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

4810--A

2009-2010 Regular Sessions

I N A S S E M B L Y

February 6, 2009

Introduced by M. of A. BRODSKY, PERRY, CLARK, GORDON -- Multi-Sponsored by -- M. of A. WRIGHT -- read once and referred to the Committee on Governmental Operations -- committed to Governmental Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the economic development law, the executive law, the state finance law, and the public authorities law, in relation to funding certain mandates set forth in the economic development law, strengthening certain provisions of the executive law as it relates to increasing procurement opportunities for minority and women-owned business enterprises, and strengthening reporting and compliance by state agencies and contracts within article 15-A of the executive law

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

Section 1. The economic development law is amended by adding a new section 118-a to read as follows:

S 118-A. FUNDING OF MANDATES. NOT LESS THAN FIFTEEN MILLION DOLLARS OF MONIES FROM THE BUDGET OF THE EMPIRE STATE DEVELOPMENT CORPORATION, FOLLOWING APPROPRIATION BY THE LEGISLATURE FOR THIS PURPOSE AND THE FURTHER ALLOCATION BY THE COMMISSIONER, SHALL BE MADE AVAILABLE ANNUALLY TO FUND THE MANDATES SET FORTH IN SECTION ONE HUNDRED EIGHTEEN OF THIS ARTICLE, SPECIFICALLY INCLUDING THE PROVISION OF TECHNICAL ASSISTANCE AND ENTERPRISE ASSISTANCE PROGRAMS PURSUANT TO SUBDIVISIONS SEVEN, EIGHT, NINE AND TEN OF SECTION ONE HUNDRED EIGHTEEN OF THIS ARTICLE.

S 2. Subdivision 2 of section 313 of the executive law, as added by chapter 261 of the laws of 1988, is amended to read as follows:

2. Contracting agencies shall include or require to be included with respect to state contracts [for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon,] such provisions as may be necessary to effectuate the provisions of this section in every bid specification and state

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

LBD08189-10-0

contract, including, but not limited to: (a) provisions requiring contractors to make a good faith effort to solicit active participation by enterprises KNOWN TO BE CERTIFIED 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) [above] 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.

S 3. Paragraph (a) of subdivision 4 of section 313 of the executive law, as amended by chapter 429 of the laws of 2009, is amended to read as follows:

(a) Contracting agencies shall administer the rules and regulations promulgated by the director to ensure compliance with the provisions of this section. Such rules and regulations: shall require a contractor to submit a utilization plan after bids are opened, when bids are required, but prior to the award of a state contract; shall require the contracting agency to review the utilization plan submitted by the contractor and to post the utilization plan and any waivers of compliance issued pursuant to subdivision five of this section on the website of the contracting agency within a reasonable period of time as established by the director; shall require the contracting agency to notify the contractor in writing within a period of time specified by the director as to any deficiencies contained in the contractor's utilization plan; shall require remedy thereof within a period of time specified by the director; shall require the contractor to submit periodic compliance reports relating to the operation and implementation of any utilization plan; shall NOT ALLOW ANY AUTOMATIC WAIVERS, BUT SHALL allow a contractor to apply for a partial or total waiver of the minority and women-owned business enterprise participation requirements pursuant to subdivisions five and six of this section; shall allow a contractor to file a complaint with the director pursuant to subdivision seven of this section in the event a contracting agency has failed or refused to issue a waiver of the minority and women-owned business enterprise participation requirements or has denied such request for a waiver; and shall allow a contracting agency to file a complaint with the director pursuant to subdivision eight of this section in the event a contractor is failing or has failed to comply with the minority and women-owned business enterprise participation requirements set forth in the state contract where no waiver has been granted.

S 4. Subdivision 3 of section 315 of the executive law, as added by chapter 261 of the laws of 1988, is amended to read as follows:

3. Each contracting agency shall report to the director with respect to activities undertaken to promote employment of minority group members and women and promote and increase participation by certified businesses with respect to state contracts and subcontracts. [Such reports shall be submitted periodically as required by the director.] SUCH REPORTS SHALL BE SUBMITTED ON AN ANNUAL BASIS WITH QUARTERLY UPDATES, AND SHALL

INCLUDE SUCH INFORMATION AS IS NECESSARY FOR THE DIRECTOR TO DETERMINE SUCH CONTRACTING AGENCIES AND ITS CONTRACTORS' COMPLIANCE WITH THE PURPOSES OF THIS ARTICLE AND SUCH SPECIFIC INFORMATION AS THE DIRECTOR MAY REQUEST, INCLUDING, WITHOUT LIMITATION, A SUMMARY OF ALL WAIVERS OF THE REQUIREMENTS OF SUBDIVISIONS FIVE AND SIX OF SECTION THREE HUNDRED THIRTEEN OF THIS ARTICLE ALLOWED BY SUCH CONTRACTING AGENCY DURING THE PERIOD COVERED BY THE REPORT, INCLUDING A DESCRIPTION OF THE BASIS OF THE WAIVER REQUEST AND THE CONTRACTING AGENCIES RATIONALE FOR GRANTING ANY SUCH WAIVER.

S 5. Section 315 of the executive law is amended by adding two new subdivisions 4 and 5 to read as follows:

4. EACH STATE AGENCY, AUTHORITY OR MEMBER CORPORATION'S PERFORMANCE IN ACHIEVING THE MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PARTICIPATION AND OTHER DIVERSITY GOALS ESTABLISHED BY THIS ARTICLE SHALL BE PERIODICALLY REVIEWED AND EVALUATED BY THE DIRECTOR. IN THE EVENT THAT THE DIRECTOR FINDS THAT A STATE AGENCY, AUTHORITY OR MEMBER CORPORATION HAS NOT MADE REASONABLE, GOOD FAITH EFFORTS TO SET OR ACHIEVE REASONABLE DIVERSITY GOALS FOR A PERIOD OF ONE YEAR FOLLOWING NOTICE OF NON-COMPLIANCE BY THE DIRECTOR, THEN THE DIRECTOR SHALL HAVE THE POWER TO PARTICIPATE IN THE CONTRACTING APPROVAL PROCESS OF SUCH STATE AGENCY, AUTHORITY OR MEMBER CORPORATION UNTIL SUCH TIME AS THE DIRECTOR DEEMS SUCH STATE AGENCY, AUTHORITY OR MEMBER CORPORATION TO BE IN COMPLIANCE WITH THIS ARTICLE. SUCH POWER SHALL INCLUDE THE RIGHT TO PREVENT ANY STATE AGENCY, AUTHORITY OR MEMBER CORPORATION DEEMED TO BE NON-COMPLIANT AS SET FORTH ABOVE FROM MAKING CONTRACT AWARDS UNLESS THE DIRECTOR HAS DEEMED SUCH AWARD TO BE IN COMPLIANCE WITH THIS ARTICLE.

5. THE DIVISION OF MINORITY AND WOMEN-BUSINESS DEVELOPMENT SHALL ISSUE AN ANNUAL REPORT WHICH: (A) SUMMARIZES ALL REPORTS SUBMITTED TO IT BY EACH CONTRACTING AGENCY PURSUANT TO SUBDIVISION THREE OF THIS SECTION; (B) CONTAINS SUCH COMPARATIVE OR OTHER INFORMATION AS THE DIRECTOR DEEMS APPROPRIATE TO EVALUATE THE EFFECTIVENESS OF THE ACTIVITIES UNDERTAKEN BY EACH SUCH CONTRACTING AGENCY TO PROMOTE INCREASED PARTICIPATION BY CERTIFIED BUSINESSES WITH RESPECT TO STATE CONTRACTS AND SUBCONTRACTS; (C) CONTAINS A SUMMARY OF ALL WAIVERS OF THE REQUIREMENTS OF SUBDIVISIONS FIVE AND SIX OF SECTION THREE HUNDRED THIRTEEN OF THIS ARTICLE ALLOWED BY EACH CONTRACTING AGENCY DURING THE PERIOD COVERED BY THE REPORT, INCLUDING A DESCRIPTION OF THE BASIS OF THE WAIVER REQUEST AND THE CONTRACTING AGENCIES' RATIONALE FOR GRANTING ANY SUCH WAIVER; AND (D) CONTAINS A SUMMARY OF (I) ALL DETERMINATIONS OF VIOLATIONS OF THIS ARTICLE BY A CONTRACTOR OR A CONTRACTING AGENCY MADE DURING THE PERIOD COVERED BY THE ANNUAL REPORT AND (II) THE PENALTIES OR SANCTION, IF ANY, ASSESSED IN CONNECTION WITH SUCH DETERMINATION AND THE RATIONALE FOR SUCH PENALTIES OR SANCTIONS. COPIES OF THE ANNUAL REPORT SHALL BE PROVIDED TO THE COMMISSIONER, GOVERNOR, THE SPEAKER OF THE ASSEMBLY, THE TEMPORARY PRESIDENT OF THE SENATE AND SHALL ALSO BE MADE WIDELY AVAILABLE TO THE PUBLIC, INCLUDING BY PUBLICATION ON A WEBSITE MAINTAINED BY THE DIVISION. THE DIVISION OF MINORITY AND WOMEN-BUSINESS DEVELOPMENT SHALL PUBLISH THE QUARTERLY UPDATES RECEIVED FROM STATE AGENCIES REFERRED TO IN SUBDIVISION THREE OF THIS SECTION ON THE WEBSITE MAINTAINED BY THE DIVISION.

S 6. Section 316 of the executive law, as added by chapter 261 of the laws of 1988, is amended to read as follows:

S 316. Enforcement. Upon receipt by the director of a complaint by a contracting agency that a contractor has violated the provisions of a state contract which have been included to comply with the provisions of this article or of a contractor that a contracting agency has violated

such provisions or has failed or refused to issue a waiver where one has been applied for pursuant to subdivision five of section three hundred thirteen of this article or has denied such application, the director shall attempt to resolve the matter giving rise to such complaint. If efforts to resolve such matter to the satisfaction of all parties are unsuccessful, the director shall refer the matter, within thirty days of the receipt of the complaint, to the American Arbitration Association for proceeding thereon. Upon conclusion of the arbitration proceedings, the arbitrator shall submit to the director his or her award regarding the alleged violation of the contract and recommendations regarding the imposition of sanctions, fines or penalties. The director shall either: (a) adopt the recommendation of the arbitrator; or (b) determine that no sanctions, fines or penalties should be imposed; or (c) modify the recommendation of the arbitrator, provided that such modification shall not expand upon any sanction recommended or impose any new sanction, or increase the amount of any recommended fine or penalty. The director, within ten days of receipt of the arbitrator's award and recommendations, shall file a determination of such matter and shall cause a copy of such determination along with a copy of this article to be served upon the respondent by personal service or by certified mail return receipt requested. The award of the arbitrator shall be final and may only be vacated or modified as provided in article seventy-five of the civil practice law and rules upon an application made within the time provided by section seventy-five hundred eleven of the civil practice law and rules. The determination of the director as to the imposition of any fines, sanctions or penalties shall be reviewable pursuant to article seventy-eight of the civil practice law and rules. IF A CONTRACTOR HAS BEEN DETERMINED TO BE IN SERIOUS VIOLATION OF THE PROVISIONS OF THIS ARTICLE, THE PENALTIES IMPOSED FOR ANY SUCH VIOLATION MAY INCLUDE, WITHOUT LIMITATION, THE RESCISSION OF ANY CONTRACT AWARD BY A STATE AGENCY AND DEBARMENT FROM STATE CONTRACT AWARDS FOR A PERIOD NOT TO EXCEED FOUR YEARS OF THE FINAL DETERMINATION.

S 7. Paragraph j of subdivision 1 of section 163 of the state finance law, as added by chapter 83 of the laws of 1995, is amended to read as follows:

j. "Best value" means the basis for awarding contracts for services to the offerer which optimizes quality, cost and efficiency, among responsive and responsible offerers AND WHICH ALSO TAKES INTO ACCOUNT THE DIVERSITY PRACTICES OF EACH OFFERER. Such basis shall reflect, wherever possible, objective and quantifiable analysis.

S 8. Subdivision 1 of section 163 of the state finance law is amended by adding a new paragraph k to read as follows:

K. "DIVERSITY PRACTICES" MEANS THE OFFERER'S PRACTICES WITH RESPECT TO: (I) APPOINTING, HIRING AND RETAINING MINORITY GROUP MEMBERS (AS DEFINED IN ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW) AND WOMEN IN SENIOR MANAGEMENT POSITIONS OF THE OFFERER, INCLUDING AT THE LEVEL OF BOARD OF DIRECTORS OR ITS COMPARABLE MANAGEMENT LEVEL BODY, AND AS SENIOR EXECUTIVE OFFICERS WITHIN THE OFFERER'S ORGANIZATION; (II) HIRING, TRAINING DEVELOPING, PROMOTING AND RETAINING MINORITY GROUP MEMBERS AND WOMEN EMPLOYEES; (III) UTILIZING CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES, AS DEFINED IN ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW OR ANY OTHER STATUTES OR REGULATIONS GOVERNING THE PARTICIPATION OF MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES IN CONTRACTS AWARDED BY A STATE AGENCY OR OTHER PUBLIC CORPORATION, AS SUBCONTRACTORS AND SUPPLIERS; (IV) ENTERING INTO PARTNERSHIPS, JOINT VENTURES OR OTHER SIMILAR ARRANGEMENTS WITH CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTER-

PRISES AS DEFINED IN ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW OR OTHER APPLICABLE STATUTE OR REGULATION GOVERNING AN ENTITY'S UTILIZATION OF MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES; AND (V) UTILIZING SUBCONTRACTORS OR OTHER PARTNERS THAT DEMONSTRATE A SIGNIFICANT COMMITMENT TO AND PROGRESS IN ATTRACTING, RETAINING AND PROMOTING DIVERSE TEAMS, INCLUDING MINORITY GROUP MEMBERS AND WOMEN WITH RELEVANT DOMAIN EXPERIENCE IN SENIOR MANAGEMENT OR STAFFING POSITIONS.

S 9. 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; PROVIDED HOWEVER, THE CORPORATION MAY PURCHASE GOODS OR SERVICES FROM SMALL BUSINESS CONCERNS OR THOSE CERTIFIED AS MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES, OR GOODS OR TECHNOLOGY THAT ARE RECYCLED OR REMANUFACTURED, IN AN AMOUNT NOT EXCEEDING TWO HUNDRED FIFTY THOUSAND DOLLARS WITHOUT A FORMAL COMPETITIVE PROCESS;

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

6. Discretionary buying thresholds. Pursuant to guidelines established by the state procurement council: the commissioner may purchase services and commodities in an amount not exceeding eighty-five thousand dollars without a formal competitive process; state agencies may purchase services and commodities in an amount not exceeding fifty thousand dollars without a formal competitive process; and state agencies may purchase commodities or services from small business concerns or those certified AS MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES pursuant to article fifteen-A of the executive law, or commodities or technology that are recycled or remanufactured, in an amount not exceeding [one] TWO hundred FIFTY thousand dollars without a formal competitive process.

S 11. The opening paragraph of subparagraph (iv) of paragraph (b) of subdivision 3 of section 2879 of the public authorities law, as amended by chapter 383 of the laws of 1994, is amended to read as follows:

as used in this subparagraph, the term "professional firm" shall be defined as any individual or sole proprietorship, partnership, corporation, association, or other legal entity permitted by law to practice the professions [of architecture, engineering or surveying] OR OFFER SERVICES RELATED TO ACCOUNTING, ARCHITECTURE, ASSET MANAGEMENT, ENGINEERING, SURVEYING, FINANCIAL, LEGAL OR OTHER PROFESSIONAL SERVICES.

S 12. Paragraphs (f), (g), (h), (i), (j) and (k) of subdivision 3 of section 2879 of the public authorities law are renumbered paragraphs (l), (m), (n), (o), (p) and (q), and six new paragraphs (f), (g), (h), (i), (j) and (k) are added to read as follows:

(F) REQUIREMENTS FOR THE APPOINTMENT OF ONE OR MORE SENIOR STAFF OF THE CORPORATION TO OVERSEE THE CORPORATION'S PROGRAMS ESTABLISHED TO PROMOTE AND ASSIST: (I) PARTICIPATION BY MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES IN THE CORPORATION'S PROCUREMENT OPPORTUNITIES AND FACILITATION OF THE AWARD OF A FAIR SHARE 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 HAVE A BACKGROUND IN THE TYPES OF GOODS OR SERVICES, INCLUD-

ING, WITHOUT LIMITATION, CONSTRUCTION, REAL ESTATE, FINANCIAL, INSURANCE, LEGAL, ACCOUNTING OR OTHER PROFESSIONAL SERVICES, AS APPLICABLE, TO BE PROCURED BY THE CORPORATION AND SHALL REPORT DIRECTLY TO THE CORPORATION'S EXECUTIVE DIRECTOR, PRESIDENT OR CHIEF EXECUTIVE OFFICER.

(G) REQUIREMENTS FOR PROVIDING NOTICE, IN ADDITION TO ANY OTHER NOTICE OF PROCUREMENT OPPORTUNITIES REQUIRED BY LAW, TO APPROPRIATE 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 MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND OTHER 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 AND WOMEN-OWNED BUSINESS ENTERPRISES IN PROCUREMENT CONTRACTS AWARDED BY THE CORPORATION AND FOR THE UTILIZATION OF MINORITY AND WOMAN ENTERPRISES AS SUBCONTRACTORS AND SUPPLIERS BY ENTITIES HAVING PROCUREMENT CONTRACTS WITH THE CORPORATION.

(J) THE CONDUCT OF PROCUREMENTS IN A MANNER THAT WILL ENABLE THE CORPORATION TO ACHIEVE THE GOALS ESTABLISHED PURSUANT TO PARAGRAPH (G) OF THIS SUBDIVISION AND THAT ELIMINATES BARRIERS TO PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES IN THE CORPORATION'S PROCUREMENTS.

(K) REQUIREMENTS THAT THE EVALUATION CRITERIA FOR AWARDING ANY PROCUREMENT CONTRACT OTHER THAN CONTRACTS REQUIRED BY LAW TO BE AWARDED TO THE LOWEST RESPONSIBLE BIDDER PURSUANT TO SEALED BIDS INCLUDE AN ASSESSMENT OF THE PROPOSER'S DIVERSITY PRACTICES. FOR PURPOSES OF THIS PARAGRAPH, "DIVERSITY PRACTICES" SHALL MEAN THE PROPOSER'S PRACTICES WITH RESPECT TO: (I) APPOINTING, HIRING AND RETAINING MINORITY GROUP MEMBERS (AS DEFINED IN ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW) AND WOMEN IN SENIOR MANAGEMENT POSITIONS OF THE OFFERER, INCLUDING AT THE LEVEL OF BOARD OF DIRECTORS OR ITS COMPARABLE MANAGEMENT LEVEL BODY, AND AS SENIOR EXECUTIVE OFFICERS WITHIN THE OFFERER'S ORGANIZATION; (II) HIRING, TRAINING DEVELOPING, PROMOTING AND RETAINING MINORITY GROUP MEMBERS AND WOMEN EMPLOYEES; (III) UTILIZING CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES, AS DEFINED IN ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW OR ANY OTHER STATUTES OR REGULATIONS GOVERNING THE PARTICIPATION OF MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES IN CONTRACTS AWARDED BY A STATE AGENCY OR OTHER PUBLIC CORPORATION, AS SUBCONTRACTORS AND SUPPLIERS; (IV) ENTERING INTO PARTNERSHIPS, JOINT VENTURES OR OTHER SIMILAR ARRANGEMENTS WITH THE CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AS DEFINED IN ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW OR OTHER APPLICABLE STATUTE OR REGULATION GOVERNING AN ENTITY'S UTILIZATION OF MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES; AND (V) UTILIZING SUBCONTRACTORS OR OTHER PARTNERS THAT DEMONSTRATES A SIGNIFICANT COMMITMENT TO AND PROGRESS IN ATTRACTING, RETAINING AND PROMOTING DIVERSE TEAMS, INCLUDING MINORITY GROUP MEMBERS AND WOMEN WITH RELEVANT DOMAIN EXPERIENCE IN SENIOR MANAGEMENT OR STAFFING POSITIONS.

IN THE CASE OF CONTRACTS REQUIRED BY LAW TO BE AWARDED TO THE LOWEST RESPONSIBLE BIDDER PURSUANT TO SEALED BIDS, IN THE EVENT OF DETERMINATION THAT TWO OR MORE BIDDERS HAVE PROVIDED BIDS THAT ARE ROUGHLY EQUAL ANY DETERMINATION OF RESPONSIBILITY OR OTHER "TIE BREAKING" FACTORS SHALL TAKE INTO ACCOUNT THE RESPECTIVE BIDDERS RECORD OF COMPLI-

ANCE UNDER ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW OR OTHER APPLICABLE STATUTES OR REGULATIONS GOVERNING THE PARTICIPATION OF MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES IN CONTRACTS AWARDED BY A STATE AGENCY OR OTHER PUBLIC CORPORATION.

S 13. 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] TO BE PUBLISHED ON AN ANNUAL BASIS WITH QUARTERLY UPDATES, 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 MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES AND THE SUBJECT MATTER AND VALUE THEREOF, ALL REFERRALS MADE 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. WITH RESPECT TO CONTRACTS ENTERED INTO WITH MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES, SUCH CORPORATION SHALL MAKE REPORTS TO THE DIVISION AS SET FORTH IN SECTION THREE HUNDRED FIFTEEN OF THE EXECUTIVE LAW.

S 14. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provision had not been included herein.

S 15. This act shall take effect on the ninetieth day after it shall have become a law; provided that the amendments to article 15-A of the executive law made by sections two, three, four, five and six of this act shall not affect the expiration of such article and shall be deemed expired therewith; and provided further that the amendments to section 163 of the state finance law made by sections seven, eight, and ten of this act shall not affect the repeal of such section and shall expire and be deemed repealed therewith.