6782

2011-2012 Regular Sessions

IN ASSEMBLY

March 31, 2011

Introduced by M. of A. BRENNAN -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, in relation to subcontracting by public authorities

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

1 Section 1. Article 9 of the public authorities law is amended by 2 adding a new title 4-A to read as follows:

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TITLE 4-A SUBCONTRACTING BY PUBLIC AUTHORITIES

5 SECTION 2883. CONTRACTS FOR PROFESSIONAL, MAINTENANCE, CLERICAL, OR 6 TECHNICAL SERVICES.

S 2883. CONTRACTS FOR PROFESSIONAL, MAINTENANCE, CLERICAL, OR TECHNI8 CAL SERVICES. 1. DEFINITIONS. AS USED IN THIS TITLE, THE FOLLOWING TERMS
9 HAVE THE FOLLOWING MEANINGS, UNLESS OTHERWISE SPECIFIED:

10 "PUBLIC AUTHORITY" MEANS (1) ANY PUBLIC AUTHORITY, PUBLIC BENEFIT (A) CORPORATION, OR COMMISSION CREATED BY OR EXISTING 11 UNDER THIS CHAPTER; (2) ANY PUBLIC AUTHORITY OR A PUBLIC BENEFIT CORPORATION, AT LEAST ONE 12 OF WHOSE MEMBERS IS APPOINTED BY THE GOVERNOR OR WHO SERVES AS A MEMBER 13 VIRTUE OF HOLDING A CIVIL OFFICE OF THE STATE; (3) A NOT-FOR-PROFIT 14 ΒY 15 CORPORATION AFFILIATED WITH, SPONSORED BY, OR CREATED BY A STATE AGENCY; (4) A NOT-FOR-PROFIT CORPORATION CREATED BY OR EXISTING UNDER 16 ARTICLE 17 TWO OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW AND OPERATING UNDER AN EXCLUSIVE FRANCHISE GRANTED 18 ΒY THE STATE; (5) A MUNICIPAL 19 INDUSTRIAL DEVELOPMENT AGENCY OR OTHER LOCAL PUBLIC BENEFIT CORPORATION; OR (6) A SUBSIDIARY OR AFFILIATE OF A PUBLIC AUTHORITY. 20

(B) "CONTRACT" MEANS AN ENFORCEABLE AGREEMENT, ENTERED INTO BY A
 CONTRACTOR AND A PUBLIC AUTHORITY, WHICH EXCEEDS TWO HUNDRED FIFTY THOU SAND DOLLARS. A SINGLE CONTRACT WHICH IS DIVIDED INTO SEPARATE CONTRACTS

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

LBD09606-01-1

SOLELY TO AVOID THE APPLICATION OF THIS TITLE SHALL BE DEEMED A SINGLE 1 2 CONTRACT FOR PURPOSES OF THIS TITLE. 3 (C) "CONTRACTOR" MEANS ANY PERSON, PARTNERSHIP, FIRM, CORPORATION, 4 ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER ENTITY RENDERING OR 5 PROVIDING PROFESSIONAL, MAINTENANCE, CLERICAL, OR TECHNICAL SERVICES 6 PURSUANT TO A CONTRACT WITH A PUBLIC AUTHORITY. 7 (D) "SERVICES" MEANS ANY PROFESSIONAL, MAINTENANCE, CLERICAL, OR TECH-NICAL SERVICES CURRENTLY PERFORMED BY MEMBERS OF THE PROFESSIONAL, MAIN-8 9 TENANCE, CLERICAL, AND TECHNICAL BARGAINING UNIT OF A PUBLIC AUTHORITY 10 WHICH COME WITHIN THE SCOPE OF THE PROFESSIONAL PRACTICE OF THE OR MEMBERS OF SUCH BARGAINING UNIT. 11 12 (E) "CHANGE ORDER" MEANS A WRITTEN ORDER BY A PUBLIC AUTHORITY DIRECT-13 ING THE CONTRACTOR TO MAKE CHANGES IN A CONTRACT. 14 (F) "CONTRACT MODIFICATION" MEANS ANY WRITTEN ALTERATION TO SPECIFICA-15 TIONS, DELIVERY POINT, RATE OF DELIVERY, PERIOD OF PERFORMANCE, PRICE, QUALITY, OR OTHER PROVISIONS OF ANY CONTRACT ACCOMPLISHED BY MUTUAL 16 17 ACTION OF THE PARTIES TO THE CONTRACT. 2. GUIDELINES FOR CONTRACTING FOR SERVICES. NO CONTRACT WITH A 18 19 CONTRACTOR FOR SERVICES SHALL BE ENTERED INTO BY A PUBLIC AUTHORITY UNLESS CONTRACTING FOR SUCH SERVICES IS: 20 21 (A) COST EFFECTIVE WHEN COMPARED TO THE COST OF HAVING A PUBLIC 22 AUTHORITY PERFORM THE WORK; OR 23 (B) REOUIRED FOR A SHORT DURATION, MAKING IT IMPRACTICAL TO HIRE 24 BARGAINING UNIT EMPLOYEES TO PERFORM THE SERVICE; OR 25 (C) REOUIRED FOR SPECIAL EXPERTISE NOT CURRENTLY AVAILABLE IN THE 26 BARGAINING UNIT; OR 27 (D) REOUIRED DUE TO AN URGENT NEED SUCH THAT THE DELAY IN HIRING 28 EMPLOYEES WOULD FRUSTRATE THE PUBLIC INTEREST; OR 29 (E) REQUIRED TO AVOID A CONFLICT OF INTEREST; OR (F) OTHERWISE REQUIRED TO BE SO CONTRACTED; OR 30 (G) IN COMPLIANCE WITH THE PUBLIC AUTHORITY'S AFFIRMATIVE ACTION 31 32 EFFORTS AND WILL NOT CAUSE THE PUBLIC AUTHORITY TO FAIL TO MEET ITS AFFIRMATIVE ACTION GOALS. A CONTRACTOR MUST ALSO MEET OR EXCEED 33 THE 34 PUBLIC AUTHORITY'S GOALS FOR AFFIRMATIVE ACTION; OR 35 IN COMPLIANCE WITH THE REQUIREMENTS OF APPLICABLE STATE, LOCAL, (H) 36 AND FEDERAL LAW. 37 3. COST BENEFIT ANALYSIS. IN DETERMINING IF A CONTRACT IS COST EFFEC-38 TIVE, THE PUBLIC AUTHORITY SHALL PERFORM A COST BENEFIT ANALYSIS WHICH 39 SHALL EVALUATE, BUT NOT BE LIMITED TO, THE FOLLOWING FACTORS: 40 (A) REIMBURSEMENT FROM OTHER SOURCES; (B) BOTH THE DIRECT AND INDIRECT COSTS OF PERFORMING THE WORK; 41 WHETHER OR NOT THE CONTRACTOR PROVIDES WAGES AND SUPPLEMENTS TO 42 (C)43 ITS EMPLOYEES WHICH ARE COMPARABLE TO THOSE PAID TO SIMILAR EMPLOYEES 44 PERFORMING SIMILAR WORK IN THE GEOGRAPHIC AREA WHERE THE WORK IS TO BE 45 PERFORMED. A CONTRACT MAY NOT BE CONSIDERED COST EFFECTIVE IF SUCH WAGES 46 AND SUPPLEMENTS ARE SUBSTANTIALLY BELOW THOSE CUSTOMARILY PAID IN THE 47 AREA; AND 48 (D) THE QUALITY OF SERVICE BEING PROVIDED. 49 4. REVIEW OF CONTRACTS FOR SERVICES. (A) PRIOR TO EXECUTING A CONTRACT 50 FOR SERVICES, A PUBLIC AUTHORITY SHALL PREPARE A SPECIFIC STATEMENT 51 WHICH SETS FORTH THE OBJECTIVE DATA SUPPORTING THE REASONS WHY THE PROPOSED CONTRACT MEETS THE REQUIREMENTS SET FORTH IN SUBDIVISION TWO OF 52 53 THIS SECTION. 54 (B) (1) PRIOR TO THE SCHEDULED AWARD OF A CONTRACT FOR SERVICES, A 55 PUBLIC AUTHORITY SHALL PROVIDE TO THE EMPLOYEE ORGANIZATION THAT REPRES-56 ENTS PUBLIC AUTHORITY EMPLOYEES WHO WOULD OTHERWISE PERFORM SUCH

SERVICES WITH COPIES OF THE STATEMENT RENDERED PURSUANT TO PARAGRAPH (A) 1 2 OF THIS SUBDIVISION AND THE PROPOSED CONTRACT SO THAT SUCH EMPLOYEE 3 ORGANIZATION SHALL HAVE AT LEAST FIFTEEN DAYS TO OBJECT TO THE PROPOSED CONTRACT. AN EMPLOYEE ORGANIZATION WHICH PROVIDES TIMELY WRITTEN NOTICE 4 5 OF OBJECTION AND THE REASONS THEREFOR SHALL, UNLESS THE PUBLIC AUTHORITY 6 AGREES IN WRITING TO WITHDRAW THE PROPOSED CONTRACT, BE PERMITTED TO BE 7 HEARD BY THE PUBLIC AUTHORITY ON ITS OBJECTIONS PRIOR TO THE AWARD OF 8 THE CONTRACT. WITHIN FIFTEEN DAYS OF RECEIPT OF ANY SUCH OBJECTIONS, THE PUBLIC AUTHORITY, AFTER CONSIDERING THE OBJECTIONS OF THE EMPLOYEE 9 10 ORGANIZATION, SHALL NOTIFY THE EMPLOYEE ORGANIZATION WHETHER THE PUBLIC AUTHORITY WILL WITHDRAW THE PROPOSED CONTRACT OR ENTER INTO 11 THE THE PUBLIC AUTHORITY DECIDES TO ENTER INTO THE CONTRACT, 12 CONTRACT. ΙF AND THE EMPLOYEE ORGANIZATION STILL BELIEVES THAT THE CONTRACT IS IN 13 14 VIOLATION OF THE GUIDELINES IN SUBDIVISION TWO OF THIS SECTION, THE 15 EMPLOYEE ORGANIZATION SHALL HAVE THE RIGHT TO BRING A PROCEEDING PURSU-16 ANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES TO 17 DETERMINE WHETHER OR NOT THE APPROVAL WAS IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION. 18

19 (2) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH ONE OF THIS PARA-20 GRAPH, THE EMPLOYEE ORGANIZATION MAY BE PROVIDED LESS THAN THE REQUIRED 21 FIFTEEN DAYS TO OBJECT TO THE PROPOSED CONTRACT WHEN THE CONTRACT IS 22 REQUIRED TO RESPOND TO AN EMERGENCY WITHIN THE SCOPE OF PARAGRAPH (D) OF 23 SUBDIVISION TWO OF THIS SECTION.

5. CHANGE ORDERS AND CONTRACT MODIFICATIONS. IF A PUBLIC AUTHORITY INTENDS TO CHANGE, BY USE OF A CHANGE ORDER OR CONTRACT MODIFICATION, A CONTRACT FOR SERVICES, AND SUCH CHANGE RESULTS IN CAUSING THE AMOUNT OF THE CONTRACT TO EXCEED ONE HUNDRED TWENTY-FIVE PERCENT OF THE ORIGINAL CONTRACT AMOUNT, THEN APPROVAL OF SUCH CHANGES SHALL BE SUBJECT TO THE PROVISIONS OF SUBDIVISION FOUR OF THIS SECTION.

30 S 2. This act shall take effect on the first of April next succeeding 31 the date on which it shall have become a law.