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

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I N S E N A T E

June 18, 2012

Introduced by Sens. GOLDEN, GRISANTI, LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the state finance law, the public authorities law and the education law, in relation to establishing a preference for New York state entities contracting with New York based vendors

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

Section 1. Paragraph j of subdivision 1 of section 163 of the state finance law, as amended by section 2 of part L of chapter 55 of the laws of 2012, is amended to read as follows:

j. "Best value" means the basis for awarding contracts for services to the offerer which optimizes quality, cost and efficiency, among responsive and responsible offerers. Such basis shall reflect, wherever possible, objective and quantifiable analysis. Such basis may also identify a quantitative factor for offerers that are small businesses or certified minority- or women-owned business enterprises as defined in subdivisions one, seven, fifteen and twenty of section three hundred ten of the executive law to be used in evaluation of offers for awarding of contracts for services. FOR STATE AGENCIES, SUCH BASIS SHALL IDENTIFY A QUALITATIVE FACTOR FOR NEW YORK BASED VENDORS. A "NEW YORK BASED VENDOR" IS ANY ENTITY WHOSE PRIMARY BUSINESS PRESENCE IS LOCATED IN NEW YORK STATE, THAT REALIZES, ALONG WITH THE GROSS REVENUES OF ITS AFFILIATES AND RELATED MEMBERS, NO LESS THAN FIFTY PERCENT OF ITS COMBINED GROSS REVENUES, AS DEFINED BY GENERALLY ACCEPTED ACCOUNTING PRINCIPLES, FROM BUSINESS ACTIVITY GENERATED IN NEW YORK STATE, AND THAT HAS AT LEAST FIFTY-ONE PERCENT OF ITS, INCLUDING ITS AFFILIATED AND RELATED MEMBERS, FULLTIME EQUIVALENT EMPLOYEES EMPLOYED IN NEW YORK STATE, AND WHOSE PRIMARY BUSINESS ACTIVITY IS ANY ACTIVITY OTHER THAN GOVERNMENTAL RELATIONS.

S 2. Section 163 of the state finance law is amended by adding a new subdivision 15 to read as follows:

15. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, FOR ANY BIDS RELATED TO A DEVELOPMENT PROJECT UNDERTAKEN BY A STATE AGENCY, THE COST OF WHICH EXCEEDS ONE MILLION DOLLARS IN THE COUNTIES OF NEW YORK, RICH-

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

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MOND, QUEENS, KINGS AND BRONX; EXCEEDS FIVE HUNDRED THOUSAND DOLLARS IN THE COUNTIES OF NASSAU, SUFFOLK AND WESTCHESTER; AND EXCEEDS TWO HUNDRED FIFTY THOUSAND DOLLARS IN ALL OTHER COUNTIES, THE LOWEST BIDDER SHALL BE THE NEW YORK BASED VENDOR AS DEFINED IN PARAGRAPH J OF SUBDIVISION ONE OF THIS SECTION THAT SUBMITS THE LOWEST BID PROVIDED THAT SUCH BID IS NOT MORE THAN FIVE PERCENT ABOVE THE LOWEST BID OF A VENDOR THAT IS NOT A NEW YORK BASED VENDOR. FOR PURPOSES OF THIS SUBDIVISION, "DEVELOPMENT PROJECT" SHALL MEAN THE CONSTRUCTION, RECONSTRUCTION, REHABILITATION, IMPROVEMENT, ACQUISITION, SINGLY OR IN COMBINATION OF ONE OR MORE BUILDINGS OR STRUCTURES.

S 3. Subdivision 10 of section 354 of the public authorities law, as amended by chapter 766 of the laws of 1992, is amended to read as follows:

10. To construct, reconstruct or improve on or along the thruway system in the manner herein provided, suitable facilities for gas stations, restaurants, and other facilities for the public, or to lease the right to construct, reconstruct or improve and operate such facilities; such facilities shall be publicly offered for leasing for operation, or the right to construct, reconstruct or improve and operate such facilities shall be publicly offered under rules and regulations to be established by the authority, provided, however, that lessees operating such facilities at the time this act becomes effective, may reconstruct or improve them or may construct additional like facilities, in the manner and upon such terms and conditions as the board shall determine; and provided further, however, that such facilities constructed, reconstructed or improved on or along the canal system shall be consistent with the canal recreationway plan approved pursuant to section one hundred thirty-eight-c of the canal law and section three hundred eighty-two of this title AND PROVIDED, FURTHER, THAT FOR ANY BIDS RELATED TO THE CONSTRUCTION OR RECONSTRUCTION OF ANY GAS STATIONS, RESTAURANTS AND OTHER FACILITIES, FOR THE PUBLIC, THE COST OF WHICH EXCEEDS TWO HUNDRED FIFTY THOUSAND DOLLARS, THE AUTHORITY SHALL PROVIDE A PREFERENCE TO ANY NEW YORK BASED VENDOR;

S 4. Subdivision 8 of section 1678 of the public authorities law, as amended by chapter 251 of the laws of 1962, is amended to read as follows:

8. By contract or contracts or by its own employees to construct, acquire, reconstruct, rehabilitate and improve, and furnish and equip, dormitories and necessary and usual attendant facilities for state-operated institutions and statutory and contract colleges under the jurisdiction of the state university of New York pursuant to agreement with the state university construction fund created by section three hundred seventy-one of the education law; PROVIDED, THAT ANY SUCH CONTRACT PROVIDE A PREFERENCE TO NEW YORK BASED VENDORS, AS DEFINED IN PARAGRAPH J OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-THREE OF THE STATE FINANCE LAW, IN A MANNER CONSISTENT WITH THE PROVISIONS OF SUBDIVISION FIFTEEN OF SUCH SECTION IF THE CONTRACT IS A LOWEST COST CONTRACT AND PARAGRAPH J OF SUBDIVISION ONE OF SUCH SECTION FOR ALL OTHER CONTRACTS;

S 5. The public authorities law is amended by adding a new section 2879-c to read as follows:

S 2879-C. NEW YORK STATE ENTITIES PREFERRED FOR CERTAIN CONTRACTS. EVERY PUBLIC AUTHORITY AND PUBLIC BENEFIT CORPORATION, A MAJORITY OF THE MEMBERS OF WHICH CONSIST OF PERSONS EITHER APPOINTED BY THE GOVERNOR OR WHO SERVE AS MEMBERS BY VIRTUE OF HOLDING A CIVIL OFFICE OF THE STATE, OR A COMBINATION THEREOF, (SUCH ENTITIES TO BE HEREINAFTER IN THIS SECTION REFERRED TO AS "CORPORATION") SHALL, WHEN REQUIRED TO USE

COMPETITIVE BIDDING FOR THE CONSTRUCTION, RECONSTRUCTION, REHABILITATION, IMPROVEMENT, ACQUISITION, SINGLY OR IN COMBINATION OF ONE OR MORE BUILDINGS OR STRUCTURES, SUCH AUTHORITY SHALL GIVE A PREFERENCE TO ANY NEW YORK BASED VENDOR CONSISTENT WITH THE PROVISIONS OF SUBDIVISION FIFTEEN OF SECTION ONE HUNDRED SIXTY-THREE OF THE STATE FINANCE LAW FOR A LOWEST COST CONTRACT AND PARAGRAPH J OF SUBDIVISION ONE OF SUCH SECTION FOR ALL OTHER CONTRACTS.

S 6. Paragraph b of subdivision 8 of section 376 of the education law, as added by chapter 251 of the laws of 1962, is amended to read as follows:

b. The letting agency shall not award any contract after public bidding except to the lowest bidder who in its opinion is qualified to perform the work required and is responsible and reliable. FOR ANY BIDS RELATED TO A PROJECT UNDERTAKEN PURSUANT TO THIS SECTION, THE COST OF WHICH EXCEEDS ONE MILLION DOLLARS IN THE COUNTIES OF NEW YORK, RICHMOND, QUEENS, KINGS AND BRONX; EXCEEDS FIVE HUNDRED THOUSAND DOLLARS IN THE COUNTIES OF NASSAU, SUFFOLK AND WESTCHESTER; AND EXCEEDS TWO HUNDRED FIFTY THOUSAND DOLLARS IN ALL OTHER COUNTIES, THE LOWEST BIDDER SHALL BE THE NEW YORK BASED VENDOR, AS DEFINED IN PARAGRAPH J OF SUBDIVISION ONE OF SECTION ONE HUNDRED SIXTY-THREE OF THE STATE FINANCE LAW, THAT SUBMITS THE LOWEST BID PROVIDED THAT SUCH BID IS NOT MORE THAN FIVE PERCENT ABOVE THE LOWEST BID OF A VENDOR THAT IS NOT A NEW YORK BASED VENDOR. THE LETTING AGENCY SHALL STILL MAKE A DETERMINATION THAT THE LOWEST BIDDER IS QUALIFIED TO PERFORM THE WORK REQUIRED AND IS RESPONSIBLE AND RELIABLE. The letting agency may, however, reject any or all bids, again advertise for bids, or waive any informality in a bid if it believes that the public interest will be promoted thereby.

S 7. This act shall take effect on the one hundred twentieth day after it shall have become a law; provided, however, that the amendments to section 163 of the state finance law made by sections one and two of this act shall not affect the expiration and repeal of such section, and shall expire and be deemed repealed therewith.