

BIDDER IN CONJUNCTION WITH THE AWARD OF A STATE CONTRACT OR A PROPOSED PARTY TO A STATE CONTRACT.

4. "DIRECTOR" SHALL MEAN THE DIRECTOR OF THE DIVISION OF VETERAN-OWNED BUSINESS DEVELOPMENT IN THE DEPARTMENT OF ECONOMIC DEVELOPMENT.

5. "VETERAN" SHALL MEAN A RESIDENT OF THIS STATE, WHO HAS SERVED ON ACTIVE DUTY IN THE UNITED STATES ARMY, NAVY, AIR FORCE, MARINES, COAST GUARD, AND/ OR RESERVES THEREOF, AND/OR THE ARMY NATIONAL GUARD, AIR NATIONAL GUARD, NEW YORK GUARD AND/OR THE NEW YORK NAVAL MILITIA, AND WHO IS CURRENTLY IN SERVICE, OR HAS BEEN RELEASED FROM SUCH SERVICE BY HONORABLE DISCHARGE, OR WHO HAS BEEN FURLOUGHED TO THE RESERVE.

6. "VETERAN-OWNED BUSINESS ENTERPRISE" SHALL MEAN A BUSINESS ENTERPRISE, INCLUDING A SOLE PROPRIETORSHIP, PARTNERSHIP, CORPORATION, OR LIMITED LIABILITY COMPANY THAT IS:

(A) AT LEAST FIFTY-ONE PERCENT OWNED BY A VETERAN;

(B) AN ENTERPRISE IN WHICH SUCH VETERAN OWNERSHIP IS REAL, SUBSTANTIAL AND CONTINUING;

(C) AN ENTERPRISE IN WHICH SUCH VETERAN OWNERSHIP HAS AND EXERCISES THE AUTHORITY TO CONTROL INDEPENDENTLY THE DAY-TO-DAY BUSINESS DECISIONS OF THE ENTERPRISE;

(D) AN ENTERPRISE AUTHORIZED TO DO BUSINESS IN THIS STATE AND INDEPENDENTLY OWNED AND OPERATED;

(E) AN ENTERPRISE OWNED BY AN INDIVIDUAL OR INDIVIDUALS, WHOSE OWNERSHIP, CONTROL AND OPERATION ARE RELIED UPON FOR CERTIFICATION, WITH A PERSONAL NET WORTH THAT DOES NOT EXCEED THREE MILLION FIVE HUNDRED THOUSAND DOLLARS, AS ADJUSTED ANNUALLY ON THE FIRST OF JANUARY FOR INFLATION ACCORDING TO THE CONSUMER PRICE INDEX OF THE PREVIOUS YEAR; AND

(F) AN ENTERPRISE THAT IS A SMALL BUSINESS PURSUANT TO SUBDIVISION FOURTEEN OF THIS SECTION.

7. "STATE AGENCY" SHALL MEAN:

(A) (I) ANY STATE DEPARTMENT; OR

(II) ANY DIVISION, BOARD, COMMISSION OR BUREAU OF ANY STATE DEPARTMENT; OR

(III) THE STATE UNIVERSITY OF NEW YORK AND THE CITY UNIVERSITY OF NEW YORK, INCLUDING ALL THEIR CONSTITUENT UNITS EXCEPT COMMUNITY COLLEGES AND THE INDEPENDENT INSTITUTIONS OPERATING STATUTORY OR CONTRACT COLLEGES ON BEHALF OF THE STATE; OR

(IV) A BOARD, A MAJORITY OF WHOSE MEMBERS ARE APPOINTED BY THE GOVERNOR OR WHO SERVE BY VIRTUE OF BEING STATE OFFICERS OR EMPLOYEES AS DEFINED IN SUBPARAGRAPH (I), (II) OR (III) OF PARAGRAPH (I) OF SUBDIVISION ONE OF SECTION SEVENTY-THREE OF THE PUBLIC OFFICERS LAW; OR

(B) A "STATE AUTHORITY," AS DEFINED IN SUBDIVISION ONE OF SECTION TWO OF THE PUBLIC AUTHORITIES LAW.

8. "STATE ASSISTED HOUSING PROJECT" OR "PROJECT" SHALL MEAN, FOR SUCH PROJECTS WHICH RECEIVE FROM THE NEW YORK STATE HOUSING FINANCE AGENCY, THE AFFORDABLE HOUSING CORPORATION, THE HOUSING TRUST FUND CORPORATION OR THE DIVISION OF HOUSING AND COMMUNITY RENEWAL A GRANT OR LOAN FOR ALL OR PART OF THE TOTAL PROJECT COST:

(A) A "PERMANENT HOUSING PROJECT FOR HOMELESS FAMILIES" AS DEFINED IN SUBDIVISION FIVE OF SECTION SIXTY-FOUR OF THE PRIVATE HOUSING FINANCE LAW;

(B) A "PROJECT" AS DEFINED IN SUBDIVISION TWELVE OF SECTION ONE THOUSAND ONE HUNDRED ONE OF THE PRIVATE HOUSING FINANCE LAW PROVIDED SAID PROJECT IS LOCATED IN A LARGE COUNTY AND CONSISTS OF MORE THAN TWELVE RESIDENTIAL UNITS AT A SINGLE SITE;

(C) "AFFORDABLE HOME OWNERSHIP DEVELOPMENT PROGRAMS" AS DEFINED IN SUBDIVISION EIGHT OF SECTION ONE THOUSAND ONE HUNDRED ELEVEN OF THE

PRIVATE HOUSING FINANCE LAW PROVIDED SAID PROJECT IS LOCATED IN A METROPOLITAN AREA AS HEREIN DEFINED AND CONSISTS OF MORE THAN TWELVE RESIDENTIAL UNITS AT A SINGLE SITE;

(D) A "TURNKEY/ENHANCED RENTAL PROJECT" AS DEFINED IN SUBDIVISION TWO OF SECTION ONE THOUSAND ONE HUNDRED SIX-A OF THE PRIVATE HOUSING FINANCE LAW;

(E) "INFRASTRUCTURE IMPROVEMENTS" AS DEFINED IN SUBDIVISION TWO OF SECTION ONE THOUSAND ONE HUNDRED THIRTY-ONE OF THE PRIVATE HOUSING FINANCE LAW, TO THE EXTENT THAT SUCH "INFRASTRUCTURE IMPROVEMENTS" ARE APPLIED FOR IN CONNECTION WITH A STATE ASSISTED HOUSING PROJECT AS DEFINED IN PARAGRAPHS (A) THROUGH (D) OF THIS SUBDIVISION AND PROVIDED FURTHER THAT THE APPLICANT FOR SUCH INFRASTRUCTURE IMPROVEMENTS AND FOR SUCH STATE ASSISTED HOUSING PROJECT ARE IDENTICAL.

9. "STATE CONTRACT" SHALL MEAN:

(A) A WRITTEN AGREEMENT OR PURCHASE ORDER INSTRUMENT, PROVIDING FOR A TOTAL EXPENDITURE IN EXCESS OF TWENTY-FIVE THOUSAND DOLLARS, WHEREBY A CONTRACTING AGENCY IS COMMITTED TO EXPEND OR DOES EXPEND FUNDS IN RETURN FOR LABOR, SERVICES INCLUDING BUT NOT LIMITED TO LEGAL, FINANCIAL AND OTHER PROFESSIONAL SERVICES, SUPPLIES, EQUIPMENT, MATERIALS OR ANY COMBINATION OF THE FOREGOING, TO BE PERFORMED FOR, OR RENDERED OR FURNISHED TO THE CONTRACTING AGENCY;

(B) A WRITTEN AGREEMENT IN EXCESS OF ONE HUNDRED THOUSAND DOLLARS WHEREBY A CONTRACTING AGENCY IS COMMITTED TO EXPEND OR DOES EXPEND FUNDS FOR THE ACQUISITION, CONSTRUCTION, DEMOLITION, REPLACEMENT, MAJOR REPAIR OR RENOVATION OF REAL PROPERTY AND IMPROVEMENTS THEREON; AND

(C) A WRITTEN AGREEMENT IN EXCESS OF ONE HUNDRED THOUSAND DOLLARS WHEREBY THE OWNER OF A STATE ASSISTED HOUSING PROJECT IS COMMITTED TO EXPEND OR DOES EXPEND FUNDS FOR THE ACQUISITION, CONSTRUCTION, DEMOLITION, REPLACEMENT, MAJOR REPAIR OR RENOVATION OF REAL PROPERTY AND IMPROVEMENTS THEREON FOR SUCH PROJECT.

10. "SUBCONTRACT" SHALL MEAN AN AGREEMENT PROVIDING FOR A TOTAL EXPENDITURE IN EXCESS OF TWENTY-FIVE THOUSAND DOLLARS FOR THE CONSTRUCTION, DEMOLITION, REPLACEMENT, MAJOR REPAIR, RENOVATION, PLANNING OR DESIGN OF REAL PROPERTY AND IMPROVEMENTS THEREON BETWEEN A CONTRACTOR AND ANY INDIVIDUAL OR BUSINESS ENTERPRISE, INCLUDING A SOLE PROPRIETORSHIP, PARTNERSHIP, CORPORATION, OR NOT-FOR-PROFIT CORPORATION, IN WHICH A PORTION OF A CONTRACTOR'S OBLIGATION UNDER A STATE CONTRACT IS UNDERTAKEN OR ASSUMED, BUT SHALL NOT INCLUDE ANY CONSTRUCTION, DEMOLITION, REPLACEMENT, MAJOR REPAIR, RENOVATION, PLANNING OR DESIGN OF REAL PROPERTY OR IMPROVEMENTS THEREON FOR THE BENEFICIAL USE OF THE CONTRACTOR.

11. "COMMISSIONER" SHALL MEAN THE COMMISSIONER OF ECONOMIC DEVELOPMENT.

12. "LESSEE" SHALL MEAN AN INDIVIDUAL, A BUSINESS ENTERPRISE, INCLUDING A SOLE PROPRIETORSHIP, A PARTNERSHIP, A CORPORATION, A NOT-FOR-PROFIT CORPORATION, OR ANY OTHER PARTY TO A LEASE WITH A STATE AGENCY AS DEFINED IN SUBDIVISION SEVEN OF THIS SECTION, OR A RESPONDENT IN CONJUNCTION WITH THE AWARD OF SUCH A LEASE OR A PROPOSED LESSEE WITH A STATE AGENCY AS DEFINED IN SUBDIVISION SEVEN OF THIS SECTION.

13. "PERSONAL NET WORTH" SHALL MEAN THE AGGREGATE ADJUSTED NET VALUE OF THE ASSETS OF AN INDIVIDUAL REMAINING AFTER TOTAL LIABILITIES ARE DEDUCTED. PERSONAL NET WORTH INCLUDES THE INDIVIDUAL'S SHARE OF ASSETS HELD JOINTLY WITH SAID INDIVIDUAL'S SPOUSE AND DOES NOT INCLUDE THE INDIVIDUAL'S OWNERSHIP INTEREST IN THE VETERAN-OWNED BUSINESS ENTERPRISE, THE INDIVIDUAL'S EQUITY IN HIS OR HER PRIMARY RESIDENCE, OR UP TO FIVE HUNDRED THOUSAND DOLLARS OF THE PRESENT CASH VALUE OF ANY QUALIFIED

1 RETIREMENT SAVINGS PLAN OR INDIVIDUAL RETIREMENT ACCOUNT HELD BY THE
2 INDIVIDUAL LESS ANY PENALTIES FOR EARLY WITHDRAWAL.

3 14. "SMALL BUSINESS" AS USED IN THIS SECTION, UNLESS OTHERWISE INDI-
4 CATED, SHALL MEAN A BUSINESS WHICH HAS A SIGNIFICANT BUSINESS PRESENCE
5 IN THE STATE, IS INDEPENDENTLY OWNED AND OPERATED, AND EMPLOYS, BASED ON
6 ITS INDUSTRY, A CERTAIN NUMBER OF PERSONS AS DETERMINED BY THE DIRECTOR,
7 BUT NOT TO EXCEED THREE HUNDRED, TAKING INTO CONSIDERATION FACTORS WHICH
8 INCLUDE, BUT ARE NOT LIMITED TO, FEDERAL SMALL BUSINESS ADMINISTRATION
9 STANDARDS. THE DIRECTOR MAY ISSUE REGULATIONS ON THE CONSTRUCTION OF THE
10 TERMS IN THIS DEFINITION.

11 S 369-A. OPPORTUNITIES FOR VETERAN-OWNED BUSINESS ENTERPRISES. 1.
12 GOALS AND REQUIREMENTS FOR AGENCIES AND CONTRACTORS. EACH AGENCY SHALL
13 STRUCTURE PROCUREMENT PROCEDURES FOR CONTRACTS MADE DIRECTLY OR INDI-
14 RECTLY TO VETERAN-OWNED BUSINESS ENTERPRISES, CONSISTENT WITH THE
15 PURPOSES OF THIS ARTICLE, TO ATTEMPT TO ACHIEVE THE FOLLOWING RESULTS
16 WITH REGARD TO TOTAL ANNUAL STATEWIDE PROCUREMENT:

17 (A) CONSTRUCTION INDUSTRY FOR CERTIFIED VETERAN-OWNED BUSINESS ENTER-
18 PRISES: THREE PERCENT;

19 (B) CONSTRUCTION RELATED PROFESSIONAL SERVICES INDUSTRY FOR CERTIFIED
20 VETERAN-OWNED BUSINESS ENTERPRISES: THREE PERCENT;

21 (C) NON-CONSTRUCTION RELATED SERVICES INDUSTRY FOR CERTIFIED VETERAN-
22 OWNED BUSINESS ENTERPRISES: THREE PERCENT;

23 (D) COMMODITIES INDUSTRY FOR CERTIFIED VETERAN-OWNED BUSINESS ENTER-
24 PRISES: THREE PERCENT; AND

25 (E) OVERALL AGENCY TOTAL DOLLAR VALUE OF PROCUREMENT FOR CERTIFIED
26 VETERAN-OWNED BUSINESS ENTERPRISES: THREE PERCENT.

27 2. THE DIRECTOR SHALL PROMULGATE RULES AND REGULATIONS PURSUANT TO THE
28 GOALS ESTABLISHED IN SUBDIVISION ONE OF THIS SECTION THAT PROVIDE MEAS-
29 URES AND PROCEDURES TO ENSURE THAT CERTIFIED VETERAN-OWNED BUSINESSES
30 SHALL BE GIVEN THE OPPORTUNITY FOR MAXIMUM FEASIBLE PARTICIPATION IN THE
31 PERFORMANCE OF STATE CONTRACTS AND TO ASSIST IN THE AGENCY'S IDENTIFICA-
32 TION OF THOSE STATE CONTRACTS FOR WHICH VETERAN-OWNED CERTIFIED BUSI-
33 NESSES MAY BEST BID TO ACTIVELY AND AFFIRMATIVELY PROMOTE AND ASSIST
34 THEIR PARTICIPATION IN THE PERFORMANCE OF STATE CONTRACTS SO AS TO
35 FACILITATE THE AGENCY'S ACHIEVEMENT OF THE MAXIMUM FEASIBLE PORTION OF
36 THE GOALS FOR STATE CONTRACTS TO SUCH BUSINESSES.

37 2-A. THE DIRECTOR SHALL PROMULGATE RULES AND REGULATIONS THAT WILL
38 ACCOMPLISH THE FOLLOWING:

39 (A) PROVIDE FOR THE CERTIFICATION AND DECERTIFICATION OF VETERAN-OWNED
40 BUSINESS ENTERPRISES FOR ALL AGENCIES THROUGH A SINGLE PROCESS THAT
41 MEETS APPLICABLE REQUIREMENTS;

42 (B) REQUIRE THAT EACH CONTRACT SOLICITATION DOCUMENT ACCOMPANYING EACH
43 SOLICITATION SET FORTH THE EXPECTED DEGREE OF VETERAN-OWNED BUSINESS
44 ENTERPRISE PARTICIPATION BASED, IN PART, ON:

45 (I) THE POTENTIAL SUBCONTRACT OPPORTUNITIES AVAILABLE IN THE PRIME
46 PROCUREMENT CONTRACT; AND

47 (II) THE AVAILABILITY, AS CONTAINED WITHIN THE STUDY, OF CERTIFIED
48 VETERAN-OWNED BUSINESS ENTERPRISES TO RESPOND COMPETITIVELY TO THE
49 POTENTIAL SUBCONTRACT OPPORTUNITIES;

50 (C) REQUIRE THAT EACH AGENCY PROVIDE A CURRENT LIST OF CERTIFIED
51 VETERAN BUSINESS ENTERPRISES TO EACH PROSPECTIVE CONTRACTOR;

52 (D) ALLOW A CONTRACTOR THAT IS A CERTIFIED VETERAN-OWNED BUSINESS
53 ENTERPRISE TO USE THE WORK IT PERFORMS TO MEET REQUIREMENTS FOR USE OF
54 VETERAN-OWNED BUSINESS ENTERPRISES AS SUBCONTRACTORS;

55 (E) PROVIDE FOR JOINT VENTURES, WHICH A BIDDER MAY COUNT TOWARD MEET-
56 ING ITS VETERAN-OWNED BUSINESS ENTERPRISE PARTICIPATION;

1 (F) CONSISTENT WITH SUBDIVISION FIVE OF THIS SECTION, PROVIDE FOR
2 CIRCUMSTANCES UNDER WHICH AN AGENCY MAY WAIVE OBLIGATIONS OF THE
3 CONTRACTOR RELATING TO VETERAN BUSINESS ENTERPRISE PARTICIPATION;

4 (G) REQUIRE THAT AN AGENCY VERIFY THAT VETERAN-OWNED BUSINESS ENTER-
5 PRISES LISTED IN A SUCCESSFUL BID ARE ACTUALLY PARTICIPATING TO THE
6 EXTENT LISTED IN THE PROJECT FOR WHICH THE BID WAS SUBMITTED;

7 (H) PROVIDE FOR THE COLLECTION OF STATISTICAL DATA BY EACH AGENCY
8 CONCERNING ACTUAL VETERAN-OWNED BUSINESS ENTERPRISE PARTICIPATION; AND

9 3. SOLELY FOR THE PURPOSE OF PROVIDING THE OPPORTUNITY FOR MEANINGFUL
10 PARTICIPATION BY CERTIFIED BUSINESSES IN THE PERFORMANCE OF STATE
11 CONTRACTS AS PROVIDED IN THIS SECTION, STATE CONTRACTS SHALL INCLUDE
12 LEASES OF REAL PROPERTY BY A STATE AGENCY TO A LESSEE WHERE: THE TERMS
13 OF SUCH LEASES PROVIDE FOR THE CONSTRUCTION, DEMOLITION, REPLACEMENT,
14 MAJOR REPAIR OR RENOVATION OF REAL PROPERTY AND IMPROVEMENTS THEREON BY
15 SUCH LESSEE; AND THE COST OF SUCH CONSTRUCTION, DEMOLITION, REPLACEMENT,
16 MAJOR REPAIR OR RENOVATION OF REAL PROPERTY AND IMPROVEMENTS THEREON
17 SHALL EXCEED THE SUM OF ONE HUNDRED THOUSAND DOLLARS. REPORTS TO THE
18 DIRECTOR PURSUANT TO SECTION THREE HUNDRED SIXTY-NINE-C OF THIS ARTICLE
19 SHALL INCLUDE ACTIVITIES WITH RESPECT TO ALL SUCH STATE CONTRACTS.
20 CONTRACTING AGENCIES SHALL INCLUDE OR REQUIRE TO BE INCLUDED WITH
21 RESPECT TO STATE CONTRACTS FOR THE ACQUISITION, CONSTRUCTION, DEMOLI-
22 TION, REPLACEMENT, MAJOR REPAIR OR RENOVATION OF REAL PROPERTY AND
23 IMPROVEMENTS THEREON, SUCH PROVISIONS AS MAY BE NECESSARY TO EFFECTUATE
24 THE PROVISIONS OF THIS SECTION IN EVERY BID SPECIFICATION AND STATE
25 CONTRACT, INCLUDING, BUT NOT LIMITED TO: (A) PROVISIONS REQUIRING
26 CONTRACTORS TO MAKE A GOOD FAITH EFFORT TO SOLICIT ACTIVE PARTICIPATION
27 BY ENTERPRISES IDENTIFIED IN THE DIRECTORY OF CERTIFIED BUSINESSES
28 PROVIDED TO THE CONTRACTING AGENCY BY THE OFFICE; (B) REQUIRING THE
29 PARTIES TO AGREE AS A CONDITION OF ENTERING INTO SUCH CONTRACT, TO BE
30 BOUND BY THE PROVISIONS OF SECTION THREE HUNDRED SIXTY-NINE-D OF THIS
31 ARTICLE; AND (C) REQUIRING THE CONTRACTOR TO INCLUDE THE PROVISIONS SET
32 FORTH IN PARAGRAPHS (A) AND (B) OF THIS SUBDIVISION IN EVERY SUBCONTRACT
33 IN A MANNER THAT THE PROVISIONS WILL BE BINDING UPON EACH SUBCONTRACTOR
34 AS TO WORK IN CONNECTION WITH SUCH CONTRACT. PROVIDED, HOWEVER, THAT NO
35 SUCH PROVISIONS SHALL BE BINDING UPON CONTRACTORS OR SUBCONTRACTORS IN
36 THE PERFORMANCE OF WORK OR THE PROVISION OF SERVICES THAT ARE UNRELATED,
37 SEPARATE OR DISTINCT FROM THE STATE CONTRACT AS EXPRESSED BY ITS TERMS,
38 AND NOTHING IN THIS SECTION SHALL AUTHORIZE THE DIRECTOR OR ANY
39 CONTRACTING AGENCY TO IMPOSE ANY REQUIREMENT ON A CONTRACTOR OR SUBCON-
40 TRACTOR EXCEPT WITH RESPECT TO A STATE CONTRACT.

41 4. (A) CONTRACTING AGENCIES SHALL ADMINISTER THE RULES AND REGULATIONS
42 PROMULGATED BY THE DIRECTOR IN A GOOD FAITH EFFORT TO MEET THE MAXIMUM
43 FEASIBLE PORTION OF THE AGENCY'S GOALS ADOPTED PURSUANT TO THIS ARTICLE
44 AND THE REGULATIONS OF THE DIRECTOR. SUCH RULES AND REGULATIONS: SHALL
45 REQUIRE A CONTRACTOR TO SUBMIT A UTILIZATION PLAN AFTER BIDS ARE OPENED,
46 WHEN BIDS ARE REQUIRED, BUT PRIOR TO THE AWARD OF A STATE CONTRACT;
47 SHALL REQUIRE THE CONTRACTING AGENCY TO REVIEW THE UTILIZATION PLAN
48 SUBMITTED BY THE CONTRACTOR AND TO POST THE UTILIZATION PLAN AND ANY
49 WAIVERS OF COMPLIANCE ISSUED PURSUANT TO SUBDIVISION FIVE OF THIS
50 SECTION ON THE WEBSITE OF THE CONTRACTING AGENCY WITHIN A REASONABLE
51 PERIOD OF TIME AS ESTABLISHED BY THE DIRECTOR; SHALL REQUIRE THE
52 CONTRACTING AGENCY TO NOTIFY THE CONTRACTOR IN WRITING WITHIN A PERIOD
53 OF TIME SPECIFIED BY THE DIRECTOR AS TO ANY DEFICIENCIES CONTAINED IN
54 THE CONTRACTOR'S UTILIZATION PLAN; SHALL REQUIRE REMEDY THEREOF WITHIN A
55 PERIOD OF TIME SPECIFIED BY THE DIRECTOR; SHALL REQUIRE THE CONTRACTOR
56 TO SUBMIT PERIODIC COMPLIANCE REPORTS RELATING TO THE OPERATION AND

1 IMPLEMENTATION OF ANY UTILIZATION PLAN; SHALL NOT ALLOW ANY AUTOMATIC
2 WAIVERS BUT SHALL ALLOW A CONTRACTOR TO APPLY FOR A PARTIAL OR TOTAL
3 WAIVER OF THE VETERAN-OWNED BUSINESS ENTERPRISE PARTICIPATION REQUIRE-
4 MENTS PURSUANT TO SUBDIVISIONS FIVE AND SIX OF THIS SECTION; SHALL ALLOW
5 A CONTRACTOR TO FILE A COMPLAINT WITH THE DIRECTOR PURSUANT TO SUBDIVI-
6 SION SIX OF THIS SECTION IN THE EVENT A CONTRACTING AGENCY HAS FAILED OR
7 REFUSED TO ISSUE A WAIVER OF THE VETERAN-OWNED BUSINESS ENTERPRISE
8 PARTICIPATION REQUIREMENTS OR HAS DENIED SUCH REQUEST FOR A WAIVER.

9 (B) THE RULES AND REGULATIONS PROMULGATED PURSUANT TO THIS SUBDIVISION
10 REGARDING A UTILIZATION PLAN SHALL PROVIDE THAT WHERE ENTERPRISES HAVE
11 BEEN IDENTIFIED WITHIN A UTILIZATION PLAN, A CONTRACTOR SHALL ATTEMPT,
12 IN GOOD FAITH, TO UTILIZE SUCH ENTERPRISE AT LEAST TO THE EXTENT INDI-
13 CATED. A CONTRACTING AGENCY MAY REQUIRE A CONTRACTOR TO INDICATE, WITHIN
14 A UTILIZATION PLAN, WHAT MEASURES AND PROCEDURES HE OR SHE INTENDS TO
15 TAKE TO COMPLY WITH THE PROVISIONS OF THIS ARTICLE, BUT MAY NOT REQUIRE,
16 AS A CONDITION OF AWARD OF, OR COMPLIANCE WITH, A CONTRACT THAT A
17 CONTRACTOR UTILIZE A PARTICULAR ENTERPRISE IN PERFORMANCE OF THE
18 CONTRACT.

19 (C) WITHOUT LIMITING OTHER GROUNDS FOR THE DISQUALIFICATION OF BIDS OR
20 PROPOSALS ON THE BASIS OF NON-RESPONSIBILITY, A CONTRACTING AGENCY MAY
21 DISQUALIFY THE BID OR PROPOSAL OF A CONTRACTOR AS BEING NON-RESPONSIBLE
22 FOR FAILURE TO REMEDY NOTIFIED DEFICIENCIES CONTAINED IN THE CONTRAC-
23 TOR'S UTILIZATION PLAN WITHIN A PERIOD OF TIME SPECIFIED IN REGULATIONS
24 PROMULGATED BY THE DIRECTOR AFTER RECEIVING NOTIFICATION OF SUCH DEFI-
25 CIENCIES FROM THE CONTRACTING AGENCY. WHERE FAILURE TO REMEDY ANY NOTI-
26 FIED DEFICIENCY IN THE UTILIZATION PLAN IS A GROUND FOR DISQUALIFICA-
27 TION, THAT ISSUE AND ALL OTHER GROUNDS FOR DISQUALIFICATION SHALL BE
28 STATED IN WRITING BY THE CONTRACTING AGENCY. WHERE THE CONTRACTING AGEN-
29 CY STATES THAT A FAILURE TO REMEDY ANY NOTIFIED DEFICIENCY IN THE UTILI-
30 ZATION PLAN IS A GROUND FOR DISQUALIFICATION THE CONTRACTOR SHALL BE
31 ENTITLED TO AN ADMINISTRATIVE HEARING, ON A RECORD, INVOLVING ALL
32 GROUNDS STATED BY THE CONTRACTING AGENCY. SUCH HEARING SHALL BE
33 CONDUCTED BY THE APPROPRIATE AUTHORITY OF THE CONTRACTING AGENCY TO
34 REVIEW THE DETERMINATION OF DISQUALIFICATION. A FINAL ADMINISTRATIVE
35 DETERMINATION MADE FOLLOWING SUCH HEARING SHALL BE REVIEWABLE IN A
36 PROCEEDING COMMENCED UNDER ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE
37 LAW AND RULES, PROVIDED THAT SUCH PROCEEDING IS COMMENCED WITHIN THIRTY
38 DAYS OF THE NOTICE GIVEN BY CERTIFIED MAIL RETURN RECEIPT REQUESTED
39 RENDERING SUCH FINAL ADMINISTRATIVE DETERMINATION. SUCH PROCEEDING
40 SHALL BE COMMENCED IN THE SUPREME COURT, APPELLATE DIVISION, THIRD
41 DEPARTMENT AND SUCH PROCEEDING SHALL BE PREFERRED OVER ALL OTHER CIVIL
42 CAUSES EXCEPT ELECTION CAUSES, AND SHALL BE HEARD AND DETERMINED IN
43 PREFERENCE TO ALL OTHER CIVIL BUSINESS PENDING THEREIN, EXCEPT ELECTION
44 MATTERS, IRRESPECTIVE OF POSITION ON THE CALENDAR. APPEALS TAKEN TO THE
45 COURT OF APPEALS OF THE STATE OF NEW YORK SHALL BE SUBJECT TO THE SAME
46 PREFERENCE.

47 5. WHERE IT APPEARS THAT A CONTRACTOR CANNOT, AFTER A GOOD FAITH
48 EFFORT, COMPLY WITH THE VETERAN-OWNED BUSINESS ENTERPRISE PARTICIPATION
49 REQUIREMENTS SET FORTH IN A PARTICULAR STATE CONTRACT, A CONTRACTOR MAY
50 FILE A WRITTEN APPLICATION WITH THE CONTRACTING AGENCY REQUESTING A
51 PARTIAL OR TOTAL WAIVER OF SUCH REQUIREMENTS SETTING FORTH THE REASONS
52 FOR SUCH CONTRACTOR'S INABILITY TO MEET ANY OR ALL OF THE PARTICIPATION
53 REQUIREMENTS TOGETHER WITH AN EXPLANATION OF THE EFFORTS UNDERTAKEN BY
54 THE CONTRACTOR TO OBTAIN THE REQUIRED VETERAN-OWNED BUSINESS ENTERPRISE
55 PARTICIPATION. IN IMPLEMENTING THE PROVISIONS OF THIS SECTION, THE
56 CONTRACTING AGENCY SHALL CONSIDER THE NUMBER AND TYPES OF VETERAN-OWNED

1 BUSINESS ENTERPRISES LOCATED IN THE REGION IN WHICH THE STATE CONTRACT
2 IS TO BE PERFORMED, THE TOTAL DOLLAR VALUE OF THE STATE CONTRACT, THE
3 SCOPE OF WORK TO BE PERFORMED AND THE PROJECT SIZE AND TERM. IF, BASED
4 ON SUCH CONSIDERATIONS, THE CONTRACTING AGENCY DETERMINES THERE IS NOT A
5 REASONABLE AVAILABILITY OF CONTRACTORS ON THE LIST OF CERTIFIED BUSINESS
6 TO FURNISH SERVICES FOR THE PROJECT, IT SHALL ISSUE A WAIVER OF COMPLI-
7 ANCE TO THE CONTRACTOR. IN MAKING SUCH DETERMINATION, THE CONTRACTING
8 AGENCY SHALL FIRST CONSIDER THE AVAILABILITY OF OTHER BUSINESS ENTER-
9 PRISES LOCATED IN THE REGION AND SHALL THEREAFTER CONSIDER THE FINANCIAL
10 ABILITY OF VETERAN-OWNED BUSINESSES LOCATED OUTSIDE THE REGION IN WHICH
11 THE CONTRACT IS TO BE PERFORMED TO PERFORM THE STATE CONTRACT.

12 6. IN THE EVENT THAT A CONTRACTING AGENCY FAILS OR REFUSES TO ISSUE A
13 WAIVER TO A CONTRACTOR AS REQUESTED WITHIN TWENTY DAYS AFTER HAVING MADE
14 APPLICATION THEREFORE PURSUANT TO SUBDIVISION FIVE OF THIS SECTION OR IF
15 THE CONTRACTING AGENCY DENIES SUCH APPLICATION, IN WHOLE OR IN PART, THE
16 CONTRACTOR MAY FILE A COMPLAINT WITH THE DIRECTOR PURSUANT TO SECTION
17 THREE HUNDRED SIXTY-NINE-D OF THIS ARTICLE SETTING FORTH THE FACTS AND
18 CIRCUMSTANCES GIVING RISE TO THE CONTRACTOR'S COMPLAINT TOGETHER WITH A
19 DEMAND FOR RELIEF. THE CONTRACTOR SHALL SERVE A COPY OF SUCH COMPLAINT
20 UPON THE CONTRACTING AGENCY BY PERSONAL SERVICE OR BY CERTIFIED MAIL,
21 RETURN RECEIPT REQUESTED. THE CONTRACTING AGENCY SHALL BE AFFORDED AN
22 OPPORTUNITY TO RESPOND TO SUCH COMPLAINT IN WRITING.

23 7. IF, AFTER THE REVIEW OF A CONTRACTOR'S VETERAN-OWNED BUSINESS
24 UTILIZATION PLAN OR REVIEW OF A PERIODIC COMPLIANCE REPORT AND AFTER
25 SUCH CONTRACTOR HAS BEEN AFFORDED AN OPPORTUNITY TO RESPOND TO A NOTICE
26 OF DEFICIENCY ISSUED BY THE CONTRACTING AGENCY IN CONNECTION THEREWITH,
27 IT APPEARS THAT A CONTRACTOR IS FAILING OR REFUSING TO COMPLY WITH THE
28 VETERAN-OWNED BUSINESS PARTICIPATION REQUIREMENTS AS SET FORTH IN THE
29 STATE CONTRACT AND WHERE NO WAIVER FROM SUCH REQUIREMENTS HAS BEEN
30 GRANTED, THE CONTRACTING AGENCY MAY FILE A WRITTEN COMPLAINT WITH THE
31 DIRECTOR PURSUANT TO SECTION THREE HUNDRED SIXTY-NINE-D OF THIS ARTICLE
32 SETTING FORTH THE FACTS AND CIRCUMSTANCES GIVING RISE TO THE CONTRACTING
33 AGENCY'S COMPLAINT TOGETHER WITH A DEMAND FOR RELIEF. THE CONTRACTING
34 AGENCY SHALL SERVE A COPY OF SUCH COMPLAINT UPON THE CONTRACTOR BY
35 PERSONAL SERVICE OR BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED. THE
36 CONTRACTOR SHALL BE AFFORDED AN OPPORTUNITY TO RESPOND TO SUCH COMPLAINT
37 IN WRITING.

38 S 369-B. STATEWIDE CERTIFICATION PROGRAM. 1. THE DIRECTOR SHALL
39 PROMULGATE RULES AND REGULATIONS PROVIDING FOR THE ESTABLISHMENT OF A
40 STATEWIDE CERTIFICATION PROGRAM INCLUDING RULES AND REGULATIONS GOVERN-
41 ING THE APPROVAL, DENIAL OR REVOCATION OF ANY SUCH CERTIFICATION.

42 2. FOR THE PURPOSES OF THIS ARTICLE, THE OFFICE SHALL BE RESPONSIBLE
43 FOR VERIFYING BUSINESSES AS BEING OWNED, OPERATED, AND CONTROLLED BY
44 VETERANS AND FOR CERTIFYING SUCH VERIFIED BUSINESSES. THE DIRECTOR SHALL
45 PREPARE A DIRECTORY OF CERTIFIED BUSINESSES FOR USE BY CONTRACTING AGEN-
46 CIES AND CONTRACTORS IN CARRYING OUT THE PROVISIONS OF THIS ARTICLE. THE
47 DIRECTOR SHALL PERIODICALLY UPDATE THE DIRECTORY.

48 3. FOLLOWING APPLICATION FOR CERTIFICATION PURSUANT TO THIS SECTION,
49 THE DIRECTOR SHALL PROVIDE THE APPLICANT WITH WRITTEN NOTICE OF THE
50 STATUS OF THE APPLICATION, INCLUDING NOTICE OF ANY OUTSTANDING DEFICIEN-
51 CIES, WITHIN THIRTY DAYS. WITHIN SIXTY DAYS OF SUBMISSION OF A FINAL
52 COMPLETED APPLICATION, THE DIRECTOR SHALL PROVIDE THE APPLICANT WITH
53 WRITTEN NOTICE OF A DETERMINATION BY THE OFFICE APPROVING OR DENYING
54 SUCH CERTIFICATION AND, IN THE EVENT OF A DENIAL A STATEMENT SETTING
55 FORTH THE REASONS FOR SUCH DENIAL. UPON A DETERMINATION DENYING OR
56 REVOKING CERTIFICATION, THE BUSINESS ENTERPRISE FOR WHICH CERTIFICATION

1 HAS BEEN SO DENIED OR REVOKED SHALL, UPON WRITTEN REQUEST MADE WITHIN
2 THIRTY DAYS FROM RECEIPT OF NOTICE OF SUCH DETERMINATION, BE ENTITLED TO
3 A HEARING BEFORE AN INDEPENDENT HEARING OFFICER DESIGNATED FOR SUCH
4 PURPOSE BY THE DIRECTOR. IN THE EVENT THAT A REQUEST FOR A HEARING IS
5 NOT MADE WITHIN SUCH THIRTY DAY PERIOD, SUCH DETERMINATION SHALL BE
6 DEEMED TO BE FINAL. THE INDEPENDENT HEARING OFFICER SHALL CONDUCT A
7 HEARING AND UPON THE CONCLUSION OF SUCH HEARING, ISSUE A WRITTEN RECOM-
8 MENDATION TO THE DIRECTOR TO AFFIRM, REVERSE OR MODIFY SUCH DETERMI-
9 NATION OF THE DIRECTOR. SUCH WRITTEN RECOMMENDATION SHALL BE ISSUED TO
10 THE PARTIES. THE DIRECTOR, WITHIN THIRTY DAYS, BY ORDER, MUST ACCEPT,
11 REJECT OR MODIFY SUCH RECOMMENDATION OF THE HEARING OFFICER AND SET
12 FORTH IN WRITING THE REASONS THEREFOR. THE DIRECTOR SHALL SERVE A COPY
13 OF SUCH ORDER AND REASONS THEREFOR UPON THE BUSINESS ENTERPRISE BY
14 PERSONAL SERVICE OR BY CERTIFIED MAIL RETURN RECEIPT REQUESTED. THE
15 ORDER OF THE DIRECTOR SHALL BE SUBJECT TO REVIEW PURSUANT TO ARTICLE
16 SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

17 4. ALL CERTIFICATIONS SHALL BE VALID FOR A PERIOD OF THREE YEARS.

18 S 369-C. RESPONSIBILITIES OF CONTRACTING AGENCIES. 1. EACH CONTRACTING
19 AGENCY SHALL BE RESPONSIBLE FOR MONITORING STATE CONTRACTS UNDER ITS
20 JURISDICTION, AND RECOMMENDING MATTERS TO THE OFFICE RESPECTING NON-COM-
21 PLIANCE WITH THE PROVISIONS OF THIS ARTICLE SO THAT THE OFFICE MAY TAKE
22 SUCH ACTION AS IS APPROPRIATE TO INSURE COMPLIANCE WITH THE PROVISIONS
23 OF THIS ARTICLE, THE RULES AND REGULATIONS OF THE DIRECTOR ISSUED HERE-
24 UNDER AND THE CONTRACTUAL PROVISIONS REQUIRED PURSUANT TO THIS ARTICLE.
25 ALL CONTRACTING AGENCIES SHALL COMPLY WITH THE RULES AND REGULATIONS OF
26 THE OFFICE AND ARE DIRECTED TO COOPERATE WITH THE OFFICE AND TO FURNISH
27 TO THE OFFICE SUCH INFORMATION AND ASSISTANCE AS MAY BE REQUIRED IN THE
28 PERFORMANCE OF ITS FUNCTIONS UNDER THIS ARTICLE.

29 2. EACH CONTRACTING AGENCY SHALL PROVIDE TO PROSPECTIVE BIDDERS A
30 CURRENT COPY OF THE DIRECTORY OF CERTIFIED BUSINESSES, AND A COPY OF THE
31 REGULATIONS REQUIRED PURSUANT TO SECTIONS THREE HUNDRED SIXTY-NINE-A OF
32 THIS ARTICLE AT THE TIME BIDS OR PROPOSALS ARE SOLICITED.

33 3. EACH CONTRACTING AGENCY SHALL REPORT TO THE DIRECTOR WITH RESPECT
34 TO ACTIVITIES UNDERTAKEN TO PROMOTE EMPLOYMENT OF VETERANS AND PROMOTE
35 AND INCREASE PARTICIPATION BY CERTIFIED BUSINESSES WITH RESPECT TO STATE
36 CONTRACTS AND SUBCONTRACTS. SUCH REPORTS SHALL BE SUBMITTED PERIOD-
37 ICALLY, BUT NOT LESS FREQUENTLY THAN ANNUALLY, AS REQUIRED BY THE DIREC-
38 TOR, AND SHALL INCLUDE SUCH INFORMATION AS IS NECESSARY FOR THE DIRECTOR
39 TO DETERMINE WHETHER THE CONTRACTING AGENCY AND CONTRACTOR HAVE COMPLIED
40 WITH THE PURPOSES OF THIS ARTICLE, INCLUDING, WITHOUT LIMITATION, A
41 SUMMARY OF ALL WAIVERS OF THE REQUIREMENTS OF SUBDIVISIONS FIVE AND SIX
42 OF SECTION THREE HUNDRED SIXTY-NINE-A OF THIS ARTICLE ALLOWED BY THE
43 CONTRACTING AGENCY DURING THE PERIOD COVERED BY THE REPORT, INCLUDING A
44 DESCRIPTION OF THE BASIS OF THE WAIVER REQUEST AND THE RATIONALE FOR
45 GRANTING ANY SUCH WAIVER. EACH AGENCY SHALL ALSO INCLUDE IN SUCH ANNUAL
46 REPORT WHETHER OR NOT IT HAS BEEN REQUIRED TO PREPARE A REMEDIAL PLAN,
47 AND, IF SO, THE PLAN AND THE EXTENT TO WHICH THE AGENCY HAS COMPLIED
48 WITH EACH ELEMENT OF THE PLAN.

49 S 369-D. ENFORCEMENT. UPON RECEIPT BY THE DIRECTOR OF A COMPLAINT BY A
50 CONTRACTING AGENCY THAT A CONTRACTOR HAS VIOLATED THE PROVISIONS OF A
51 STATE CONTRACT WHICH HAVE BEEN INCLUDED TO COMPLY WITH THE PROVISIONS OF
52 THIS ARTICLE OR OF A CONTRACTOR THAT A CONTRACTING AGENCY HAS VIOLATED
53 SUCH PROVISIONS OR HAS FAILED OR REFUSED TO ISSUE A WAIVER WHERE ONE HAS
54 BEEN APPLIED FOR PURSUANT TO SUBDIVISION FIVE OF SECTION THREE HUNDRED
55 SIXTY-NINE-A OF THIS ARTICLE OR HAS DENIED SUCH APPLICATION, THE DIREC-
56 TOR SHALL ATTEMPT TO RESOLVE THE MATTER GIVING RISE TO SUCH COMPLAINT.

1 IF EFFORTS TO RESOLVE SUCH MATTER TO THE SATISFACTION OF ALL PARTIES ARE
2 UNSUCCESSFUL, THE DIRECTOR SHALL REFER THE MATTER, WITHIN THIRTY DAYS OF
3 THE RECEIPT OF THE COMPLAINT, TO THE DIVISION'S HEARING OFFICERS. UPON
4 CONCLUSION OF THE ADMINISTRATIVE HEARING, THE HEARING OFFICER SHALL
5 SUBMIT TO THE DIRECTOR HIS OR HER DECISION REGARDING THE ALLEGED
6 VIOLATION OF THE CONTRACT AND RECOMMENDATIONS REGARDING THE IMPOSITION
7 OF SANCTIONS, FINES OR PENALTIES. THE DIRECTOR, WITHIN TEN DAYS OF
8 RECEIPT OF THE DECISION, SHALL FILE A DETERMINATION OF SUCH MATTER AND
9 SHALL CAUSE A COPY OF SUCH DETERMINATION ALONG WITH A COPY OF THIS ARTI-
10 CLE TO BE SERVED UPON THE CONTRACTOR BY PERSONAL SERVICE OR BY CERTIFIED
11 MAIL RETURN RECEIPT REQUESTED. THE DECISION OF THE HEARING OFFICER SHALL
12 BE FINAL AND MAY ONLY BE VACATED OR MODIFIED AS PROVIDED IN ARTICLE
13 SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES UPON AN APPLICATION
14 MADE WITHIN THE TIME PROVIDED BY SUCH ARTICLE. THE DETERMINATION OF THE
15 DIRECTOR AS TO THE IMPOSITION OF ANY FINES, SANCTIONS OR PENALTIES SHALL
16 BE REVIEWABLE PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE
17 LAW AND RULES. THE PENALTIES IMPOSED FOR ANY VIOLATION WHICH IS PREMISED
18 UPON EITHER A FRAUDULENT OR INTENTIONAL MISREPRESENTATION BY THE
19 CONTRACTOR OR THE CONTRACTOR'S WILLFUL AND INTENTIONAL DISREGARD OF THE
20 VETERAN-OWNED PARTICIPATION REQUIREMENT INCLUDED IN THE CONTRACT MAY
21 INCLUDE A DETERMINATION THAT THE CONTRACTOR SHALL BE INELIGIBLE TO
22 SUBMIT A BID TO ANY CONTRACTING AGENCY OR BE AWARDED ANY SUCH CONTRACT
23 FOR A PERIOD NOT TO EXCEED ONE YEAR FOLLOWING THE FINAL DETERMINATION;
24 PROVIDED HOWEVER, IF A CONTRACTOR HAS PREVIOUSLY BEEN DETERMINED TO BE
25 INELIGIBLE TO SUBMIT A BID PURSUANT TO THIS SECTION, THE PENALTIES
26 IMPOSED FOR ANY SUBSEQUENT VIOLATION, IF SUCH VIOLATION OCCURS WITHIN
27 FIVE YEARS OF THE FIRST VIOLATION, MAY INCLUDE A DETERMINATION THAT THE
28 CONTRACTOR SHALL BE INELIGIBLE TO SUBMIT A BID TO ANY CONTRACTING AGENCY
29 OR BE AWARDED ANY SUCH CONTRACT FOR A PERIOD NOT TO EXCEED FIVE YEARS
30 FOLLOWING THE FINAL DETERMINATION. THE DIVISION OF VETERAN'S BUSINESS
31 DEVELOPMENT SHALL MAINTAIN A WEBSITE LISTING ALL CONTRACTORS THAT HAVE
32 BEEN DEEMED INELIGIBLE TO SUBMIT A BID PURSUANT TO THIS SECTION AND THE
33 DATE AFTER WHICH EACH CONTRACTOR SHALL ONCE AGAIN BECOME ELIGIBLE TO
34 SUBMIT BIDS.

35 S 369-E. SEVERABILITY. IF ANY CLAUSE, SENTENCE, PARAGRAPH, SECTION OR
36 PART OF THIS ARTICLE SHALL BE ADJUDGED BY ANY COURT OF COMPETENT JURIS-
37 DICTION TO BE INVALID, THE JUDGMENT SHALL NOT AFFECT, IMPAIR OR INVALI-
38 DATE THE REMAINDER THEREOF, BUT SHALL BE CONFINED IN ITS OPERATION TO
39 THE CLAUSE, SENTENCE, PARAGRAPH, SECTION OR PART OF THIS ARTICLE DIRECT-
40 LY INVOLVED IN THE CONTROVERSY IN WHICH THE JUDGMENT SHALL HAVE BEEN
41 RENDERED.

42 S 2. This act shall take effect immediately.