

2009-2010 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2009

Introduced by Sen. KRUGER -- 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 public bidding for purchases and contracts

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

1 Section 1. The public authorities law is amended by adding three new
2 sections 2878-c, 2878-d and 2878-e to read as follows:
3 S 2878-C. LETTING OF CONTRACTS. 1. ALL PUBLIC AUTHORITIES AND
4 PUBLIC BENEFIT CORPORATIONS, UNLESS OTHERWISE REQUIRED BY LAW TO AWARD
5 CONTRACTS FOR THE PURCHASE OF SUPPLIES, MATERIALS OR EQUIPMENT TO THE
6 LOWEST RESPONSIBLE BIDDER AFTER HAVING OBTAINED SEALED BIDS, SHALL AWARD
7 CONTRACTS IN THE MANNER PROVIDED IN THIS SECTION.
8 2. ALL PURCHASE CONTRACTS FOR SUPPLIES, MATERIALS OR EQUIPMENT
9 INVOLVING AN ESTIMATED EXPENDITURE IN EXCESS OF TWENTY-FIVE THOUSAND
10 DOLLARS SHALL BE AWARDED BY PUBLIC AUTHORITIES OR PUBLIC BENEFIT CORPO-
11 RATIONS TO THE LOWEST RESPONSIBLE BIDDER FURNISHING REQUIRED SECURITY,
12 IF SECURITY IS TO BE REQUIRED, AFTER OBTAINING SEALED BIDS IN THE MANNER
13 HEREINAFTER SET FORTH. NOTHING IN THIS SECTION SHALL PROHIBIT THE EVALU-
14 ATION OF BIDS ON THE BASIS OF THE LIFE CYCLE COST OF THE SUPPLIES, MATE-
15 RIALS AND EQUIPMENT TO BE PURCHASED SO LONG AS THE INVITATION TO BID
16 CLEARLY SETS FORTH THE OBJECTIVELY MEASURABLE CRITERIA TO BE USED IN
17 EVALUATING THE LIFE CYCLE COST OF THE ITEM TO BE PURCHASED. SUCH CRITE-
18 RIA MAY INCLUDE BUT SHALL NOT BE LIMITED TO COSTS OR SAVINGS ASSOCIATED
19 WITH DISCOUNTS, TRANSPORTATION, INSTALLATION, ENERGY USE, MAINTENANCE,
20 OPERATION AND SALVAGE OR DISPOSAL. A PUBLIC AUTHORITY OR PUBLIC BENEFIT
21 CORPORATION MAY, IN ITS DISCRETION, REJECT ALL BIDS AND OBTAIN NEW BIDS
22 IN THE MANNER PROVIDED BY THIS SECTION OR, IN CASES WHERE TWO OR MORE
23 RESPONSIBLE BIDDERS FURNISHING SECURITY, IF REQUIRED BY THE AUTHORITY,

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

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1 SUBMIT IDENTICAL BIDS AS TO PRICE, AWARD THE CONTRACT TO ANY OF SUCH
2 BIDDERS OR OBTAIN NEW BIDS FROM SUCH BIDDERS. NOTHING IN THIS SECTION
3 SHALL OBLIGATE THE AUTHORITY TO SEEK NEW BIDS AFTER THE REJECTION OF
4 BIDS OR AFTER CANCELLATION OF A BID.

5 3. (A) ADVERTISEMENT FOR BIDS, WHEN REQUIRED BY THIS SECTION, SHALL
6 BE PUBLISHED AT LEAST ONCE IN THE STATE REGISTER, PUBLISHED BY THE
7 DEPARTMENT OF STATE PURSUANT TO SECTION ONE HUNDRED FORTY-SIX OF THE
8 EXECUTIVE LAW, AND AT LEAST ONCE IN A NEWSPAPER OF GENERAL CIRCULATION
9 IN THE AREA SERVED BY SUCH PUBLIC AUTHORITY OR PUBLIC BENEFIT CORPO-
10 RATION. PUBLICATION IN THE STATE REGISTER AND A NEWSPAPER OF GENERAL
11 CIRCULATION IN THE AREA SERVED SHALL NOT BE REQUIRED IF BIDS FOR
12 CONTRACTS FOR SUPPLIES, MATERIALS OR EQUIPMENT ARE OF A TYPE REGULARLY
13 PURCHASED BY THE AUTHORITY OR PUBLIC BENEFIT CORPORATION AND ARE TO BE
14 SOLICITED FROM A LIST OF POTENTIAL SUPPLIERS, IF SUCH LIST IS OR HAS
15 BEEN DEVELOPED CONSISTENT WITH THE PROVISIONS OF SUBDIVISION SEVEN OF
16 THIS SECTION. PUBLIC AUTHORITIES AND PUBLIC BENEFIT CORPORATIONS SHALL
17 PAY ANY REASONABLE CHARGE FOR PUBLICATION IN THE STATE REGISTER DETER-
18 MINED BY THE SECRETARY OF STATE WITH THE APPROVAL OF THE DIRECTOR OF THE
19 BUDGET. SUCH ADVERTISEMENT SHALL CONTAIN A STATEMENT OF THE TIME AND
20 PLACE WHERE ALL BIDS RECEIVED PURSUANT TO SUCH NOTICE WILL BE PUBLICLY
21 OPENED AND READ. AT LEAST FIFTEEN DAYS SHALL ELAPSE BETWEEN THE FIRST
22 PUBLICATION OF SUCH ADVERTISEMENT OR THE SOLICITATION OF BIDS, AS THE
23 CASE MAY BE, AND THE DATE OF OPENING AND READING OF BIDS.

24 (B) SUCH PUBLIC AUTHORITY OR PUBLIC BENEFIT CORPORATION MAY DESIGNATE
25 ANY OFFICER OR EMPLOYEE TO OPEN THE BIDS AT THE TIME AND PLACE BIDS ARE
26 TO BE OPENED AND TO AWARD THE CONTRACT TO THE LOWEST RESPONSIBLE BIDDER.
27 SUCH DESIGNEE SHALL MAKE A RECORD OF ALL BIDS IN SUCH FORM AND DETAIL AS
28 THE AUTHORITY OR CORPORATION SHALL PRESCRIBE AND PRESENT THE SAME AT THE
29 NEXT REGULAR OR SPECIAL MEETING OF THE PUBLIC AUTHORITY OR PUBLIC BENE-
30 FIT CORPORATION. ALL BIDS RECEIVED SHALL BE PUBLICLY OPENED AND READ AT
31 THE TIME AND PLACE SPECIFIED IN THE ADVERTISEMENT OR AT THE TIME OF
32 SOLICITATION OR TO WHICH THE OPENING AND READING HAVE BEEN ADJOURNED BY
33 THE AUTHORITY.

34 4. NOTWITHSTANDING THE FOREGOING, A PUBLIC AUTHORITY OR PUBLIC BENE-
35 FIT CORPORATION MAY, BY RESOLUTION, DECLARE THAT COMPETITIVE BIDDING IS
36 IMPRACTICAL OR INAPPROPRIATE BECAUSE OF THE EXISTENCE OF ANY OF THE
37 CIRCUMSTANCES HEREINAFTER SET FORTH. IN EACH CASE WHERE A PUBLIC
38 AUTHORITY OR PUBLIC BENEFIT CORPORATION DECLARES COMPETITIVE BIDDING
39 IMPRACTICAL OR INAPPROPRIATE, IT SHALL STATE THE REASON THEREFOR.
40 COMPETITIVE BIDDING MAY ONLY BE DECLARED IMPRACTICAL OR INAPPROPRIATE
41 WHERE:

42 (A) THE EXISTENCE OF AN EMERGENCY INVOLVING DANGER TO LIFE AND PROPER-
43 TY OR OTHER UNFORESEEN OCCURRENCE REQUIRES IMMEDIATE ACTION AND CANNOT
44 AWAIT COMPETITIVE BIDDING;

45 (B) THE ITEM TO BE PURCHASED IS AVAILABLE ONLY FROM A SINGLE RESPONSI-
46 BLE SOURCE;

47 (C) THE PUBLIC AUTHORITY OR PUBLIC BENEFIT CORPORATION WISHES TO
48 EXPERIMENT WITH OR TEST A NEW PRODUCT OR TECHNOLOGY OR EVALUATE THE
49 SERVICE OR RELIABILITY OF SUCH PRODUCT OR TECHNOLOGY;

50 (D) THE AUTHORITY RECEIVES NO RESPONSIBLE BIDS OR ONLY A SINGLE
51 RESPONSIVE BID IS RECEIVED IN RESPONSE TO AN INVITATION FOR COMPETITIVE
52 BIDS;

53 (E) THE PUBLIC AUTHORITY OR PUBLIC BENEFIT CORPORATION DETERMINES THAT
54 IT IS IN THE PUBLIC INTEREST TO AWARD CONTRACTS BY NEGOTIATION AND WITH-
55 OUT COMPETITIVE BIDDING BECAUSE THE MARKET FOR A PARTICULAR PRODUCT IS

1 EXTREMELY VOLATILE AND, AS A RESULT, THERE IS INSUFFICIENT TIME TO
2 CONDUCT THE COMPETITIVE BIDDING PROCESS;

3 (F) THE PUBLIC AUTHORITY OR PUBLIC BENEFIT CORPORATION DETERMINES, BY
4 A TWO-THIRDS VOTE OF ITS MEMBERS, THAT IT IS IN THE PUBLIC INTEREST TO
5 AWARD CONTRACTS THROUGH NEGOTIATION PURSUANT TO A COMPETITIVE REQUEST
6 FOR PROPOSALS PROCESS. FOR PURPOSES OF THIS SECTION, A COMPETITIVE
7 REQUEST FOR PROPOSALS PROCESS SHALL MEAN A COMPETITIVE METHOD OF SOLIC-
8 ITING TECHNICAL AND PRICE PROPOSALS AND AWARDING A CONTRACT ON THE BASIS
9 OF A FORMAL EVALUATION OF THE CHARACTERISTICS SUCH AS QUALITY AND COST
10 OF SUCH PROPOSALS AGAINST STATED SELECTION CRITERIA. SUCH PROCESS SHALL
11 PROVIDE FOR THE ACCEPTANCE BY RESOLUTION OF THE MOST ADVANTAGEOUS
12 PROPOSAL AT A PUBLIC MEETING OF THE PUBLIC AUTHORITY OR PUBLIC BENEFIT
13 CORPORATION WITH SUCH RESOLUTION SETTING FORTH THE SELECTION CRITERIA.
14 NOTHING IN THIS PARAGRAPH SHALL PRECLUDE:

15 (I) NEGOTIATIONS FOLLOWING THE RECEIPT OF RESPONSES TO THE REQUEST FOR
16 PROPOSALS;

17 (II) NEGOTIATIONS WITH THE PROPONENT OF THE MOST ADVANTAGEOUS PROPOSAL
18 FOLLOWING ITS ACCEPTANCE AND NEGOTIATION WITH ANOTHER PROPOSER; OR

19 (III) THE REJECTION OF ANY PROPOSAL AFTER ITS ACCEPTANCE AND THE
20 SOLICITATION OF NEW COMPETITIVE PROPOSALS IN THE MANNER HEREIN PROVIDED;

21 (G) THE ITEM IS AVAILABLE THROUGH A CONTRACT OF THE STATE OF NEW YORK,
22 A POLITICAL SUBDIVISION THEREOF, OR ANOTHER PUBLIC AUTHORITY OR PUBLIC
23 BENEFIT CORPORATION, PROVIDED THAT THE AUTHORITY SHALL ACCEPT SOLE
24 RESPONSIBILITY FOR ANY PAYMENT DUE THE VENDOR.

25 5. THE GOVERNING BODY OF ANY PUBLIC AUTHORITY OR PUBLIC BENEFIT CORPO-
26 RATION MAY, BY A RESOLUTION ADOPTED ANNUALLY BY TWO-THIRDS OF ITS
27 MEMBERS, DELEGATE TO ANY SENIOR OFFICER OR SENIOR EMPLOYEE THE AUTHORITY
28 TO DECLARE COMPETITIVE BIDDING INAPPROPRIATE OR IMPRACTICAL IN THOSE
29 CIRCUMSTANCES SET FORTH IN PARAGRAPH (A), (B) OR (G) OF SUBDIVISION FOUR
30 OF THIS SECTION. THE SENIOR OFFICER OR SENIOR EMPLOYEE TO WHOM SUCH
31 AUTHORITY IS DELEGATED SHALL REPORT TO THE GOVERNING BODY ALL ACTIONS
32 TAKEN PURSUANT TO ANY SUCH RESOLUTION AT THE NEXT REGULARLY SCHEDULED
33 BOARD MEETING OF THE AUTHORITY BUT NOT MORE THAN THIRTY DAYS LATER.
34 FAILURE TO MAKE SUCH A REPORT SHALL NOT, HOWEVER, AFFECT THE LEGALITY OF
35 ANY PURCHASES MADE PURSUANT TO THE AUTHORITY CONFERRED BY SUCH RESOL-
36 UTION.

37 6. UPON THE ADOPTION OF A RESOLUTION BY A PUBLIC AUTHORITY OR PUBLIC
38 BENEFIT CORPORATION STATING, FOR REASONS OF EFFICIENCY, ECONOMY, COMPAT-
39 IBILITY OR MAINTENANCE RELIABILITY, THAT THERE IS A NEED FOR STANDARDI-
40 ZATION, PURCHASE CONTRACTS FOR PARTICULAR SUPPLIES, MATERIALS OR EQUIP-
41 MENT IDENTIFIED ON A QUALIFIED PRODUCTS LIST, WHICH LIST MIGHT BE
42 MODIFIED FROM TIME TO TIME BY AN OFFICER OF THE AUTHORITY IN ACCORDANCE
43 WITH PROCEDURES PROVIDED IN SUCH RESOLUTION, MAY BE AWARDED BY THE
44 PUBLIC AUTHORITY OR PUBLIC BENEFIT CORPORATION, TO THE LOWEST RESPONSI-
45 BLE BIDDER AFTER OBTAINING SEALED BIDS IN ACCORDANCE WITH THIS SECTION
46 OR WITHOUT COMPETITIVE SEALED BIDS IN INSTANCES WHEN THE ITEM IS AVAIL-
47 ABLE FROM ONLY A SINGLE SOURCE.

48 7. EVERY PUBLIC AUTHORITY AND PUBLIC BENEFIT CORPORATION SHALL COMPILE
49 A LIST OF POTENTIAL SOURCES OF SUPPLIES, MATERIALS OR EQUIPMENT REGU-
50 LARLY PURCHASED. THE PUBLIC AUTHORITY OR PUBLIC BENEFIT CORPORATION
51 SHALL, IN ITS ANNUAL REPORT, OR IF THERE BE NONE, ANNUALLY IN THE
52 MINUTES OF ITS PROCEEDINGS, SET FORTH THE PROCEDURES IT HAS ESTABLISHED
53 TO IDENTIFY NEW SOURCES AND TO NOTIFY SUCH NEW SOURCES OF THE OPPORTU-
54 NITY TO BID FOR CONTRACTS FOR THE PURCHASE OF SUPPLIES, MATERIALS OR
55 EQUIPMENT. SUCH PROCEDURES SHALL INCLUDE, BUT NOT BE LIMITED TO: (A)
56 ADVERTISING IN TRADE JOURNALS; (B) COOPERATION WITH FEDERAL, STATE AND

1 LOCAL COMMUNITY AGENCIES WITHIN ITS AREA OF OPERATIONS; AND (C) THE
2 ESTABLISHMENT OF PROCEDURES PURSUANT TO PARAGRAPH B OF SUBDIVISION THIR-
3 TEEN OF SECTION TWELVE HUNDRED SIXTY-SIX-C OF THIS CHAPTER.

4 8. THE PROVISIONS OF THIS SECTION SHALL NOT SUPERCEDE ANY OTHER
5 PROVISIONS OF LAW RELATING TO PURCHASES OF PRODUCTS OR DEVICES MANUFAC-
6 TURED OR PROVIDED BY THE BLIND AND OTHER SEVERELY HANDICAPPED, TO THE
7 INVITATION AND ACCEPTANCE OF BIDS FROM SMALL OR MINORITY BUSINESS ENTER-
8 PRISES OR TO THE PURCHASES OF SUPPLIES, MATERIALS OR EQUIPMENT THROUGH
9 THE OFFICE OF GENERAL SERVICES. EXCEPT AS MAY OTHERWISE BE PROVIDED BY
10 LAW OR AS MORE RESTRICTIVELY DEFINED IN THE OFFICIAL POLICY OR BID SPEC-
11 IFICATIONS OF A PUBLIC AUTHORITY OR PUBLIC BENEFIT CORPORATION, THE TERM
12 "SMALL BUSINESS" MEANS A SOLE PROPRIETORSHIP, FIRM OR CORPORATION HAVING
13 TEN OR LESS PRINCIPALS OR STOCKHOLDERS AND EMPLOYING FEWER THAN ONE
14 HUNDRED EMPLOYEES.

15 9. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO ANY PURCHASES OF
16 SUPPLIES, MATERIALS OR EQUIPMENT MADE BY A PUBLIC AUTHORITY OR PUBLIC
17 BENEFIT CORPORATION IN BEHALF OF AN ENTITY NOT OTHERWISE REQUIRED BY LAW
18 TO AWARD CONTRACTS FOR SUCH PURCHASES TO THE LOWEST RESPONSIBLE BIDDER
19 IF SUCH PURCHASES ARE MADE AT THE SOLE COST AND EXPENSE OF SUCH ENTITY.

20 10. (A) NOTWITHSTANDING THE OTHER PROVISIONS OF THIS SECTION, A PUBLIC
21 AUTHORITY OR PUBLIC BENEFIT CORPORATION MAY AWARD THE CONTRACT TO A
22 RESPONSIBLE NEW YORK BIDDER WHO OR WHICH IS NOT THE LOWEST RESPONSIBLE
23 BIDDER PROVIDED THAT THE BID MADE BY THE NEW YORK BIDDER IS NOT MORE
24 THAN FIVE PERCENT HIGHER THAN THE BID MADE BY THE LOWEST RESPONSIBLE
25 BIDDER AND THE LOWEST RESPONSIBLE BIDDER IS NOT A NEW YORK BIDDER, AND
26 PROVIDED FURTHER THAT THE AUTHORITY OR PUBLIC BENEFIT CORPORATION HAS
27 MADE A DETERMINATION THAT IT IS IN THE PUBLIC INTEREST FOR A BID OTHER
28 THAN THE LOWEST RESPONSIBLE BID TO BE ACCEPTED.

29 (B) FOR THE PURPOSES OF THIS SUBDIVISION, A "NEW YORK BIDDER" IS A
30 PERSON OR ENTITY WHO OR WHICH HAS ITS PRINCIPAL PLACE OF BUSINESS IN
31 THIS STATE, OR WHO OR WHICH CONDUCTS A SUBSTANTIAL PORTION OF ITS
32 ECONOMIC ACTIVITY WITHIN THIS STATE, OR WHO OR WHICH MANUFACTURES A
33 PRODUCT WITHIN NEW YORK STATE WHICH PRODUCT IS THE SUBJECT OF THE BID TO
34 BE AWARDED. A BIDDER WHO OR WHICH CLAIMS TO BE A NEW YORK BIDDER SHALL
35 SUBMIT TO THE AUTHORITY OR PUBLIC BENEFIT CORPORATION ADEQUATE PROOF
36 THAT IT MEETS THE REQUIREMENTS OF THIS DEFINITION AND THAT IT WILL
37 CONTINUE TO MEET SUCH REQUIREMENTS FOR THE DURATION OF THE CONTRACT TO
38 BE AWARDED. IF A CONTRACT IS AWARDED TO A NEW YORK BIDDER PURSUANT TO
39 THIS SUBDIVISION AND THEN SUBSEQUENT TO THE AWARD AND DURING THE TERM OF
40 THE CONTRACT OR PENDING ITS IMPLEMENTATION, THE NEW YORK BIDDER NO LONG-
41 ER MEETS THE DEFINITIONAL REQUIREMENTS OF A NEW YORK BIDDER, SUCH BIDDER
42 MAY, AT THE DISCRETION OF THE AUTHORITY OR PUBLIC BENEFIT CORPORATION,
43 BE REQUIRED TO FORFEIT SUCH CONTRACT OR BE DISQUALIFIED FROM BEING
44 AWARDED ANY CONTRACTS BY THE AUTHORITY OR PUBLIC BENEFIT CORPORATION FOR
45 A PERIOD OF THREE YEARS FROM THE DATE OF THE AUTHORITY'S OR CORPO-
46 RATION'S DISCOVERY THAT SUCH BIDDER IS NO LONGER A NEW YORK BIDDER, OR
47 BE SUBJECT TO BOTH SUCH CONSEQUENCES FOR LOSS OF ITS STATUS AS A NEW
48 YORK BIDDER WHILE THE CONTRACT IS IN EFFECT OR PENDING ITS IMPLEMENTA-
49 TION. EVERY NEW YORK BIDDER AWARDED A CONTRACT PURSUANT TO THIS SUBDIVI-
50 SION SHALL SUBMIT PROOF PERIODICALLY OF ITS CONTINUING STATUS AS A NEW
51 YORK BIDDER DURING THE TERM OF ANY CONTRACT AWARDED PURSUANT TO THIS
52 SUBDIVISION AT SUCH TIMES AS THE AUTHORITY OR PUBLIC BENEFIT CORPORATION
53 SHALL REQUIRE. FAILURE TO SUBMIT SUCH PROOF WITHIN THIRTY DAYS OF A
54 REQUEST BY THE AUTHORITY OR PUBLIC BENEFIT CORPORATION FOR THE SAME
55 SHALL RESULT IN THE AUTOMATIC LOSS OF ITS STATUS AS A NEW YORK BIDDER
56 FOR THE PURPOSES OF THIS PARAGRAPH. ALL CONTRACTS AWARDED PURSUANT TO

1 THIS SUBDIVISION SHALL BE SUBJECT TO THE CONDITIONS CONTAINED IN THIS
2 PARAGRAPH.

3 (C) THE PROVISIONS OF THIS SUBDIVISION SHALL NOT APPLY TO: (I)
4 CONSULTANT CONTRACTS; (II) PROJECTS RECEIVING FEDERAL FUNDING UNDER
5 RESTRICTIONS THAT REQUIRE COMPETITIVE BIDDING WITHOUT EXCEPTION; AND
6 (III) AS DETERMINED BY THE AUTHORITY OR PUBLIC BENEFIT CORPORATION BASED
7 UPON ITS EVALUATION OF THE PUBLIC INTEREST, CERTAIN LARGE CAPITAL
8 PROJECTS FOR WHICH MAJOR CONSTRUCTION ACTIVITIES EMPLOY WORKERS WHO
9 RESIDE IN NEW YORK STATE WITHIN THE GENERAL AREA TO BE SERVED BY THE
10 COMPLETED PROJECT.

11 11. THE PROVISIONS OF THIS SECTION SHALL NOT BE APPLICABLE TO THE
12 AWARD OF ANY CONTRACT FOR WHICH AN INVITATION TO BID, SOLICITATION,
13 REQUEST FOR PROPOSAL, OR ANY SIMILAR DOCUMENT HAS BEEN ISSUED BY THE
14 PUBLIC AUTHORITY OR PUBLIC BENEFIT CORPORATION PRIOR TO THE EFFECTIVE
15 DATE OF THIS SECTION.

16 S 2878-D. EQUAL EMPLOYMENT OPPORTUNITY PROGRAM. ALL CONTRACTS FOR
17 DESIGN, CONSTRUCTION, SERVICES AND MATERIALS PURSUANT TO THIS CHAPTER OF
18 WHATEVER NATURE AND ALL DOCUMENTS SOLICITING BIDS OR PROPOSALS THEREFOR
19 SHALL CONTAIN OR MAKE REFERENCE TO THE FOLLOWING PROVISIONS:

20 1. THE CONTRACTOR WILL NOT DISCRIMINATE AGAINST EMPLOYEES OR APPLI-
21 CANTS FOR EMPLOYMENT BECAUSE OF RACE, CREED, COLOR, NATIONAL ORIGIN,
22 SEX, AGE, DISABILITY, OR MARITAL STATUS, AND WILL UNDERTAKE OR CONTINUE
23 EXISTING PROGRAMS OF AFFIRMATIVE ACTION TO ENSURE THAT MINORITY GROUP
24 PERSONS AND WOMEN ARE AFFORDED EQUAL OPPORTUNITY WITHOUT DISCRIMINATION.
25 SUCH PROGRAMS SHALL INCLUDE, BUT NOT BE LIMITED TO, RECRUITMENT, EMPLOY-
26 MENT, JOB ASSIGNMENTS, PROMOTION, UPGRADING, DEMOTION, TRANSFER, LAYOFF,
27 TERMINATION, RATES OF PAY OR OTHER FORMS OF COMPENSATION, AND SELECTIONS
28 FOR TRAINING OR RETRAINING, INCLUDING APPRENTICESHIP AND ON-THE-JOB
29 TRAINING.

30 2. AT THE REQUEST OF THE AUTHORITY, THE CONTRACTOR SHALL REQUEST EACH
31 EMPLOYMENT AGENCY, LABOR UNION, OR AUTHORIZED REPRESENTATIVE OF WORKERS
32 WITH WHICH IT HAS A COLLECTIVE BARGAINING OR OTHER AGREEMENT OR UNDER-
33 STANDING AND WHICH IS INVOLVED IN THE PERFORMANCE OF THE CONTRACT WITH
34 THE AUTHORITY TO FURNISH A WRITTEN STATEMENT THAT SUCH EMPLOYMENT AGEN-
35 CY, LABOR UNION OR REPRESENTATIVE SHALL NOT DISCRIMINATE BECAUSE OF
36 RACE, CREED, COLOR, NATIONAL ORIGIN, SEX, AGE, DISABILITY OR MARITAL
37 STATUS AND THAT SUCH UNION OR REPRESENTATIVE WILL COOPERATE IN THE
38 IMPLEMENTATION OF THE CONTRACTOR'S OBLIGATIONS HEREUNDER.

39 3. THE CONTRACTOR WILL STATE, IN ALL SOLICITATIONS OR ADVERTISEMENTS
40 FOR EMPLOYEES PLACED BY OR ON BEHALF OF THE CONTRACTOR IN THE PERFORM-
41 ANCE OF THE CONTRACT WITH THE AUTHORITY, THAT ALL QUALIFIED APPLICANTS
42 WILL BE AFFORDED EQUAL EMPLOYMENT OPPORTUNITY WITHOUT DISCRIMINATION
43 BECAUSE OF RACE, CREED, COLOR, NATIONAL ORIGIN, SEX, AGE, DISABILITY OR
44 MARITAL STATUS.

45 4. THE CONTRACTOR WILL INCLUDE THE PROVISIONS OF SUBDIVISIONS ONE, TWO
46 AND THREE OF THIS SECTION IN EVERY SUBCONTRACT OR PURCHASE ORDER IN SUCH
47 A MANNER THAT SUCH PROVISIONS WILL BE BINDING UPON EACH SUBCONTRACTOR OR
48 VENDOR AS TO ITS WORK IN CONNECTION WITH THE CONTRACT WITH THE AUTHORI-
49 TY.

50 5. THE AUTHORITY SHALL ESTABLISH PROCEDURES AND GUIDELINES TO ENSURE
51 THAT CONTRACTORS AND SUBCONTRACTORS UNDERTAKE PROGRAMS OF AFFIRMATIVE
52 ACTION AND EQUAL EMPLOYMENT OPPORTUNITY AS REQUIRED BY THIS SECTION.
53 SUCH PROCEDURES MAY REQUIRE AFTER NOTICE IN A BID SOLICITATION, THE
54 SUBMISSION OF AN AFFIRMATIVE ACTION PROGRAM PRIOR TO THE AWARD OF ANY
55 CONTRACT, OR AT ANY TIME THEREAFTER, AND MAY REQUIRE THE SUBMISSION OF
56 COMPLIANCE REPORTS RELATING TO THE OPERATION AND IMPLEMENTATION OF ANY

1 AFFIRMATIVE ACTION PROGRAM ADOPTED HEREUNDER. THE AUTHORITY MAY TAKE
2 APPROPRIATE ACTION INCLUDING CONTRACTUAL SANCTIONS FOR NON-COMPLIANCE TO
3 EFFECTUATE THE PROVISIONS OF THIS SECTION AND SHALL BE RESPONSIBLE FOR
4 MONITORING COMPLIANCE WITH THIS SECTION.

5 S 2878-E. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PROGRAM. 1.

6 (A) IN THE PERFORMANCE OF PROJECTS PURSUANT TO THIS CHAPTER MINORITY AND
7 WOMEN-OWNED BUSINESS ENTERPRISES SHALL BE GIVEN THE OPPORTUNITY FOR
8 MEANINGFUL PARTICIPATION. THE AUTHORITY SHALL ESTABLISH MEASURES AND
9 PROCEDURES TO SECURE MEANINGFUL PARTICIPATION AND IDENTIFY THOSE
10 CONTRACTS AND ITEMS OF WORK FOR WHICH MINORITY AND WOMEN-OWNED BUSINESS
11 ENTERPRISES MAY BEST BID TO ACTIVELY AND AFFIRMATIVELY PROMOTE AND
12 ASSIST THEIR PARTICIPATION IN THE PROJECTS, SO AS TO FACILITATE THE
13 AWARD OF A FAIR SHARE OF CONTRACTS TO SUCH ENTERPRISES; PROVIDED, HOWEV-
14 ER, THAT NOTHING IN THIS TITLE SHALL BE CONSTRUED TO LIMIT THE ABILITY
15 OF THE AUTHORITY TO ASSURE THAT QUALIFIED MINORITY AND WOMEN-OWNED BUSI-
16 NESS ENTERPRISES MAY PARTICIPATE IN THE PROGRAM. FOR PURPOSES HEREOF,
17 MINORITY BUSINESS ENTERPRISE SHALL MEAN ANY BUSINESS ENTERPRISE WHICH IS
18 AT LEAST FIFTY-ONE PER CENTUM OWNED BY, OR IN THE CASE OF A PUBLICLY
19 OWNED BUSINESS, AT LEAST FIFTY-ONE PER CENTUM OF THE STOCK OF WHICH IS
20 OWNED BY CITIZENS OR PERMANENT RESIDENT ALIENS WHO ARE BLACK, HISPANIC,
21 ASIAN OR AMERICAN INDIAN, PACIFIC ISLANDER OR ALASKAN NATIVES AND SUCH
22 OWNERSHIP INTEREST IS REAL, SUBSTANTIAL AND CONTINUING AND HAVE THE
23 AUTHORITY TO INDEPENDENTLY CONTROL THE DAY-TO-DAY BUSINESS DECISIONS OF
24 THE ENTITY; AND WOMEN-OWNED BUSINESS ENTERPRISE SHALL MEAN ANY BUSINESS
25 ENTERPRISE WHICH IS AT LEAST FIFTY-ONE PER CENTUM OWNED BY, OR IN THE
26 CASE OF A PUBLICLY OWNED BUSINESS, AT LEAST FIFTY-ONE PER CENTUM OF THE
27 STOCK OF WHICH IS OWNED BY CITIZENS OR PERMANENT RESIDENT ALIENS WHO ARE
28 WOMEN, AND SUCH OWNERSHIP INTEREST IS REAL, SUBSTANTIAL AND CONTINUING
29 AND HAVE THE AUTHORITY TO INDEPENDENTLY CONTROL THE DAY-TO-DAY BUSINESS
30 DECISIONS OF THE ENTITY.

31 THE PROVISIONS OF THIS PARAGRAPH SHALL NOT BE CONSTRUED TO LIMIT THE
32 ABILITY OF ANY MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISE TO BID ON ANY
33 CONTRACT.

34 (B) IN THE IMPLEMENTATION OF THIS SECTION, THE AUTHORITY SHALL CONSID-
35 ER COMPLIANCE BY ANY CONTRACTOR WITH THE REQUIREMENTS OF ANY FEDERAL,
36 STATE, OR LOCAL LAW CONCERNING MINORITY AND WOMEN-OWNED BUSINESS ENTER-
37 PRISES, WHICH MAY EFFECTUATE THE REQUIREMENTS OF THIS SECTION. IF THE
38 AUTHORITY DETERMINES THAT BY VIRTUE OF THE IMPOSITION OF THE REQUIRE-
39 MENTS OF ANY SUCH LAW, IN RESPECT TO PROJECT CONTRACTS, THE PROVISIONS
40 THEREOF DUPLICATE OR CONFLICT WITH THIS SECTION, THE AUTHORITY MAY WAIVE
41 THE APPLICABILITY OF THIS SECTION TO THE EXTENT OF SUCH DUPLICATION OR
42 CONFLICT.

43 (C) NOTHING IN THIS SECTION SHALL BE DEEMED TO REQUIRE THAT OVERALL
44 STATE AND FEDERAL REQUIREMENTS FOR PARTICIPATION OF MINORITY AND WOMEN-
45 OWNED BUSINESS ENTERPRISES IN PROGRAMS AUTHORIZED UNDER THIS CHAPTER BE
46 APPLIED WITHOUT REGARD TO LOCAL CIRCUMSTANCES TO ALL PROJECTS OR IN ALL
47 COMMUNITIES.

48 2. IN ORDER TO IMPLEMENT THE REQUIREMENTS AND OBJECTIVES OF THIS
49 SECTION, THE AUTHORITY SHALL ESTABLISH PROCEDURES TO MONITOR THE
50 CONTRACTORS' COMPLIANCE WITH PROVISIONS HEREOF, PROVIDE ASSISTANCE IN
51 OBTAINING MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES TO PERFORM
52 CONTRACTS PROPOSED TO BE AWARDED, AND TAKE OTHER APPROPRIATE MEASURES TO
53 IMPROVE THE ACCESS OF MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES TO
54 THESE CONTRACTS.

55 S 2. This act shall take effect on the first of January next succeed-
56 ing the date on which it shall have become a law.