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

5987

2009-2010 Regular Sessions

I N S E N A T E

June 19, 2009

Introduced by Sen. SAMPSON -- 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 establishing the metropolitan transportation authority small business mentoring program; and providing for the repeal of such provisions upon expiration thereof

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

Section 1. Legislative findings. Historically, in the construction industry, there have been significant obstacles to the ability of small businesses to compete for public work contracts. These include the lack of sufficient construction management expertise to compete for and perform public work contracts and prime contractor and statutory public work contracting requirements that may present insurmountable obstacles to a small, inexperienced business including requirements with respect to bonding, insurance and competitive bidding.

It is hereby declared that there is a public purpose in initiating a mentoring program to be implemented by the metropolitan transportation authority for itself and its affiliates and subsidiaries that will afford participating small businesses with the opportunity to obtain public work construction management experience and training by providing the small businesses with the mentoring services of an experienced construction firm and with the opportunity to compete with certain other small businesses in the program for the award of designated public work contracts.

It is also hereby declared to be in the public interest of the state of New York to authorize the metropolitan transportation authority and its affiliates and subsidiaries to allocate a portion of their funds for the purpose of retaining on a competitive basis successful construction management firms to act as mentors to small businesses participating in the mentoring program, to provide such small businesses training to facilitate their growth into successful bidders and performers on public work contracts. It is also in the public interest for the state of New York to provide for certain exceptions to the provisions of the public

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

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authorities law, the state finance law, and the insurance law to enable the metropolitan transportation authority and its affiliates and subsidiaries to designate specific public work contracts for award through the mentoring program to competing small businesses participating in the program and to waive or modify otherwise applicable requirements for advertised and sealed competitive bidding, bonding, and insurance for such designated public work contracts.

S 2. The public authorities law is amended by adding a new section 1265-b to read as follows:

S 1265-B. METROPOLITAN TRANSPORTATION AUTHORITY SMALL BUSINESS MENTORING PROGRAM. 1. DEFINITIONS. AS USED IN THIS SECTION, UNLESS THE CONTEXT REQUIRES OTHERWISE: (A) "AUTHORITY" MEANS THE METROPOLITAN TRANSPORTATION AUTHORITY AND ITS SUBSIDIARIES CONSISTING OF THE LONG ISLAND RAIL ROAD COMPANY, METRO-NORTH COMMUTER RAILROAD COMPANY, METROPOLITAN SUBURBAN BUS AUTHORITY, STATEN ISLAND RAPID TRANSIT OPERATING AUTHORITY, MTA BUS, MTA CAPITAL CONSTRUCTION COMPANY, AND FIRST MUTUAL TRANSPORTATION ASSURANCE COMPANY, AND ITS AFFILIATES CONSISTING OF THE NEW YORK CITY TRANSIT AUTHORITY, TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY, AND MANHATTAN AND BRONX SURFACE TRANSIT OPERATING AUTHORITY;

(B) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE AUTHORITY AND ITS SUBSIDIARIES AND AFFILIATES;

(C) "SMALL BUSINESS" MEANS A BUSINESS IN THE CONSTRUCTION TRADES WHICH (I) IS INDEPENDENTLY OWNED AND OPERATED; (II) HAS ANNUAL REVENUES NOT EXCEEDING A FISCAL LIMITATION OF FIVE MILLION DOLLARS OR SUCH LESSER AMOUNT AS ESTABLISHED BY THE AUTHORITY PURSUANT TO THESE PROVISIONS; AND (III) MEETS ADDITIONAL CRITERIA AS OTHERWISE ESTABLISHED BY THE EXECUTIVE DIRECTOR IN CONSULTATION WITH THE MEMBERS OF THE MTA SMALL BUSINESS MENTORING PROGRAM ADVISORY COMMITTEE. THE CHAIR OF THE COMMITTEE SHALL BE THE CHIEF DIVERSITY OFFICER OF THE MTA. THE AUTHORITY SHALL ESTABLISH A DETAILED DEFINITION IN GENERAL AND SPECIFIC TO DIFFERENT SEGMENTS OF THE CONSTRUCTION INDUSTRY TO THE EXTENT NECESSARY TO REFLECT DIFFERING CHARACTERISTICS OF SUCH SEGMENTS BASED ON THE CRITERIA USED BY THE UNITED STATES SMALL BUSINESS ADMINISTRATION FOR LOANS TO SMALL BUSINESSES AS SET FORTH IN SECTIONS 121.301 THROUGH 121.305, OR FOR AWARDING GOVERNMENT PROCUREMENTS AS SET FORTH IN SECTIONS 121.401 THROUGH 121.413, OF SUBPART A OF PART 121 OF CHAPTER I OF TITLE 13 OF THE CODE OF FEDERAL REGULATIONS AS AMENDED, AND SUCH OTHER CRITERIA AS DETERMINED BY THE AUTHORITY;

(D) "SMALL BUSINESS MENTORING PROGRAM" IS A PROGRAM ESTABLISHED BY THE AUTHORITY PURSUANT TO THESE PROVISIONS TO PROVIDE SMALL BUSINESSES ACCEPTED INTO THE PROGRAM WITH THE OPPORTUNITY:

(I) FOR UP TO FOUR YEARS, TO COMPETE FOR AND, WHERE AWARDED, TO PERFORM CERTAIN AUTHORITY PUBLIC WORK CONTRACTS TO BE DESIGNATED BY THE AUTHORITY FOR INCLUSION IN THIS PROGRAM UNDER THIS SUBPARAGRAPH, WITH THE ASSISTANCE OF AN AUTHORITY-PROVIDED MENTOR, WHICH SHALL BE A FIRM COMPETITIVELY SELECTED BY THE AUTHORITY THAT HAS EXTENSIVE CONSTRUCTION MANAGEMENT AND MENTORING EXPERIENCE, WITH THE MENTOR TO PROVIDE THE SMALL BUSINESS WITH ADVICE AND ASSISTANCE IN COMPETING FOR AND MANAGING AUTHORITY PUBLIC WORK CONTRACTS; AND

(II) FOR A SMALL BUSINESS MENTORING PROGRAM PARTICIPANT WHICH THE AUTHORITY HAS DETERMINED HAS SUCCESSFULLY COMPLETED THE PROGRAM UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, FOR UP TO FOUR ADDITIONAL YEARS, (A) ADDITIONAL OPPORTUNITIES TO COMPETE WITH OTHER DESIGNATED SMALL BUSINESSES IN THE PROGRAM FOR CERTAIN PUBLIC WORK CONTRACTS TO BE DESIGNATED FOR INCLUSION UNDER THIS SUBPARAGRAPH AND, WHERE AWARDED, TO PERFORM SUCH AUTHORITY PUBLIC WORK CONTRACTS, WITH THE FURTHER ASSISTANCE OF AN

AUTHORITY-PROVIDED MENTOR, WHICH SHALL BE A FIRM COMPETITIVELY SELECTED BY THE AUTHORITY THAT HAS EXTENSIVE CONSTRUCTION MANAGEMENT AND MENTORING EXPERIENCE, WITH THE MENTOR TO PROVIDE THE SMALL BUSINESS WITH ADVICE AND TECHNICAL ASSISTANCE IN COMPETING FOR AND MANAGING AUTHORITY PUBLIC WORK CONTRACTS, AND (B) AUTHORITY-PROVIDED ASSISTANCE, AS DETERMINED BY THE AUTHORITY, FOR SUCH A SMALL BUSINESS TO OBTAIN BONDING FOR PUBLIC WORK CONTRACTS THAT ARE COMPETITIVELY AWARDED PURSUANT TO PROVISIONS OF LAW OTHER THAN THIS SECTION.

(E) "SMALL BUSINESS MENTORING PROGRAM CONTRACT" MEANS A NON-FEDERALLY FUNDED AUTHORITY PUBLIC WORK CONTRACT DESIGNATED BY THE AUTHORITY, IN AN ESTIMATED AMOUNT OF NOT MORE THAN ONE MILLION DOLLARS FOR CONTRACTS UNDER SUBPARAGRAPH (I) OF PARAGRAPH (D) OF THIS SUBDIVISION AND THREE MILLION DOLLARS FOR CONTRACTS UNDER SUBPARAGRAPH (II) OF PARAGRAPH (D) OF THIS SUBDIVISION, FOR WHICH BIDS OR PROPOSALS ARE TO BE INVITED AND ACCEPTED ONLY FROM BUSINESSES THAT ARE ENROLLED IN THE SMALL BUSINESS MENTORING PROGRAM AND HAVE BEEN SELECTED BY THE AUTHORITY TO COMPETE FOR THE CONTRACT.

2. SMALL BUSINESS MENTORING PROGRAM. (A) PURSUANT TO THESE PROVISIONS, THE AUTHORITY MAY ESTABLISH A SMALL BUSINESS MENTORING PROGRAM. IN CONNECTION THEREWITH, THE AUTHORITY MAY DETERMINE THE CRITERIA PURSUANT TO WHICH A SMALL BUSINESS SHALL BE ELIGIBLE FOR AND SELECTED TO PARTICIPATE IN THE PROGRAM UNDER SUBPARAGRAPHS (I) AND (II) OF PARAGRAPH (D) OF SUBDIVISION ONE OF THIS SECTION, THE NUMBER OF PARTICIPANTS TO PARTICIPATE IN EACH SUCH COMPONENTS OF THE PROGRAM, THE CRITERIA FOR THE COMPETITIVE SELECTION OF THE FIRMS THAT WILL PROVIDE SMALL BUSINESSES WITH MENTORING SERVICES, THE ASSIGNMENT OF A MENTOR TO A SPECIFIC SMALL BUSINESS IN THE SMALL BUSINESS MENTORING PROGRAM, AND THE FUNDING FOR THE PROGRAM.

(B) UNDER THE SMALL BUSINESS MENTORING PROGRAM, THE EXECUTIVE DIRECTOR OR THE EXECUTIVE DIRECTOR'S DESIGNEE IS AUTHORIZED, NOTWITHSTANDING ANY OTHER PROVISION OF LAW:

(I) TO DESIGNATE WHICH ELIGIBLE PUBLIC WORK CONTRACTS SHALL BE SMALL BUSINESS MENTORING PROGRAM CONTRACTS UNDER SUBPARAGRAPHS (I) AND (II) OF PARAGRAPH (D) OF SUBDIVISION ONE OF THIS SECTION, RESPECTIVELY;

(II) TO ESTABLISH STANDARDS FOR QUALIFYING SMALL BUSINESS MENTORING PROGRAM PARTICIPANTS TO COMPETE FOR A SMALL BUSINESS MENTORING PROGRAM CONTRACT, PROVIDED THAT NO LESS THAN THREE QUALIFIED SMALL BUSINESSES IN THE PROGRAM MUST SUBMIT RESPONSIVE OFFERS TO PERFORM THE CONTRACT;

(III) TO DETERMINE WHEN BIDS OR PROPOSALS FOR A SMALL BUSINESS MENTORING PROGRAM CONTRACT SHOULD BE RESTRICTED TO SMALL BUSINESS MENTORING PROGRAM PARTICIPANTS WHICH, PRIOR TO THE RECEIPT OF BIDS OR PROPOSALS, HAVE BEEN QUALIFIED BY THE AUTHORITY FOR SUCH COMPETITION;

(IV) TO COMPETITIVELY SELECT, DESIGNATE AND CONTRACT WITH ONE OR MORE EXPERIENCED CONSTRUCTION MANAGEMENT FIRMS THAT, UNDER THE GENERAL SUPERVISION OF THE AUTHORITY, WILL PROVIDE MENTORING SERVICES TO THE SMALL BUSINESSES PARTICIPATING IN THE SMALL BUSINESS MENTORING PROGRAM, AND TO ASSIGN SUCH MENTORS ONE OR MORE DESIGNATED SMALL BUSINESSES PARTICIPATING IN THE PROGRAM;

(V) FOR SMALL BUSINESS MENTORING PROGRAM CONTRACTS, EXCEPT AS SET FORTH HEREIN, TO WAIVE REQUIREMENTS FOR THE SOLICITATION AND AWARD OF A PUBLIC WORK CONTRACT PURSUANT TO SECTIONS TWELVE HUNDRED NINE, TWELVE HUNDRED SIXTY-FIVE-A AND TWENTY-EIGHT HUNDRED SEVENTY-NINE OF THIS CHAPTER AND ANY OTHER PROVISION OF LAW AND FOR OBTAINING A PERFORMANCE, PAYMENT OR OTHER GUARANTEE BOND PURSUANT TO SECTION ONE HUNDRED THIRTY-SEVEN OF THE STATE FINANCE LAW AND ANY OTHER PROVISION OF LAW, AND TO WAIVE REQUIREMENTS FORBIDDING THE AUTHORITY FROM DESIGNATING AN INSUR-

ANCE COMPANY OR OBTAINING INSURANCE FOR A CONTRACTOR PURSUANT TO SECTION TWO THOUSAND FIVE HUNDRED FOUR OF THE INSURANCE LAW OR ANY OTHER PROVISION OF LAW; AND

(VI) FOR SMALL BUSINESSES THAT HAVE BEEN ACCEPTED INTO THE SMALL BUSINESS MENTORING PROGRAM UNDER SUBPARAGRAPH (II) OF PARAGRAPH (D) OF SUBDIVISION ONE OF THIS SECTION, IN ADDITION TO THE BENEFITS OF SUCH PROGRAM AND NOTWITHSTANDING ANY OTHER PROVISION OF LAW, TO PROVIDE TECHNICAL ASSISTANCE IN OBTAINING BID, PAYMENT AND PERFORMANCE BONDING FOR AUTHORITY PUBLIC WORK CONTRACTS THAT ARE NOT SMALL BUSINESS MENTORING PROGRAM CONTRACTS, FOR WHICH THE SMALL BUSINESS IS OTHERWISE QUALIFIED.

3. WITHDRAWAL OF DESIGNATION OF SMALL BUSINESS MENTORING PROGRAM CONTRACTS. (A) IF THE TOTAL NUMBER OF QUALIFIED SMALL BUSINESS MENTORING PROGRAM PARTICIPANTS THAT RESPOND TO A COMPETITION AND ARE CONSIDERED CAPABLE OF MEETING THE SPECIFICATIONS AND TERMS OF THE INVITATION TO COMPETE IS LESS THAN THREE, OR IF THE EXECUTIVE DIRECTOR OR THE EXECUTIVE DIRECTOR'S DESIGNEE DETERMINES THAT ACCEPTANCE OF THE BEST OFFER WILL RESULT IN THE PAYMENT OF AN UNREASONABLE PRICE, THE AUTHORITY MAY REJECT ALL OFFERS AND WITHDRAW THE DESIGNATION OF THE CONTRACT AS A SMALL BUSINESS MENTORING PROGRAM CONTRACT.

(B) IF THE AUTHORITY WITHDRAWS THE DESIGNATION OF CONTRACT AS A SMALL BUSINESS MENTORING PROGRAM CONTRACT, THE FIRMS, IF ANY, THAT MADE OFFERS SHALL BE NOTIFIED. INVITATIONS TO COMPETE CONTAINING THE SAME OR REWRITTEN SPECIFICATIONS AND TERMS SHALL THEN BE RE-ISSUED AS A SMALL BUSINESS MENTORING PROGRAM CONTRACT FOR ONE OR MORE ADDITIONAL CONTRACT PERIOD.

4. CONSTRUCTION MANAGER MENTORS. A MENTOR SHALL PROVIDE SERVICES AND ASSISTANCE TO A SMALL BUSINESS AS DESIGNATED BY THE AUTHORITY, WHICH MAY INCLUDE THE FOLLOWING: (A) PROVIDE BUSINESS TRAINING IN THE SKILLS NECESSARY TO OPERATE A SUCCESSFUL CONSTRUCTION BUSINESS AND TO COMPETE FOR AND PERFORM A PUBLIC WORK CONTRACT;

(B) PROVIDE TECHNICAL ASSISTANCE TO THE SMALL BUSINESS TO ASSESS THE OUTCOME IF THE SMALL BUSINESS COMPETES FOR BUT IS NOT AWARDED A CONTRACT;

(C) IF THE SMALL BUSINESS MENTORING PROGRAM CONTRACT IS AWARDED TO THE SMALL BUSINESS, PROVIDE GUIDANCE, ADVICE AND TECHNICAL ASSISTANCE TO THE SMALL BUSINESS IN THE PERFORMANCE OF THE CONTRACT;

(D) PROVIDE OTHER TECHNICAL ASSISTANCE TO THE SMALL BUSINESS TO FACILITATE LEARNING, TRAINING AND OTHER ISSUES WHICH MAY ARISE.

5. THE AUTHORITY MAY DELEGATE TO THE EXECUTIVE DIRECTOR OR THE EXECUTIVE DIRECTOR'S DESIGNEE, THE AUTHORITY'S RESPONSIBILITIES SET FORTH HEREIN.

6. THE SMALL BUSINESS MENTORING PROGRAM CONTRACTS AUTHORIZED BY THIS LEGISLATION SHALL, FOR THE INITIAL YEAR OF THE PROGRAM, BE IN AN AGGREGATE AMOUNT OF NOT LESS THAN TEN MILLION DOLLARS, AND SHALL NOT EXCEED ONE HUNDRED MILLION DOLLARS, WITH THE MAXIMUM AMOUNT IN FUTURE YEARS TO BE SET BY THE EXECUTIVE DIRECTOR.

S 3. This act shall take effect January 1, 2010 and shall expire December 31, 2019 when upon such date the provisions of this act shall be deemed repealed; provided that such expiration shall not apply to pending and awarded public work contracts and provided further that effective immediately, the addition, amendment or repeal of any rule, regulation or standard necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.