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

8313

I N S E N A T E

June 22, 2010

Introduced by Sen. HASSELL-THOMPSON -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the public authorities law, in relation to expanding opportunities for women and minority-owned business enterprises and increasing competition and diversity in procurements by the state and its public authorities

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

Section 1. The opening paragraph of subdivision 2 of section 2825 of the public authorities law, as amended by chapter 506 of the laws of 2009, is amended to read as follows:

Except for members who serve as members by virtue of holding a civil office of the state, the majority of the remaining members of the governing body of every state or local authority shall be independent members; provided, however, that this provision shall apply to appointments made on or after the effective date of chapter seven hundred sixty-six of the laws of two thousand five which added this subdivision. The official or officials having the authority to appoint or remove such remaining members shall take such actions as may be necessary to satisfy this requirement AND FURTHER, SHALL CONSIDER THE PROSPECTIVE DIVERSITY OF THE MEMBERS OF A STATE AUTHORITY WHEN MAKING THEIR DETERMINATIONS TO APPOINT ANY MEMBER. For the purposes of this section, an independent member is one who:

S 2. Subparagraph (i) of paragraph (b) of subdivision 3 of section 2879 of the public authorities law, as amended by chapter 45 of the laws of 1994, is amended to read as follows:

(i) for the selection of such contractors on a competitive basis, and provisions relating to the circumstances under which the board may by resolution waive competition, INCLUDING, NOTWITHSTANDING ANY OTHER PROVISION OF LAW REQUIRING COMPETITION, THE PURCHASE OF GOODS OR SERVICES FROM SMALL BUSINESS CONCERNS OR THOSE CERTIFIED AS MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES, OR GOODS OR TECHNOLOGY THAT ARE RECY-

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

LBD17550-06-0

CLED OR REMANUFACTURED, IN AN AMOUNT NOT TO EXCEED TWO HUNDRED THOUSAND DOLLARS WITHOUT A FORMAL COMPETITIVE PROCESS;

S 3. Paragraphs (f), (g), (h), (i), (j) and (k) of subdivision 3 of section 2879 of the public authorities law are relettered paragraphs (k), (l), (m), (n), (o), and (p) and five new paragraphs (f), (g), (h), (i), and (j) are added to read as follows:

(F) REQUIREMENTS FOR THE DESIGNATION OF ONE OR MORE SENIOR STAFF OF THE CORPORATION TO OVERSEE THE CORPORATION'S PROGRAMS ESTABLISHED TO PROMOTE AND ASSIST: (I) PARTICIPATION BY CERTIFIED MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES IN THE CORPORATION'S PROCUREMENT OPPORTUNITIES AND FACILITATION OF THE AWARD OF PROCUREMENT CONTRACTS TO SUCH ENTERPRISES; (II) THE UTILIZATION OF CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AS SUBCONTRACTORS AND SUPPLIERS BY ENTITIES HAVING PROCUREMENT CONTRACTS WITH THE CORPORATION; AND (III) THE UTILIZATION OF PARTNERSHIPS, JOINT VENTURES OR OTHER SIMILAR ARRANGEMENTS BETWEEN CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND OTHER ENTITIES HAVING PROCUREMENT CONTRACTS WITH THE CORPORATION. SUCH STAFF SHALL BE FAMILIAR WITH THE PROCUREMENT OF THE TYPES OF CONSTRUCTION, FINANCIAL, LEGAL OR PROFESSIONAL SERVICES UTILIZED BY THE CORPORATION, REPORT DIRECTLY TO THE CORPORATION'S EXECUTIVE DIRECTOR, PRESIDENT OR CHIEF EXECUTIVE OFFICER AND EITHER DIRECTLY OR THROUGH THEIR DESIGNEES PARTICIPATE IN THE PROCUREMENT PROCESS.

(G) REQUIREMENTS FOR PROVIDING NOTICE, IN ADDITION TO ANY OTHER NOTICE OF PROCUREMENT OPPORTUNITIES REQUIRED BY LAW, TO PROFESSIONAL AND OTHER ORGANIZATIONS THAT SERVE MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES PROVIDING THE TYPES OF SERVICES PROCURED BY THE CORPORATION.

(H) PROCEDURES FOR MAINTAINING LISTS OF QUALIFIED CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES, INCLUDING PROFESSIONAL FIRMS THAT HAVE EXPRESSED AN INTEREST IN DOING BUSINESS WITH THE CORPORATION AND ENSURING THAT SUCH LISTS ARE UPDATED REGULARLY. THE CORPORATION SHALL ALSO CONSULT THE LISTS OF CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES MAINTAINED BY THE DEPARTMENT OF ECONOMIC DEVELOPMENT PURSUANT TO ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW.

(I) THE ESTABLISHMENT OF APPROPRIATE GOALS FOR PARTICIPATION BY MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES IN PROCUREMENT CONTRACTS AWARDED BY THE CORPORATION AND FOR THE UTILIZATION OF MINORITY AND WOMEN-OWNED ENTERPRISES AS SUBCONTRACTORS AND SUPPLIERS BY ENTITIES HAVING PROCUREMENT CONTRACTS WITH THE CORPORATION. STATEWIDE NUMERICAL PARTICIPATION TARGET GOALS SHALL BE ESTABLISHED BY EACH AUTHORITY BASED ON THE FINDINGS OF THE TWO THOUSAND TEN DISPARITY STUDY.

(J) REQUIREMENTS TO CONDUCT PROCUREMENTS IN A MANNER THAT WILL ENABLE THE CORPORATION TO ACHIEVE THE MAXIMUM FEASIBLE PORTION OF THE GOALS ESTABLISHED PURSUANT TO PARAGRAPH (I) OF THIS SUBDIVISION AND THAT ELIMINATES BARRIERS TO PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES IN THE CORPORATION'S PROCUREMENTS. SUCH PROCUREMENT REQUIREMENTS SHALL INCLUDE THE FOLLOWING:

(A) MEASURES AND PROCEDURES TO ENSURE THAT CERTIFIED BUSINESSES SHALL BE GIVEN THE OPPORTUNITY FOR MAXIMUM FEASIBLE PARTICIPATION IN THE PERFORMANCE OF STATE CONTRACTS AND TO ASSIST IN THE CORPORATION'S IDENTIFICATION OF THOSE STATE CONTRACTS FOR WHICH CERTIFIED BUSINESSES MAY BEST BID TO ACTIVELY AND AFFIRMATIVELY PROMOTE AND ASSIST THEIR PARTICIPATION IN THE PERFORMANCE OF STATE CONTRACTS SO AS TO FACILITATE THE CORPORATION'S ACHIEVEMENT OF THE MAXIMUM FEASIBLE PORTION OF THE GOALS FOR STATE CONTRACTS TO SUCH BUSINESSES;

(B) PROVISIONS DESIGNATING THE DIVISION OF MINORITY AND WOMEN-OWNED BUSINESS DEVELOPMENT TO CERTIFY AND DECERTIFY MINORITY AND WOMEN-OWNED

BUSINESS ENTERPRISES FOR ALL CORPORATIONS THROUGH A SINGLE PROCESS THAT MEETS APPLICABLE STATE AND FEDERAL REQUIREMENTS;

(C) A REQUIREMENT THAT EACH CONTRACT SOLICITATION DOCUMENT ACCOMPANYING EACH SOLICITATION SET FORTH THE EXPECTED DEGREE OF MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PARTICIPATION BASED, IN PART, ON:

I. THE POTENTIAL SUBCONTRACT OPPORTUNITIES AVAILABLE IN THE PRIME PROCUREMENT CONTRACT; AND

II. THE AVAILABILITY OF CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES TO RESPOND COMPETITIVELY TO THE POTENTIAL SUBCONTRACT OPPORTUNITIES;

(D) A REQUIREMENT THAT EACH CORPORATION PROVIDE A CURRENT LIST OF CERTIFIED MINORITY BUSINESS ENTERPRISES TO EACH PROSPECTIVE CONTRACTOR;

(E) PROVISIONS RELATING TO JOINT VENTURES, UNDER WHICH A BIDDER MAY COUNT TOWARD MEETING ITS MINORITY BUSINESS ENTERPRISE PARTICIPATION GOAL, THE MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PORTION OF THE JOINT VENTURE;

(F) PROVISIONS UNDER WHICH THE CORPORATION MAY WAIVE OBLIGATIONS OF THE CONTRACTOR RELATING TO MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PARTICIPATION AFTER A SHOWING OF GOOD FAITH EFFORTS TO COMPLY WITH THE REQUIREMENTS OF THIS ACT PURSUANT TO THE WAIVER PROVISIONS CONTAINED IN SUBDIVISION SIX OF SECTION THREE HUNDRED THIRTEEN OF THE EXECUTIVE LAW;

(G) A REQUIREMENT THAT THE CORPORATION VERIFY THAT MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES LISTED IN A SUCCESSFUL BID ARE ACTUALLY PARTICIPATING TO THE EXTENT LISTED IN THE PROJECT FOR WHICH THE BID WAS SUBMITTED;

(H) IN THE IMPLEMENTATION OF THIS SECTION, THE CONTRACTING CORPORATION SHALL:

I. CONSIDER, WHERE PRACTICABLE, THE SEVERABILITY OF CONSTRUCTION PROJECTS AND OTHER BUNDLED CONTRACTS;

II. IMPLEMENT A PROGRAM THAT WILL ENABLE THE CORPORATION TO EVALUATE EACH CONTRACT TO DETERMINE THE APPROPRIATENESS OF THE GOAL PURSUANT TO PARAGRAPH (I) OF THIS SUBDIVISION;

III. CONSIDER COMPLIANCE WITH THE REQUIREMENTS OF ANY FEDERAL LAW CONCERNING OPPORTUNITIES FOR MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES WHICH EFFECTUATES THE PURPOSE OF THIS SECTION; AND

IV. CONSULT THE MOST RECENT DISPARITY STUDY PURSUANT TO ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW.

S 4. Subdivision 6 of section 2879 of the public authorities law, as amended by chapter 844 of the laws of 1992, is amended to read as follows:

6. Each corporation, as part of the guidelines established pursuant to subdivision three of this section, shall establish policies regarding the preparation of publicly available reports on procurement contracts entered into by such corporation. Such policies shall provide, at the minimum, for the preparation of a report no less frequently than annually, summarizing procurement activity by such corporation for the period of the report, including a listing of all procurement contracts entered into, all contracts entered into with New York state business enterprises and the subject matter and value thereof, ALL CONTRACTS ENTERED INTO WITH CERTIFIED MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES AND THE SUBJECT MATTER AND VALUE THEREOF, ALL REFERRALS MADE AND ALL PENALTIES IMPOSED PURSUANT TO SECTION THREE HUNDRED SIXTEEN OF THE EXECUTIVE LAW, all contracts entered into with foreign business enterprises, and the subject matter and value thereof, the selection process used to select such contractors, all procurement contracts which were exempt from the publication requirements of article four-C of the economic development

law, the basis for any such exemption and the status of existing procurement contracts.

S 5. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after exhaustion of all further judicial review, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

S 6. This act shall take effect on the ninetieth day after it shall have become a law.