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

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2011-2012 Regular Sessions

I N S E N A T E

January 18, 2011

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:

Section 1. The public authorities law is amended by adding three new sections 2878-c, 2878-d and 2878-e to read as follows:

S 2878-C. LETTING OF CONTRACTS. 1. ALL PUBLIC AUTHORITIES AND PUBLIC BENEFIT CORPORATIONS, UNLESS OTHERWISE REQUIRED BY LAW TO AWARD CONTRACTS FOR THE PURCHASE OF SUPPLIES, MATERIALS OR EQUIPMENT TO THE LOWEST RESPONSIBLE BIDDER AFTER HAVING OBTAINED SEALED BIDS, SHALL AWARD CONTRACTS IN THE MANNER PROVIDED IN THIS SECTION.

2. ALL PURCHASE CONTRACTS FOR SUPPLIES, MATERIALS OR EQUIPMENT INVOLVING AN ESTIMATED EXPENDITURE IN EXCESS OF TWENTY-FIVE THOUSAND DOLLARS SHALL BE AWARDED BY PUBLIC AUTHORITIES OR PUBLIC BENEFIT CORPORATIONS TO THE LOWEST RESPONSIBLE BIDDER FURNISHING REQUIRED SECURITY, IF SECURITY IS TO BE REQUIRED, AFTER OBTAINING SEALED BIDS IN THE MANNER HEREINAFTER SET FORTH. NOTHING IN THIS SECTION SHALL PROHIBIT THE EVALUATION OF BIDS ON THE BASIS OF THE LIFE CYCLE COST OF THE SUPPLIES, MATERIALS AND EQUIPMENT TO BE PURCHASED SO LONG AS THE INVITATION TO BID CLEARLY SETS FORTH THE OBJECTIVELY MEASURABLE CRITERIA TO BE USED IN EVALUATING THE LIFE CYCLE COST OF THE ITEM TO BE PURCHASED. SUCH CRITERIA MAY INCLUDE BUT SHALL NOT BE LIMITED TO COSTS OR SAVINGS ASSOCIATED WITH DISCOUNTS, TRANSPORTATION, INSTALLATION, ENERGY USE, MAINTENANCE, OPERATION AND SALVAGE OR DISPOSAL. A PUBLIC AUTHORITY OR PUBLIC BENEFIT CORPORATION MAY, IN ITS DISCRETION, REJECT ALL BIDS AND OBTAIN NEW BIDS IN THE MANNER PROVIDED BY THIS SECTION OR, IN CASES WHERE TWO OR MORE RESPONSIBLE BIDDERS FURNISHING SECURITY, IF REQUIRED BY THE AUTHORITY, SUBMIT IDENTICAL BIDS AS TO PRICE, AWARD THE CONTRACT TO ANY OF SUCH

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

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BIDDERS OR OBTAIN NEW BIDS FROM SUCH BIDDERS. NOTHING IN THIS SECTION SHALL OBLIGATE THE AUTHORITY TO SEEK NEW BIDS AFTER THE REJECTION OF BIDS OR AFTER CANCELLATION OF A BID.

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

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

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

(A) THE EXISTENCE OF AN EMERGENCY INVOLVING DANGER TO LIFE AND PROPERTY OR OTHER UNFORESEEN OCCURRENCE REQUIRES IMMEDIATE ACTION AND CANNOT AWAIT COMPETITIVE BIDDING;

(B) THE ITEM TO BE PURCHASED IS AVAILABLE ONLY FROM A SINGLE RESPONSIBLE SOURCE;

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

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

(E) THE PUBLIC AUTHORITY OR PUBLIC BENEFIT CORPORATION DETERMINES THAT IT IS IN THE PUBLIC INTEREST TO AWARD CONTRACTS BY NEGOTIATION AND WITHOUT COMPETITIVE BIDDING BECAUSE THE MARKET FOR A PARTICULAR PRODUCT IS EXTREMELY VOLATILE AND, AS A RESULT, THERE IS INSUFFICIENT TIME TO CONDUCT THE COMPETITIVE BIDDING PROCESS;

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

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

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

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

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

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

6. UPON THE ADOPTION OF A RESOLUTION BY A PUBLIC AUTHORITY OR PUBLIC BENEFIT CORPORATION STATING, FOR REASONS OF EFFICIENCY, ECONOMY, COMPATIBILITY OR MAINTENANCE RELIABILITY, THAT THERE IS A NEED FOR STANDARDIZATION, PURCHASE CONTRACTS FOR PARTICULAR SUPPLIES, MATERIALS OR EQUIPMENT IDENTIFIED ON A QUALIFIED PRODUCTS LIST, WHICH LIST MIGHT BE MODIFIED FROM TIME TO TIME BY AN OFFICER OF THE AUTHORITY IN ACCORDANCE WITH PROCEDURES PROVIDED IN SUCH RESOLUTION, MAY BE AWARDED BY THE PUBLIC AUTHORITY OR PUBLIC BENEFIT CORPORATION, TO THE LOWEST RESPONSIBLE BIDDER AFTER OBTAINING SEALED BIDS IN ACCORDANCE WITH THIS SECTION OR WITHOUT COMPETITIVE SEALED BIDS IN INSTANCES WHEN THE ITEM IS AVAILABLE FROM ONLY A SINGLE SOURCE.

7. EVERY PUBLIC AUTHORITY AND PUBLIC BENEFIT CORPORATION SHALL COMPILE A LIST OF POTENTIAL SOURCES OF SUPPLIES, MATERIALS OR EQUIPMENT REGULARLY PURCHASED. THE PUBLIC AUTHORITY OR PUBLIC BENEFIT CORPORATION SHALL, IN ITS ANNUAL REPORT, OR IF THERE BE NONE, ANNUALLY IN THE MINUTES OF ITS PROCEEDINGS, SET FORTH THE PROCEDURES IT HAS ESTABLISHED TO IDENTIFY NEW SOURCES AND TO NOTIFY SUCH NEW SOURCES OF THE OPPORTUNITY TO BID FOR CONTRACTS FOR THE PURCHASE OF SUPPLIES, MATERIALS OR EQUIPMENT. SUCH PROCEDURES SHALL INCLUDE, BUT NOT BE LIMITED TO: (A) ADVERTISING IN TRADE JOURNALS; (B) COOPERATION WITH FEDERAL, STATE AND LOCAL COMMUNITY AGENCIES WITHIN ITS AREA OF OPERATIONS; AND (C) THE

ESTABLISHMENT OF PROCEDURES PURSUANT TO PARAGRAPH B OF SUBDIVISION THIRTEEN OF SECTION TWELVE HUNDRED SIXTY-SIX-C OF THIS CHAPTER.

8. THE PROVISIONS OF THIS SECTION SHALL NOT SUPERCEDE ANY OTHER PROVISIONS OF LAW RELATING TO PURCHASES OF PRODUCTS OR DEVICES MANUFACTURED OR PROVIDED BY THE BLIND AND OTHER SEVERELY HANDICAPPED, TO THE INVITATION AND ACCEPTANCE OF BIDS FROM SMALL OR MINORITY BUSINESS ENTERPRISES OR TO THE PURCHASES OF SUPPLIES, MATERIALS OR EQUIPMENT THROUGH THE OFFICE OF GENERAL SERVICES. EXCEPT AS MAY OTHERWISE BE PROVIDED BY LAW OR AS MORE RESTRICTIVELY DEFINED IN THE OFFICIAL POLICY OR BID SPECIFICATIONS OF A PUBLIC AUTHORITY OR PUBLIC BENEFIT CORPORATION, THE TERM "SMALL BUSINESS" MEANS A SOLE PROPRIETORSHIP, FIRM OR CORPORATION HAVING TEN OR LESS PRINCIPALS OR STOCKHOLDERS AND EMPLOYING FEWER THAN ONE HUNDRED EMPLOYEES.

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

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

(B) FOR THE PURPOSES OF THIS SUBDIVISION, A "NEW YORK BIDDER" IS A PERSON OR ENTITY WHO OR WHICH HAS ITS PRINCIPAL PLACE OF BUSINESS IN THIS STATE, OR WHO OR WHICH CONDUCTS A SUBSTANTIAL PORTION OF ITS ECONOMIC ACTIVITY WITHIN THIS STATE, OR WHO OR WHICH MANUFACTURES A PRODUCT WITHIN NEW YORK STATE WHICH PRODUCT IS THE SUBJECT OF THE BID TO BE AWARDED. A BIDDER WHO OR WHICH CLAIMS TO BE A NEW YORK BIDDER SHALL SUBMIT TO THE AUTHORITY OR PUBLIC BENEFIT CORPORATION ADEQUATE PROOF THAT IT MEETS THE REQUIREMENTS OF THIS DEFINITION AND THAT IT WILL CONTINUE TO MEET SUCH REQUIREMENTS FOR THE DURATION OF THE CONTRACT TO BE AWARDED. IF A CONTRACT IS AWARDED TO A NEW YORK BIDDER PURSUANT TO THIS SUBDIVISION AND THEN SUBSEQUENT TO THE AWARD AND DURING THE TERM OF THE CONTRACT OR PENDING ITS IMPLEMENTATION, THE NEW YORK BIDDER NO LONGER MEETS THE DEFINITIONAL REQUIREMENTS OF A NEW YORK BIDDER, SUCH BIDDER MAY, AT THE DISCRETION OF THE AUTHORITY OR PUBLIC BENEFIT CORPORATION, BE REQUIRED TO FORFEIT SUCH CONTRACT OR BE DISQUALIFIED FROM BEING AWARDED ANY CONTRACTS BY THE AUTHORITY OR PUBLIC BENEFIT CORPORATION FOR A PERIOD OF THREE YEARS FROM THE DATE OF THE AUTHORITY'S OR CORPORATION'S DISCOVERY THAT SUCH BIDDER IS NO LONGER A NEW YORK BIDDER, OR BE SUBJECT TO BOTH SUCH CONSEQUENCES FOR LOSS OF ITS STATUS AS A NEW YORK BIDDER WHILE THE CONTRACT IS IN EFFECT OR PENDING ITS IMPLEMENTATION. EVERY NEW YORK BIDDER AWARDED A CONTRACT PURSUANT TO THIS SUBDIVISION SHALL SUBMIT PROOF PERIODICALLY OF ITS CONTINUING STATUS AS A NEW YORK BIDDER DURING THE TERM OF ANY CONTRACT AWARDED PURSUANT TO THIS SUBDIVISION AT SUCH TIMES AS THE AUTHORITY OR PUBLIC BENEFIT CORPORATION SHALL REQUIRE. FAILURE TO SUBMIT SUCH PROOF WITHIN THIRTY DAYS OF A REQUEST BY THE AUTHORITY OR PUBLIC BENEFIT CORPORATION FOR THE SAME SHALL RESULT IN THE AUTOMATIC LOSS OF ITS STATUS AS A NEW YORK BIDDER FOR THE PURPOSES OF THIS PARAGRAPH. ALL CONTRACTS AWARDED PURSUANT TO

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

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

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

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

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

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

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

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

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

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

S 2878-E. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PROGRAM. 1. (A) IN THE PERFORMANCE OF PROJECTS PURSUANT TO THIS CHAPTER MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES SHALL BE GIVEN THE OPPORTUNITY FOR MEANINGFUL PARTICIPATION. THE AUTHORITY SHALL ESTABLISH MEASURES AND PROCEDURES TO SECURE MEANINGFUL PARTICIPATION AND IDENTIFY THOSE CONTRACTS AND ITEMS OF WORK FOR WHICH MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES MAY BEST BID TO ACTIVELY AND AFFIRMATIVELY PROMOTE AND ASSIST THEIR PARTICIPATION IN THE PROJECTS, SO AS TO FACILITATE THE AWARD OF A FAIR SHARE OF CONTRACTS TO SUCH ENTERPRISES; PROVIDED, HOWEVER, THAT NOTHING IN THIS TITLE SHALL BE CONSTRUED TO LIMIT THE ABILITY OF THE AUTHORITY TO ASSURE THAT QUALIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES MAY PARTICIPATE IN THE PROGRAM. FOR PURPOSES HEREOF, MINORITY BUSINESS ENTERPRISE SHALL MEAN ANY BUSINESS ENTERPRISE WHICH IS AT LEAST FIFTY-ONE PER CENTUM OWNED BY, OR IN THE CASE OF A PUBLICLY OWNED BUSINESS, AT LEAST FIFTY-ONE PER CENTUM OF THE STOCK OF WHICH IS OWNED BY CITIZENS OR PERMANENT RESIDENT ALIENS WHO ARE BLACK, HISPANIC, ASIAN OR AMERICAN INDIAN, PACIFIC ISLANDER OR ALASKAN NATIVES AND SUCH OWNERSHIP INTEREST IS REAL, SUBSTANTIAL AND CONTINUING AND HAVE THE AUTHORITY TO INDEPENDENTLY CONTROL THE DAY-TO-DAY BUSINESS DECISIONS OF THE ENTITY; AND WOMEN-OWNED BUSINESS ENTERPRISE SHALL MEAN ANY BUSINESS ENTERPRISE WHICH IS AT LEAST FIFTY-ONE PER CENTUM OWNED BY, OR IN THE CASE OF A PUBLICLY OWNED BUSINESS, AT LEAST FIFTY-ONE PER CENTUM OF THE STOCK OF WHICH IS OWNED BY CITIZENS OR PERMANENT RESIDENT ALIENS WHO ARE WOMEN, AND SUCH OWNERSHIP INTEREST IS REAL, SUBSTANTIAL AND CONTINUING AND HAVE THE AUTHORITY TO INDEPENDENTLY CONTROL THE DAY-TO-DAY BUSINESS DECISIONS OF THE ENTITY.

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

(B) IN THE IMPLEMENTATION OF THIS SECTION, THE AUTHORITY SHALL CONSIDER COMPLIANCE BY ANY CONTRACTOR WITH THE REQUIREMENTS OF ANY FEDERAL, STATE, OR LOCAL LAW CONCERNING MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES, WHICH MAY EFFECTUATE THE REQUIREMENTS OF THIS SECTION. IF THE AUTHORITY DETERMINES THAT BY VIRTUE OF THE IMPOSITION OF THE REQUIREMENTS OF ANY SUCH LAW, IN RESPECT TO PROJECT CONTRACTS, THE PROVISIONS THEREOF DUPLICATE OR CONFLICT WITH THIS SECTION, THE AUTHORITY MAY WAIVE THE APPLICABILITY OF THIS SECTION TO THE EXTENT OF SUCH DUPLICATION OR CONFLICT.

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

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

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