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I N   S E N A T E

June 22, 2010

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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 ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1     Section 1. The opening paragraph of subdivision 2 of section 2825 of  
2     the public authorities law, as amended by chapter 506 of the laws of  
3     2009, is amended to read as follows:  
4     Except for members who serve as members by virtue of holding a civil  
5     office of the state, the majority of the remaining members of the  
6     governing body of every state or local authority shall be independent  
7     members; provided, however, that this provision shall apply to appoint-  
8     ments made on or after the effective date of chapter seven hundred  
9     sixty-six of the laws of two thousand five which added this subdivision.  
10    The official or officials having the authority to appoint or remove such  
11    remaining members shall take such actions as may be necessary to satisfy  
12    this requirement AND FURTHER, SHALL CONSIDER THE PROSPECTIVE DIVERSITY  
13    OF THE MEMBERS OF A STATE AUTHORITY WHEN MAKING THEIR DETERMINATIONS TO  
14    APPOINT ANY MEMBER. For the purposes of this section, an independent  
15    member is one who:  
16    S 2. Subparagraph (i) of paragraph (b) of subdivision 3 of section  
17    2879 of the public authorities law, as amended by chapter 45 of the laws  
18    of 1994, is amended to read as follows:  
19    (i) for the selection of such contractors on a competitive basis, and  
20    provisions relating to the circumstances under which the board may by  
21    resolution waive competition, INCLUDING, NOTWITHSTANDING ANY OTHER  
22    PROVISION OF LAW REQUIRING COMPETITION, THE PURCHASE OF GOODS OR  
23    SERVICES FROM SMALL BUSINESS CONCERNS OR THOSE CERTIFIED AS MINORITY OR  
24    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.

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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

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

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

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

8 II. THE AVAILABILITY OF CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS  
9 ENTERPRISES TO RESPOND COMPETITIVELY TO THE POTENTIAL SUBCONTRACT OPPOR-  
10 TUNITIES;

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

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

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

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

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

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

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

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

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

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

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

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

3 S 5. Severability. If any clause, sentence, paragraph, section or  
4 part of this act shall be adjudged by any court of competent jurisdic-  
5 tion to be invalid and after exhaustion of all further judicial review,  
6 the judgment shall not affect, impair or invalidate the remainder there-  
7 of, but shall be confined in its operation to the clause, sentence,  
8 paragraph, section or part of this act directly involved in the contro-  
9 versy in which the judgment shall have been rendered.

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