ordered printed, and when printed to be committed to
the Committee on Finance

AN ACT to amend the state finance law, in relation to purchasing
services and commodities; to amend the economic development law, in
relation to the definition of procurement contract; to amend the state
finance law, in relation to program procurements; to amend the state
finance law, in relation to allowing for pilot procurement methods; to
amend the state finance law, in relation to clarifying the definition
of services; to amend the state finance law, in relation to the
purchasing of renewable energy resources and recycled products; and to
amend the state finance law, in relation to minimizing the number of
contracts awarded without competition

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

1 Section 1. The closing paragraph of section 43 of the state finance
2 law, as amended by chapter 137 of the laws of 2008, is amended to read
3 as follows:
4 Except as otherwise expressly provided, the comptroller shall not
5 audit any claim or account or draw a warrant for the payment of moneys
6 for the purchase of an aircraft intended primarily for the purpose of
7 carrying passengers or the rent of an aircraft for such purpose for a
8 period longer than ten days. [The provision of this section shall not
9 apply to the necessary rental of automobiles for construction and main-
10 tenance work on the highways of the state or for grade crossing elimi-
11 nation work.]
12 S 2. Paragraph h of subdivision 1 of section 163 of the state finance
13 law, as amended by chapter 137 of the laws of 2008, is amended to read
14 as follows:
15 h. "Single source" means a procurement in which although two or more
16 offerers can supply the required commodities or services, the commis-

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

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1 sioner or state agency, upon written findings setting forth the material
2 and substantial reasons therefor, may award a contract or [non-techni-
3 cal] amendment to a contract to one offerer over the other. The commis-
4 sioner or state agency shall document in the procurement record the
5 circumstances leading to the selection of the vendor, including the
6 alternatives considered, the rationale for selecting the specific vendor
7 and the basis upon which it determined the cost was reasonable.

8 S 3. Subdivision 6-a of section 163 of the state finance law, as
9 added by section 4 of part D of chapter 56 of the laws of 2006, is
10 amended to read as follows:

11 6-a. Discretionary purchases. Notwithstanding the provisions of subdi-
12 vision two of section one hundred twelve of this chapter relating to the
13 dollar threshold requiring the state comptroller's approval of
14 contracts, the commissioner of general services may make purchases or
15 enter into contracts for the acquisition of commodities and services
16 having a value not exceeding eighty-five thousand dollars without prior
17 approval by any other state officer or agency in accordance with proce-
18 dures and requirements set forth in this article. Notwithstanding the
19 provisions of article four-C of the economic development law, the
20 commissioner of general services may make purchases or enter into
21 contracts for the acquisition of commodities and services having a value
22 not exceeding [thirty] FIFTY thousand dollars without prior approval by
23 any other state officer or agency in accordance with procedures and
24 requirements set forth in this article.

25 S 4. Subdivision 6-b of section 163 of the state finance law, as added
26 by chapter 137 of the laws of 2008, is amended to read as follows:

27 6-b. Determination of threshold amount. For [determination of thresh-
28 old amount] purposes of determining whether a purchase is within the
29 discretionary thresholds established by subdivision six of this section,
30 the commissioner and state agencies shall consider the reasonably
31 expected aggregate amount of all purchases of the same commodities or
32 services to be made within the twelve-month period commencing on the
33 date of purchase. Purchases of services or commodities shall not be
34 artificially divided for the purpose of satisfying the discretionary
35 buying thresholds established by subdivision six of this section. A
36 change to or a renewal of a discretionary purchase shall not be permit-
37 ted if the change or renewal would bring the reasonably expected aggre-
38 gate amount of all purchases of the same commodities or services from
39 the same provider within the twelve-month period commencing on the date
40 of the first purchase to an amount greater than the discretionary buying
41 threshold amount EXCEPT WHERE THE CHANGE OR RENEWAL COULD NOT HAVE BEEN
42 REASONABLY EXPECTED PRIOR TO THE FIRST PURCHASE.

43 S 5. Paragraph c of subdivision 9 of section 163 of the state finance
44 law, as amended by chapter 137 of the laws of 2008, is amended to read
45 as follows:

46 c. Where provided in the solicitation, state agencies may require
47 clarification from offerers for purposes of assuring a full understand-
48 ing of responsiveness to the solicitation requirements. Where provided
49 for in the solicitation, revisions may be permitted from all offerers
50 determined to be susceptible of being selected for contract award, prior
51 to award. Offerers shall be accorded fair and equal treatment with
52 respect to their opportunity for discussion and revision of offers. A
53 state agency shall, [upon] WITHIN TEN BUSINESS DAYS FOLLOWING A request,
54 provide a debriefing to any unsuccessful offerer that responded to a
55 request for proposal or an invitation for bids, regarding the reasons
56 that the proposal or bid submitted by the unsuccessful offerer was not

1 selected for an award. The opportunity for an unsuccessful offerer to
2 seek a debriefing shall be stated in the solicitation, which shall
3 provide a reasonable time for requesting a debriefing.

4 S 6. Paragraph e of subdivision 10 of section 163 of the state finance
5 law, as amended by chapter 137 of the laws of 2008, is amended to read
6 as follows:

7 e. The commissioner may authorize purchases required by state agencies
8 or other authorized purchasers by letting a contract pursuant to a writ-
9 ten agreement, or by approving the use of a contract let by any depart-
10 ment, agency or instrumentality of the United States government and/or
11 any department, agency, office, political subdivision or instrumentality
12 of any state or states. A state agency purchaser shall document in the
13 procurement record its rationale for the use of a contract let by any
14 department, agency or instrumentality of the United States government or
15 any department, agency, office, political subdivision or instrumentality
16 of THIS STATE OR any other state or states. Such rationale shall
17 include, but need not be limited to, a determination of need, a consid-
18 eration of the procurement method by which the contract was awarded, an
19 analysis of alternative procurement sources including an explanation why
20 a competitive procurement or the use of a centralized contract let by
21 the commissioner is not in the best interest of the state, and the
22 reasonableness of cost.

23 S 7. Subdivision 3 of section 141 of the economic development law, as
24 amended by chapter 137 of the laws of 2008, is amended to read as
25 follows:

26 3. "Procurement contract" shall mean any written agreement entered
27 into by an agency for the acquisition of goods, services, or
28 construction of any kind in the actual or estimated amount of [fifteen]
29 FIFTY thousand dollars or more. The term does not include an agreement
30 for employment in the civil service.

31 S 8. Section 146 of the economic development law, as amended by chap-
32 ter 95 of the laws of 2000 and renumbered by chapter 137 of the laws of
33 2008, is amended to read as follows:

34 S 146. Approval of comptroller. The comptroller shall not approve or
35 file any procurement contract for the acquisition of goods or services
36 in the amount of [fifteen] FIFTY thousand dollars or more unless notice
37 as provided in section one hundred forty-two of this article shall first
38 have been published in the procurement opportunities newsletter at least
39 fifteen business days prior to the date on which a bid or proposal was
40 due. Provided, however, such requirement of publication of advance
41 notice shall not apply to contracts exempt from such requirement under
42 section one hundred forty-four of this article; provided further, that
43 the comptroller shall not be required to disapprove a contract if he
44 determines that there has been substantial compliance with the require-
45 ments of section one hundred forty-two and section one hundred forty-
46 three of this article. The foregoing provisions of this section shall
47 not be construed to limit, in any manner, the right of the comptroller
48 to demand evidence of adequate competition or such other proofs as he
49 may require in the discharge of his responsibilities pursuant to section
50 one hundred twelve of the state finance law or any other provision of
51 law.

52 S 9. Paragraph m of subdivision 2 of section 161 of the state finance
53 law, as added by chapter 95 of the laws of 2000, is amended to read as
54 follows:

55 m. Establish and, from time to time, amend guidelines with respect to
56 publishing by state agencies of quarterly listings of projected procure-

ments having a value greater than five thousand dollars but less than [fifteen] FIFTY thousand dollars in the procurement opportunities newsletter established by article four-C of the economic development law.

S 10. Subdivision 8 of section 163 of the state finance law, as amended by chapter 95 of the laws of 2000, is amended to read as follows:

8. Public notice. All procurements by state agencies in excess of [fifteen] FIFTY thousand dollars shall be advertised in the state's procurement opportunities newsletter in accordance with article four-C of the economic development law.

S 11. The state finance law is amended by adding a new article 11-C to read as follows:

ARTICLE 11-C
PROGRAM PROCUREMENTS

SECTION 179-FF. DEFINITIONS.

179-GG. PROGRAM PROCUREMENTS.

179-HH. REQUEST FOR EXEMPTION.

179-II. PROGRAM PROCUREMENT PROCESS.

S 179-FF. DEFINITIONS. AS USED IN THIS ARTICLE THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS UNLESS OTHERWISE SPECIFIED:

1. "COSTS" SHALL BE QUANTIFIABLE AND MAY INCLUDE, WITHOUT LIMITATION, THE PRICE OF PROVIDING THE GIVEN GOOD OR SERVICE AND THE ADMINISTRATIVE, TRAINING, STORAGE, MAINTENANCE OR OTHER OVERHEAD EXPENSE ASSOCIATED WITH A GIVEN GOOD OR SERVICE.

2. "EMERGENCY" MEANS AN URGENT AND UNEXPECTED REQUIREMENT WHERE PUBLIC HEALTH, SAFETY, OR WELFARE OR THE CONSERVATION OF PUBLIC RESOURCES IS AT RISK.

3. "PRICE" MEANS THE AMOUNT OF MONEY SET AS CONSIDERATION FOR A GOOD OR SERVICE AND MAY INCLUDE, BUT IS NOT LIMITED TO, WHEN APPLICABLE AND WHEN SPECIFIED IN THE PROPOSAL/APPLICATION, DELIVERY CHARGES, INSTALLATION CHARGES AND OTHER COSTS.

4. "PROCUREMENT RECORD" MEANS DOCUMENTATION OF THE DECISIONS MADE AND THE APPROACH TAKEN IN THE PROCUREMENT PROCESS.

5. "PROGRAM PROCUREMENT" MEANS A PROCUREMENT WHICH:

A. IS NOT UNDERTAKEN BY A STATE AGENCY PRIMARILY TO OBTAIN COMMODITIES, SERVICES OR TECHNOLOGY FOR SUCH AGENCY BUT RATHER UNDERTAKEN FOR A BROAD PUBLIC PURPOSE AUTHORIZED BY LAW, RATHER THAN A NARROWLY DEFINED ACTIVITY; AND

B. IS INTENDED TO BENEFIT A COMMUNITY OR A PORTION OF A COMMUNITY; AND

C. IS ACCOMPLISHED IN WHOLE OR IN PART THROUGH A CONTRACT OR CONTRACTS WITH AN ASSOCIATION, PARTNERSHIP, JOINT VENTURE, FIRM, COMPANY, CORPORATION, PUBLIC CORPORATION, NOT-FOR-PROFIT ORGANIZATION OR A COMBINATION OF SUCH ENTITIES; AND

D. HAS BEEN GRANTED AN EXEMPTION PURSUANT TO THE PROVISIONS OF SECTION ONE HUNDRED SEVENTY-NINE-HH OF THIS ARTICLE WHERE SUCH EXEMPTION IS REQUIRED BY SECTION ONE HUNDRED SEVENTY-NINE-GG OF THIS ARTICLE.

A PROGRAM PROCUREMENT PROVIDES THE PROPOSER OR APPLICANT WITH WIDE DISCRETION AND LATITUDE IN THE MANNER IN WHICH THE PURPOSE IS TO BE ACCOMPLISHED WITH FEW SPECIFIC LIMITATIONS ON THE SCOPE OF THE PROPOSAL OR APPLICATION.

6. "PUBLIC CORPORATION" MEANS A CITY, TOWN, VILLAGE, SCHOOL DISTRICT, A DISTRICT CORPORATION OR A PUBLIC BENEFIT CORPORATION AS THOSE TERMS ARE DEFINED IN SECTION SIXTY-SIX OF THE GENERAL CONSTRUCTION LAW.

7. "RESPONSIBLE" OR "RESPONSIBILITY" SHALL HAVE THE SAME MEANING AS SUCH TERMS HAVE BEEN INTERPRETED PRIOR TO THE EFFECTIVE DATE OF THIS ARTICLE.

1 8. "RESPONSIVE" MEANS A PROPOSER OR APPLICANT MEETING THE MINIMUM
2 SPECIFICATIONS OR REQUIREMENTS AS PRESCRIBED IN A SOLICITATION ISSUED BY
3 A STATE AGENCY.

4 9. "SINGLE SOURCE" MEANS A PROGRAM PROCUREMENT IN WHICH ALTHOUGH TWO
5 OR MORE PROPOSERS OR APPLICANTS CAN SUPPLY THE REQUIRED GOODS OR
6 SERVICES, THE STATE AGENCY, UPON WRITTEN FINDINGS SETTING FORTH THE
7 MATERIAL AND SUBSTANTIAL REASONS THEREFOR, MAY AWARD THE CONTRACT TO ONE
8 PROPOSER OR APPLICANT OVER ANOTHER. THE STATE AGENCY SHALL DOCUMENT IN
9 THE PROCUREMENT RECORD THE CIRCUMSTANCES LEADING TO THE SELECTION OF THE
10 PROPOSER OR APPLICANT, INCLUDING THE ALTERNATIVES CONSIDERED, THE
11 RATIONALE FOR SELECTING THE SPECIFIC PROPOSER OR APPLICANT AND THE BASIS
12 UPON WHICH THE STATE AGENCY DETERMINED THAT THE COST WAS REASONABLE.

13 10. "SOLICITATION DOCUMENT" MEANS THE DOCUMENT ISSUED BY A STATE AGEN-
14 CY NOTIFYING PROSPECTIVE PROPOSERS OR APPLICANTS THAT THE STATE AGENCY
15 WISHES TO RECEIVE PROPOSALS OR APPLICATIONS FOR PROVIDING GOODS OR
16 SERVICES.

17 11. "SOLE SOURCE" MEANS A PROGRAM PROCUREMENT IN WHICH ONLY ONE PROPO-
18 SER OR APPLICANT IS CAPABLE OF SUPPLYING THE REQUIRED GOODS OR SERVICES.

19 12. "SPECIFICATION" OR "REQUIREMENT" MEANS ANY DESCRIPTION OF THE
20 PHYSICAL OR FUNCTIONAL CHARACTERISTICS OR THE NATURE OF A GOOD OR
21 SERVICE, ANY DESCRIPTION OF THE SERVICES TO BE PERFORMED, THE GOODS OR
22 SERVICES TO BE PROVIDED, THE NECESSARY QUALIFICATIONS OF THE PROPOSER OR
23 APPLICANT, THE CAPACITY AND CAPABILITY OF THE PROPOSER OR APPLICANT TO
24 COMPLETE THE PROPOSED CONTRACT SUCCESSFULLY, OR THE PROCESS FOR ACHIEV-
25 ING SPECIFIC RESULTS OR ANTICIPATED OUTCOMES, OR BOTH, OR ANY OTHER
26 REQUIREMENT NECESSARY TO PERFORM THE WORK. IT MAY INCLUDE A DESCRIPTION
27 OF ANY OBLIGATORY TESTING, INSPECTION OR PREPARATION FOR DELIVERY AND
28 USE, AND MAY INCLUDE FEDERALLY REQUIRED PROVISIONS AND CONDITIONS WHERE
29 THE ELIGIBILITY FOR FEDERAL FUNDS IS CONDITIONED UPON THE INCLUSION OF
30 SUCH FEDERALLY REQUIRED PROVISIONS AND CONDITIONS. SPECIFICATIONS SHALL
31 BE DESIGNED TO ENHANCE COMPETITION.

32 13. "STATE AGENCY" OR "STATE AGENCIES" MEANS ALL STATE DEPARTMENTS,
33 BOARDS, COMMISSIONS, OFFICES OR INSTITUTIONS BUT EXCLUDES, HOWEVER, FOR
34 THE PURPOSES OF SUBDIVISION FIVE OF SECTION THREE HUNDRED FIFTY-FIVE OF
35 THE EDUCATION LAW, THE STATE UNIVERSITY OF NEW YORK, AND EXCLUDES, FOR
36 THE PURPOSES OF SUBDIVISION A OF SECTION SIXTY-TWO HUNDRED EIGHTEEN OF
37 THE EDUCATION LAW, THE CITY UNIVERSITY OF NEW YORK. FURTHERMORE, SUCH
38 TERM SHALL NOT INCLUDE THE LEGISLATURE OR THE JUDICIARY.

39 S 179-GG. PROGRAM PROCUREMENTS. THE PROGRAM PROCUREMENT PROCESS SET
40 FORTH IN THIS ARTICLE, RATHER THAN THE REQUIREMENTS OF ARTICLE ELEVEN OF
41 THIS CHAPTER, SHALL APPLY TO:

42 1. PROGRAM PROCUREMENTS OPEN ONLY TO NOT-FOR-PROFIT ORGANIZATIONS OR
43 PUBLIC CORPORATIONS OR BOTH, AND

44 2. THOSE PROGRAM PROCUREMENTS OPEN TO PROFIT-SEEKING ENTITIES WHERE
45 THE STATE AGENCY HAS OBTAINED FROM THE STATE COMPTROLLER, IN ACCORDANCE
46 WITH SECTION ONE HUNDRED SEVENTY-NINE-HH OF THIS ARTICLE, AN EXEMPTION
47 FROM THE REQUIREMENTS OF ARTICLE ELEVEN OF THIS CHAPTER.

48 S 179-HH. REQUEST FOR EXEMPTION. BEFORE THE ISSUANCE OF A SOLICITATION
49 DOCUMENT, A STATE AGENCY CONDUCTING A PROCUREMENT OPEN TO PROFIT-SEEKING
50 ENTITIES WHICH THE STATE AGENCY BELIEVES FALLS WITHIN THE MEANING OF A
51 PROGRAM PROCUREMENT, AS DEFINED IN THIS ARTICLE, SHALL MAKE A WRITTEN
52 REQUEST TO THE STATE COMPTROLLER FOR AN EXEMPTION FROM THE REQUIREMENTS
53 OF ARTICLE ELEVEN OF THIS CHAPTER. THE STATE COMPTROLLER SHALL MAKE A
54 WRITTEN DETERMINATION AS TO WHETHER THE PROPOSED PROCUREMENT FALLS WITH-
55 IN THE DEFINITION OF A PROGRAM PROCUREMENT AS SET FORTH IN SECTION ONE
56 HUNDRED SEVENTY-NINE-HH OF THIS ARTICLE AND IS IN THE BEST INTEREST OF

1 THE STATE, AND SHALL EITHER GRANT OR DENY THE EXEMPTION ON THE BASIS OF
2 SUCH DETERMINATION. IF THE STATE COMPTROLLER GRANTS A STATE AGENCY AN
3 EXEMPTION FROM THE REQUIREMENTS OF ARTICLE ELEVEN OF THIS CHAPTER, THE
4 PROGRAM PROCUREMENT SHALL BE CONDUCTED IN ACCORDANCE WITH THE REQUIRE-
5 MENTS OF THIS ARTICLE.

6 S 179-II. PROGRAM PROCUREMENT PROCESS. 1. METHOD OF PROCUREMENT. THE
7 STATE AGENCY SHALL DOCUMENT IN THE PROCUREMENT RECORD AND IN ADVANCE OF
8 THE RECEIPT OF THE INITIAL RECEIPT OF PROPOSALS/APPLICATIONS THE DETER-
9 MINATION OF THE EVALUATION CRITERIA AND THE PROCESS TO BE USED IN THE
10 DETERMINATION OF FUNDING/AWARD, AND THE MANNER IN WHICH THE EVALUATION
11 AND SELECTION SHALL BE CONDUCTED.

12 2. PUBLIC NOTICE. ALL PROGRAM PROCUREMENTS BY STATE AGENCIES OR AN
13 AWARD OR FUNDING IN EXCESS OF FIFTEEN THOUSAND DOLLARS SHALL BE ADVER-
14 TISED IN THE STATE'S PROCUREMENT OPPORTUNITIES NEWSLETTER IN ACCORDANCE
15 WITH ARTICLE FOUR-C OF THE ECONOMIC DEVELOPMENT LAW.

16 3. SOLICITING AND ACCEPTING PROPOSALS OR APPLICATIONS. A SOLICITATION
17 DOCUMENT ISSUED BY A STATE AGENCY SHALL PRESCRIBE THE MINIMUM SPECIFICA-
18 TIONS OR REQUIREMENTS THAT MUST BE MET TO BE CONSIDERED RESPONSIVE AND
19 SHALL DESCRIBE AND DISCLOSE THE GENERAL MANNER IN WHICH THE EVALUATION
20 AND SELECTION SHALL BE CONDUCTED. WHERE APPROPRIATE, THE SOLICITATION
21 DOCUMENT SHALL IDENTIFY THE RELATIVE IMPORTANCE OR WEIGHT OF COST AND
22 THE OVERALL TECHNICAL CRITERIA TO BE CONSIDERED BY A STATE AGENCY IN
23 MAKING A PROGRAM PROCUREMENT DETERMINATION.

24 4. SELECTION AND AWARD. A. SELECTION AND AWARD SHALL BE CONSISTENT
25 WITH: (I) THE TERMS OF THE SOLICITATION DOCUMENT ISSUED BY THE STATE
26 AGENCY; AND (II) THE AWARD METHODOLOGY SET FORTH IN THE PROCUREMENT
27 RECORD BEFORE THE INITIAL RECEIPT OF PROPOSALS OR APPLICATIONS.

28 B. PROGRAM PROCUREMENT AWARDS SHALL BE MADE TO A PROPOSER OR APPLICANT
29 OFFERING REASONABLE COSTS ON THE BASIS OF TECHNICAL MERIT. THE AWARD OR
30 FUNDING SHALL BE ALLOCATED TO THE HIGHEST RANKED PROPOSALS. NOTHING IN
31 THIS SECTION, HOWEVER, SHALL BE DEEMED TO PROHIBIT A STATE AGENCY FROM
32 EVALUATING COST SEPARATELY IN ITS SELECTION AND AWARD.

33 C. A PROCUREMENT RECORD SHALL BE MAINTAINED FOR EACH PROGRAM PROCURE-
34 MENT IDENTIFYING, WITH SUPPORTING DOCUMENTATION, DECISIONS MADE BY THE
35 STATE AGENCY DURING THE PROCUREMENT PROCESS.

36 D. SELECTION AND AWARD SHALL BE A WRITTEN DETERMINATION IN THE
37 PROCUREMENT RECORD MADE BY THE STATE AGENCY.

38 E. PRIOR TO MAKING A PROGRAM PROCUREMENT AWARD, THE STATE AGENCY SHALL
39 MAKE A DETERMINATION OF THE RESPONSIBILITY OF THE PROPOSER OR APPLICANT.

40 5. REDUCTION OF AWARD. A STATE AGENCY MAY REDUCE THE MONETARY AMOUNT
41 OF THE AWARDS MADE UNDER A PROGRAM PROCUREMENT IF THE STATE AGENCY
42 RESERVES THE RIGHT TO MAKE SUCH A REDUCTION IN THE SOLICITATION DOCUMENT
43 AND SUCH REDUCTION IS CONSISTENT WITH A PREDEFINED METHODOLOGY SET FORTH
44 IN THE PROCUREMENT RECORD PRIOR TO THE RECEIPT OF INITIAL PROPOSALS OR
45 APPLICATIONS.

46 6. DISCRETIONARY PROGRAM PROCUREMENT AWARDS. A STATE AGENCY MAY MAKE A
47 PROGRAM PROCUREMENT AWARD IN AN AMOUNT NOT EXCEEDING FIFTY THOUSAND
48 DOLLARS WITHOUT A COMPETITIVE PROCESS. THE STATE AGENCY SHALL, HOWEVER,
49 DOCUMENT THAT THE AMOUNT OF THE FUNDING AWARD IS REASONABLE.

50 7. CONTRACT AWARDS. A. CONTRACT AWARDS SHALL BE MADE ON THE BASIS OF
51 HIGHEST RANK IN ACCORDANCE WITH THE SELECTION AND AWARD METHODOLOGY.

52 B. SINGLE OR SOLE SOURCE CONTRACT AWARDS, OR CONTRACT AWARDS MADE TO
53 MEET EMERGENCIES ARISING FROM UNFORESEEN CAUSES, MAY BE MADE WITHOUT A
54 FORMAL COMPETITIVE PROCESS AND SHALL ONLY BE MADE UNDER UNUSUAL CIRCUM-
55 STANCES AND SHALL BE BASED UPON A DETERMINATION BY THE STATE AGENCY THAT
56 THE SPECIFICATIONS OR REQUIREMENTS FOR SUCH AWARD HAVE BEEN DESIGNED IN

1 A FAIR AND EQUITABLE MANNER. THE STATE AGENCY SHALL DOCUMENT IN THE
2 PROCUREMENT RECORD, SUBJECT TO REVIEW BY THE STATE COMPTROLLER, THE
3 BASIS FOR A DETERMINATION TO MAKE AN AWARD TO A SINGLE SOURCE OR SOLE
4 SOURCE, OR THE NATURE OF THE EMERGENCY GIVING RISE TO THE AWARD.

5 8. CONTRACTS. ANY CONTRACT RESULTING FROM A PROGRAM PROCUREMENT
6 AWARDED PURSUANT TO THE PROVISIONS OF THIS ARTICLE THAT INCLUDES FUNDING
7 FOR COMMODITIES OR CONSTRUCTION SERVICES IN EXCESS OF FIFTY THOUSAND
8 DOLLARS SHALL INCLUDE CONTRACT LANGUAGE REQUIRING THE CONTRACTOR TO
9 ACQUIRE SUCH COMMODITIES AND/OR CONSTRUCTION SERVICES PURSUANT TO A
10 COMPETITIVE BIDDING PROCESS.

11 9. REVIEW BY THE OFFICE OF THE STATE COMPTROLLER. REVIEW BY THE OFFICE
12 OF THE STATE COMPTROLLER SHALL BE IN ACCORDANCE WITH SECTION ONE HUNDRED
13 TWELVE OF THIS CHAPTER.

14 S 12. Section 163 of the state finance law is amended by adding a new
15 subdivision 13-a to read as follows:

16 13-A. PILOT PROCUREMENT PROJECTS. WHEN THE COMMISSIONER OR A STATE
17 AGENCY DEVELOPS A PROCUREMENT METHOD NOT AUTHORIZED BY THIS ARTICLE, THE
18 COMMISSIONER OR STATE AGENCY MAY USE SUCH METHOD ON A LIMITED BASIS FOR
19 A SPECIFIC CONTRACT AWARD IF: A. THE COMMISSIONER OR STATE AGENCY HAS
20 MADE A DETERMINATION, DOCUMENTED IN THE PROCUREMENT RECORD, THAT SUCH A
21 PILOT PROCUREMENT METHOD WOULD BETTER SERVE THE INTEREST OF THE STATE
22 THAN OTHER METHODS CURRENTLY AVAILABLE UNDER THIS SECTION AND THAT THE
23 PILOT PROCUREMENT METHOD CAN BE APPLIED ON A FAIR AND EQUITABLE BASIS,
24 AND B. THE COMPTROLLER AGREES, PRIOR TO THE COMMENCEMENT OF THE PROCURE-
25 MENT, THAT SUCH PROCUREMENT METHOD BETTER SERVES THE INTERESTS OF THE
26 STATE AND CAN BE APPLIED ON A FAIR AND EQUITABLE BASIS. FOR EACH SUCH
27 PILOT PROCUREMENT PROJECT AWARD, THE COMMISSIONER OR THE STATE AGENCY,
28 AS APPLICABLE, SHALL SUBMIT TO THE COMPTROLLER NOT LATER THAN THE
29 MID-POINT OF THE TERM OF THE RESULTANT CONTRACT A REPORT ASSESSING THE
30 SUCCESS OR FAILURE OF THE PILOT PROCUREMENT METHOD. THE COMPTROLLER
31 SHALL THEN REVIEW THE REPORT AND MAKE WRITTEN RECOMMENDATIONS TO THE
32 GOVERNOR AND THE LEGISLATURE REGARDING THE POSSIBLE CONTINUED USE OF
33 SUCH METHOD.

34 S 13. Subdivision 7 of section 160 of the state finance law, as added
35 by chapter 83 of the laws of 1995, is amended to read as follows:

36 7. "Service" or "services" means, except with respect to contracts for
37 state printing, the performance of a task or tasks and may include a
38 material good or a quantity of material goods, and which is the subject
39 of any purchase or other exchange. For the purposes of this article,
40 technology shall be deemed a service. Services, as defined in this arti-
41 cle, shall not apply to those contracts for (I) architectural, engineer-
42 ing or surveying services, [or those contracts approved in accordance
43 with] (II) SERVICES PROVIDED BY A NOT-FOR-PROFIT ORGANIZATION IN ACCORD-
44 ANCE WITH THE PROVISIONS OF article eleven-B of this chapter, (III)
45 SERVICES PROVIDED BY A PUBLIC CORPORATION AS DEFINED IN SUBDIVISION ONE
46 OF SECTION SIXTY-SIX OF THE GENERAL CONSTRUCTION LAW, OR (IV) SERVICES
47 OBTAINED THROUGH PROGRAM PROCUREMENTS IN ACCORDANCE WITH ARTICLE
48 ELEVEN-C OF THIS CHAPTER.

49 S 14. The state finance law is amended by adding a new section 169 to
50 read as follows:

51 S 169. PURCHASING OF PRODUCTS FOR PUBLIC USE. NOTWITHSTANDING ANY
52 OTHER PROVISION OF THIS ARTICLE, WHEN PURCHASING PRODUCTS THE OFFICER,
53 BOARD OR AGENCY CHARGED WITH THE AWARDED OF PUBLIC CONTRACTS MAY, WHER-
54 EVER RENEWABLE ENERGY RESOURCES OR RECYCLED PRODUCTS MEET CONTRACT SPEC-
55 IFICATIONS AND THE PRICE OF SUCH PRODUCTS IS REASONABLY COMPETITIVE,
56 PURCHASE SUCH PRODUCTS. FOR THE PURPOSE OF THIS SECTION:

1 1. "RECYCLED PRODUCT" SHALL MEAN ANY PRODUCT WHICH IS MANUFACTURED
2 FROM SECONDARY MATERIALS, AS DEFINED IN SUBDIVISION ONE OF SECTION TWO
3 HUNDRED SIXTY-ONE OF THE ECONOMIC DEVELOPMENT LAW, AND WHICH MEETS THE
4 REQUIREMENTS OF SUBDIVISION TWO OF SECTION 27-0717 OF THE ENVIRONMENTAL
5 CONSERVATION LAW AND REGULATIONS PROMULGATED PURSUANT THERETO;

6 2. "RENEWABLE ENERGY RESOURCES" SHALL INCLUDE SOURCES THAT ARE CAPABLE
7 OF BEING CONTINUOUSLY RESTORED BY NATURAL OR OTHER MEANS OR ARE SO LARGE
8 AS TO BE USEABLE FOR CENTURIES WITHOUT SIGNIFICANT DEPLETION AND INCLUDE
9 SOLAR, WIND, PHOTOVOLTAICS, METHANE WASTE, TIDAL, GEOTHERMAL, AND FUEL
10 CELL TECHNOLOGIES; AND

11 3. "REASONABLY COMPETITIVE" SHALL MEAN: (A) THAT THE COST OF THE RECY-
12 CLED PRODUCT DOES NOT EXCEED A COST PREMIUM OF TEN PERCENT ABOVE THE
13 COST OF A COMPARABLE PRODUCT THAT IS NOT A RECYCLED PRODUCT OR, IF AT
14 LEAST FIFTY PERCENT OF THE SECONDARY MATERIALS UTILIZED IN THE MANUFAC-
15 TURE OF THAT PRODUCT ARE GENERATED FROM THE WASTE STREAM IN NEW YORK
16 STATE, THE COST OF THE RECYCLED PRODUCT DOES NOT EXCEED A COST PREMIUM
17 OF FIFTEEN PERCENT ABOVE THE COST OF A COMPARABLE PRODUCT THAT IS NOT A
18 RECYCLED PRODUCT; OR (B) THAT THE COST OF THE RENEWABLE ENERGY RESOURCE
19 DOES NOT EXCEED A COST PREMIUM OF FIFTEEN PERCENT ABOVE THE COST OF A
20 COMPARABLE PRODUCT THAT IS NOT A RENEWABLE ENERGY RESOURCE.

21 S 15. Subparagraph (ii) of paragraph b of subdivision 10 of section
22 163 of the state finance law, as added by chapter 137 of the laws of
23 2008, is amended to read as follows:

24 (ii) State agencies shall minimize the use of single source procure-
25 ments and shall use single source procurements only when a formal
26 competitive process is not feasible. State agencies shall document in
27 the procurement record the circumstances and the material and substan-
28 tial reasons why a formal competitive process is not feasible. The term
29 of a single source procurement contract shall be limited to the minimum
30 period of time necessary to ameliorate the circumstances which created
31 the material and substantial reasons for the single source award. Not
32 later than thirty days after the contract award, state agencies shall,
33 for all single source procurement contracts, make available for public
34 inspection on the agency website, a summary of the circumstances and
35 material and substantial reasons why a competitive procurement is not
36 feasible. Any information which the contracting agency is otherwise
37 prohibited by law from disclosing pursuant to sections eighty-seven and
38 eighty-nine of the public officers law, shall be redacted from the
39 documentation published on the agency website. NOTWITHSTANDING THE
40 PROVISIONS OF THIS PARAGRAPH, A STATE AGENCY SHALL NOT MAKE AVAILABLE
41 FOR PUBLIC INSPECTION THE PROCUREMENT RECORD OF A SINGLE SOURCE PROCURE-
42 MENT CONTRACT WHERE THE STATE COMPTROLLER, UPON REQUEST BY THE CONTRACT-
43 ING AGENCY, DETERMINES THAT PUBLICATION WOULD AFFECT THE ABILITY OF (A)
44 LAW ENFORCEMENT AGENCIES TO CARRY OUT INVESTIGATIONS, OR (B) AGENCIES TO
45 PROTECT SECURITY OPERATIONS AND IN SUCH CASE NOTICE OF AVAILABILITY
46 SHALL NOT BE PLACED IN THE PROCUREMENT OPPORTUNITIES NEWSLETTER.

47 S 16. Subdivision 12 of section 163 of the state finance law, as added
48 by chapter 83 of the laws of 1995, is amended to read as follows:

49 12. Review by the office of the state comptroller. Review by the
50 office of the state comptroller shall be in accordance with section one
51 hundred twelve of this chapter. WHERE THE CONTRACTING AGENCY HAS NOT
52 COMPLIED WITH ONE OR MORE PROVISIONS OF THIS ARTICLE, THE COMPTROLLER
53 MAY APPROVE THE AWARDED CONTRACT IF: (I) THE CONTRACTING AGENCY DETER-
54 MINES AND CERTIFIES, BASED UPON CLEAR AND CONVINCING EVIDENCE DOCUMENTED
55 IN THE PROCUREMENT RECORD, THAT THE NONCOMPLIANCE DID NOT PREJUDICE OR
56 FAVOR ANY VENDOR OR POTENTIAL VENDOR AND THAT A NEW PROCUREMENT WOULD

1 NOT BE IN THE BEST INTEREST OF THE STATE; AND (II) THE COMPTROLLER
2 CONCURS IN SUCH DETERMINATION.
3 S 17. This act shall take effect immediately and shall apply to any
4 procurement initiated on or after such date; provided, however, that the
5 amendments to section 163 of the state finance law made by sections two,
6 three, four, five, six, ten, twelve, fifteen and sixteen of this act
7 shall not affect the repeal of such section as provided in subdivision 5
8 of section 362 of chapter 83 of the laws of 1995, as amended, and shall
9 be deemed repealed therewith; and provided further, that section seven
10 of this act shall take effect on the same date as section 5 of chapter
11 137 of the laws of 2008 takes effect.