

5593

2013-2014 Regular Sessions

I N A S S E M B L Y

March 4, 2013

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

AN ACT to amend the public authorities law, in relation to oversight of public authority contracts

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

1 Section 1. Section 2824 of the public authorities law is amended by
2 adding a new subdivision 9 to read as follows:
3 9. THE GOVERNING BODY OF EVERY STATE AUTHORITY SHALL ESTABLISH A
4 PROCUREMENT POLICY COMMITTEE THAT SHALL CONSIST OF AT LEAST THREE INDE-
5 PENDENT MEMBERS, UNLESS THERE ARE INSUFFICIENT SEATS ON THE GOVERNING
6 BODY ITSELF TO ALLOW FOR THE APPOINTMENT OF AT LEAST THREE INDEPENDENT
7 MEMBERS, IN WHICH CASE THE PROCUREMENT POLICY COMMITTEE SHALL CONSIST OF
8 ALL THE INDEPENDENT MEMBERS OF THE GOVERNING BODY, AND SUCH COMMITTEE
9 SHALL BE RESPONSIBLE FOR ISSUING APPROPRIATE RULES OR GUIDELINES FOR
10 OVERSIGHT OF ALL CONTRACTING MATTERS IN ACCORDANCE WITH RULES OR GUIDE-
11 LINES ADOPTED BY THE GOVERNING BODY PURSUANT TO SECTION TWENTY-EIGHT
12 HUNDRED SEVENTY-NINE OF THIS ARTICLE.
13 S 2. Section 2879 of the public authorities law, as amended by chapter
14 564 of the laws of 1988, paragraph (b) of subdivision 3 as amended by
15 chapter 45 of the laws of 1994, subparagraph (i) of paragraph (b) of
16 subdivision 3 and subdivision 6 as amended, paragraphs (f), (g), (h),
17 (i) and (j) of subdivision 3 as added and paragraphs (k), (l), (m), (n),
18 (o) and (p) of subdivision 3 as relettered by chapter 174 of the laws of
19 2010, subparagraph (iv) of paragraph (b) of subdivision 3 as amended by
20 chapter 383 of the laws of 1994, paragraph (m) of subdivision 3 as added
21 by chapter 862 of the laws of 1990, paragraph (n) of subdivision 3 and
22 paragraph (a) of subdivision 5 as amended by chapter 531 of the laws of
23 1993, paragraphs (o) and (p) of subdivision 3 and subdivision 5 as added
24 and paragraph (a) of subdivision 8 as amended, subdivisions 7, 8 and 9

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

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1 as renumbered by chapter 844 of the laws of 1992, paragraph (b) of
2 subdivision 5 as amended by chapter 684 of the laws of 1994, subpara-
3 graph (iii) of paragraph (b) and paragraphs (c) and (d) of subdivision 5
4 as amended by chapter 383 of the laws of 2000, is amended to read as
5 follows:

6 S 2879. Procurement, PUBLIC WORK, CONSTRUCTION AND REVENUE contracts.

7 1. (A) Every [public] STATE authority [and public benefit corporation, a
8 majority of the members of which consist of persons either appointed by
9 the governor or who serve as members by virtue of holding a civil office
10 of the state, or a combination thereof, (such entities to be hereinafter
11 in this section referred to as "corporation")] shall adopt by resolution
12 comprehensive RULES OR guidelines which (I) detail the [corporation's]
13 STATE AUTHORITY'S operative policy and instructions regarding the use,
14 awarding, monitoring and reporting of procurement, PUBLIC WORK,
15 CONSTRUCTION AND REVENUE contracts[. Guidelines], AND (II) DESIGNATE A
16 CONTRACTING OFFICER WHO SHALL BE RESPONSIBLE FOR THE PUBLIC AUTHORITY'S
17 COMPLIANCE WITH, AND ENFORCEMENT OF, SUCH RULES OR GUIDELINES. SUCH
18 RULES OR GUIDELINES SHALL BE CONSISTENT WITH, AND SHALL REQUIRE A STATE
19 AUTHORITY'S CONTRACTING ACTIVITIES TO COMPLY WITH THE PROVISIONS OF THE
20 STATE FINANCE LAW OR ANY OTHER LAW APPLICABLE TO CONTRACTS OF THE STATE,
21 EXCEPT THAT SUCH RULES OR GUIDELINES MAY BE STRICTER THAN THE PROVISIONS
22 OF THE STATE FINANCE LAW OR OTHER LAW APPLICABLE TO STATE CONTRACTS IF A
23 STATE AUTHORITY DETERMINES THAT ADDITIONAL SAFEGUARDS ARE NECESSARY TO
24 ASSURE THE INTEGRITY OF ITS OPERATIONS. RULES OR GUIDELINES approved by
25 the [corporation] STATE AUTHORITY shall be annually reviewed and
26 approved by the [corporation.] GOVERNING BODY OF THE STATE AUTHORITY.
27 NOT MORE THAN NINETY DAYS AFTER THE CLOSE OF THE STATE AUTHORITY'S
28 FISCAL YEAR, THE STATE AUTHORITY SHALL FILE WITH THE COMPTROLLER A COPY
29 OF THE RULES OR GUIDELINES MOST RECENTLY REVIEWED AND APPROVED BY THE
30 STATE AUTHORITY, INCLUDING THE NAME OF THE STATE AUTHORITY'S DESIGNATED
31 CONTRACTING OFFICER. AT THE TIME OF FILING SUCH RULES OR GUIDELINES WITH
32 THE COMPTROLLER, EVERY STATE AUTHORITY SHALL ALSO POST SUCH RULES OR
33 GUIDELINES ON THE STATE AUTHORITY'S INTERNET WEBSITE. PROCUREMENT RULES
34 OR GUIDELINES POSTED ON THE STATE AUTHORITY'S INTERNET WEBSITE SHALL BE
35 MAINTAINED ON SUCH WEBSITE AT LEAST UNTIL THE PROCUREMENT RULES OR
36 GUIDELINES FOR THE FOLLOWING YEAR ARE POSTED ON SUCH WEBSITE.

37 (B) THE PROCUREMENT, PUBLIC WORK, CONSTRUCTION, AND REVENUE CONTRACTS
38 OF A STATE AUTHORITY SHALL BE SUBJECT TO PRIOR REVIEW AND APPROVAL BY
39 THE COMPTROLLER, IF THE COMPTROLLER, IN HIS OR HER DISCRETION, DETER-
40 MINES THAT SUCH REVIEW AND APPROVAL SHALL BE REQUIRED. IF THE COMP-
41 TROLLER DETERMINES THAT ANY CONTRACT OR CATEGORY OF CONTRACTS OF A STATE
42 AUTHORITY OR CATEGORY OF STATE AUTHORITIES REQUIRES DIRECT SUPERVISION
43 IN THE FORM OF PRE-APPROVAL OF CONTRACTS AND THE COMPTROLLER SO NOTIFIES
44 ANY STATE AUTHORITY OF SUCH DETERMINATION, THEN NO SUCH CONTRACT OR
45 AGREEMENT BY SUCH STATE AUTHORITY SHALL BE A VALID ENFORCEABLE CONTRACT
46 UNLESS SUCH CONTRACT SHALL FIRST BE APPROVED BY THE COMPTROLLER. IN THE
47 EVENT THAT THE COMPTROLLER NOTIFIES ANY STATE AUTHORITY THAT APPROVAL
48 SHALL BE REQUIRED THEN THE STATE AUTHORITY SHALL (I) INCLUDE IN ALL SUCH
49 CONTRACTS A PROVISION INFORMING THE OTHER PARTIES TO SUCH CONTRACTS THAT
50 THE SAME ARE NOT VALID AND ENFORCEABLE WITHOUT THE COMPTROLLER'S
51 APPROVAL, AND (II) PUBLISH A NOTICE ON SUCH STATE AUTHORITY'S INTERNET
52 WEBSITE DISCLOSING THAT SUCH CONTRACTS SHALL NOT BE VALID AND ENFORCEA-
53 BLE WITHOUT THE COMPTROLLER'S APPROVAL. NOTHING IN THIS PARAGRAPH SHALL
54 BE DEEMED TO LIMIT THE COMPTROLLER'S EXISTING AUTHORITY TO SUPERVISE THE
55 ACCOUNTS OF PUBLIC AUTHORITIES.

1 2. For purposes of this section, procurement, PUBLIC WORK,
2 CONSTRUCTION OR REVENUE contracts shall mean any written agreement OF A
3 STATE AUTHORITY for the acquisition of goods or services of any kind OR
4 THE CONSTRUCTION OF A PROJECT OF ANY KIND, in the actual or estimated
5 [amount of five thousand dollars or more] AMOUNTS PROVIDED FOR CONTRACTS
6 OF THE STATE IN SECTION ONE HUNDRED TWELVE OF THE STATE FINANCE LAW.

7 3. The RULES OR guidelines approved by [the corporation] EACH STATE
8 AUTHORITY shall include, but not be limited to the following:

9 (a) A description of the types of goods purchased OR THE TYPES OF
10 PROJECTS CONSTRUCTED, [and] for procurement contracts for services, a
11 description of those areas of responsibility and oversight requiring the
12 use of personal services and the reasons for the use of personal
13 services in such areas, AND FOR REVENUE CONTRACTS, A DESCRIPTION OF THE
14 TYPES OF CONSIDERATIONS GIVEN BY THE PUBLIC AUTHORITY, AND THE REVENUES
15 EXPECTED TO BE GENERATED.

16 (b) Requirements regarding the [selection of contractors] AWARD OF
17 CONTRACTS, which shall include provisions:

18 (i) for the [selection of such contractors] AWARD OF CONTRACTS on a
19 competitive basis, and provisions relating to the circumstances under
20 which the [board] GOVERNING BODY may by resolution waive competition,
21 including, notwithstanding any other provision of law requiring competi-
22 tion, the purchase of goods or services from small business concerns or
23 those certified as minority or women-owned business enterprises, or
24 goods or technology that are recycled or remanufactured, in an amount
25 not to exceed two hundred thousand dollars without a formal competitive
26 process, BUT ONLY IF SUCH WAIVER WOULD BE PERMISSIBLE UNDER THE LIMITED
27 CIRCUMSTANCES PERMITTED BY THE STATE FINANCE LAW, AND ONLY IF SUCH A
28 WAIVER IS APPROVED BY A TWO-THIRDS MAJORITY OF THE ENTIRE GOVERNING BODY
29 OF THE STATE AUTHORITY;

30 (ii) describing when the award of procurement, PUBLIC WORK,
31 CONSTRUCTION OR REVENUE contracts shall require approval of the [board]
32 GOVERNING BODY by resolution, provided that any contract involving
33 services to be rendered, A PROJECT TO BE CONSTRUCTED, OR CONSIDERATIONS
34 TO BE GIVEN over a period in excess of one year shall require the
35 approval of the [board] GOVERNING BODY by resolution and an annual
36 review of the contract by the [board] GOVERNING BODY;

37 (iii) setting forth responsibilities of contractors;

38 (iv) as used in this subparagraph, the term "professional firm" shall
39 be defined as any individual or sole proprietorship, partnership, corpo-
40 ration, association, or other legal entity permitted by law to practice
41 the professions of architecture, engineering or surveying.

42 [The corporation] A STATE AUTHORITY shall not refuse to negotiate with
43 a professional firm solely because the ratio of the "allowable indirect
44 costs" to direct labor costs of the professional firm or the hourly
45 labor rate in any labor category of the professional firm exceeds a
46 limitation generally set by the [corporation] STATE AUTHORITY in the
47 determination of the reasonableness of the estimated cost of services to
48 be rendered by the professional firm, but rather the [corporation] STATE
49 AUTHORITY should also consider the reasonableness of cost based on the
50 total estimated cost of the service of the professional firm which
51 should include, among other things, all the direct labor costs of the
52 professional firm for such services plus all "allowable indirect costs,"
53 other direct costs, and negotiated profit of the professional firm.
54 "Allowable indirect costs" of a professional firm are defined as those
55 costs generally associated with overhead which cannot be specifically

1 identified with a single project or contract and are considered reason-
2 able and allowable under specific state contract or allowability limits.

3 (c) An identification of those areas or types of contracts for which
4 minority or women-owned business enterprises may best bid so as to
5 promote and assist participation by such enterprises and facilitate a
6 fair share of the awarding of contracts to such enterprises. For the
7 purposes of this section, a minority business enterprise means any busi-
8 ness enterprise, including a sole proprietorship, partnership or corpo-
9 ration that is:

10 (i) at least fifty-one percent owned by one or more minority group
11 members or in the case of a publicly-owned business at least fifty-one
12 percent of the common stock or other voting interests of which is owned
13 by one or more minority group members;

14 (ii) an enterprise in which the minority ownership is real, substan-
15 tial and continuing;

16 (iii) an enterprise in which the minority ownership has and exercises
17 the authority to control independently the day-to-day business decisions
18 of the enterprise; and

19 (iv) an enterprise authorized to do business in New York state, inde-
20 pendently owned and operated, and not dominant in its field.

21 (d) For the purposes of this section, a minority group member means a
22 United States citizen or permanent resident alien who is and can demon-
23 strate membership in one of the following groups:

24 (i) Black persons having origins in any of the Black African racial
25 groups not of Hispanic origin;

26 (ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban,
27 Central or South American of either Indian or Hispanic origin, regard-
28 less of race;

29 (iii) Asian and Pacific Islander persons having origins in any of the
30 Far East, Southeast Asia, the Indian sub-continent or the Pacific
31 Islands; or

32 (iv) Native American persons having origins in any of the original
33 peoples of North America.

34 (e) For the purposes of this section, a women-owned business enter-
35 prise means a business enterprise, including a sole proprietorship,
36 partnership or corporation which is:

37 (i) at least fifty-one percent owned by one or more United States
38 citizens or permanent resident aliens who are women or in the case of a
39 publicly-owned business at least fifty-one percent of the common stock
40 or other voting interests of which is owned by United States citizens or
41 permanent resident aliens who are women;

42 (ii) an enterprise in which the ownership interest of women is real,
43 substantial and continuing;

44 (iii) an enterprise in which the women ownership has and exercises the
45 authority to control independently the day-to-day business decisions of
46 the enterprise; and

47 (iv) an enterprise authorized to do business in New York state, inde-
48 pendently owned and operated, and not dominant in its field.

49 (f) Requirements for the designation of one or more senior staff of
50 the [corporation] STATE AUTHORITY to oversee the [corporation's] STATE
51 AUTHORITY'S programs established to promote and assist: (i) partic-
52 ipation by certified minority or women-owned business enterprises in the
53 [corporation's] STATE AUTHORITY'S procurement opportunities and facili-
54 tation of the award of procurement contracts to such enterprises; (ii)
55 the utilization of certified minority and women-owned business enter-
56 prises as subcontractors and suppliers by entities having procurement

1 contracts with the [corporation] STATE AUTHORITY; and (iii) the utiliza-
2 tion of partnerships, joint ventures or other similar arrangements
3 between certified minority and women-owned business enterprises and
4 other entities having procurement contracts with the [corporation] STATE
5 AUTHORITY. Such staff shall be familiar with the procurement of the
6 types of construction, financial, legal or professional services
7 utilized by the [corporation] STATE AUTHORITY, report directly to the
8 [corporation's] STATE AUTHORITY'S executive director, president or chief
9 executive officer and either directly or through their designees partic-
10 ipate in the procurement process.

11 (g) Requirements for providing notice, in addition to any other notice
12 of procurement opportunities required by law, to professional and other
13 organizations that serve minority and women-owned business enterprises
14 providing the types of services procured by the [corporation] STATE
15 AUTHORITY.

16 (h) Procedures for maintaining lists of qualified certified minority
17 and women-owned business enterprises, including professional firms that
18 have expressed an interest in doing business with the [corporation]
19 STATE AUTHORITY and ensuring that such lists are updated regularly. The
20 [corporation] STATE AUTHORITY shall also consult the lists of certified
21 minority and women-owned business enterprises maintained by the depart-
22 ment of economic development pursuant to article fifteen-A of the execu-
23 tive law.

24 (i) The establishment of appropriate goals for participation by minor-
25 ity or women-owned business enterprises in procurement contracts awarded
26 by the [corporation] STATE AUTHORITY and for the utilization of minority
27 and women-owned enterprises as subcontractors and suppliers by entities
28 having procurement contracts with the [corporation] STATE AUTHORITY.
29 Statewide numerical participation target goals shall be established by
30 each authority based on the findings of the two thousand ten disparity
31 study.

32 (j) Requirements to conduct procurements in a manner that will enable
33 the [corporation] STATE AUTHORITY to achieve the maximum feasible
34 portion of the goals established pursuant to paragraph (i) of this
35 subdivision and that eliminates barriers to participation by minority
36 and women-owned business enterprises in the [corporation's] STATE
37 AUTHORITY'S procurements. Such procurement requirements shall include
38 the following:

39 (A) Measures and procedures to ensure that certified businesses shall
40 be given the opportunity for maximum feasible participation in the
41 performance of state contracts and to assist in the [corporation's]
42 STATE AUTHORITY'S identification of those state contracts for which
43 certified businesses may best bid to actively and affirmatively promote
44 and assist their participation in the performance of state contracts so
45 as to facilitate the [corporation's] STATE AUTHORITY'S achievement of
46 the maximum feasible portion of the goals for state contracts to such
47 businesses;

48 (B) Provisions designating the division of minority and women-owned
49 business development to certify and decertify minority and women-owned
50 business enterprises for all [corporations] STATE AUTHORITIES through a
51 single process that meets applicable state and federal requirements;

52 (C) A requirement that each contract solicitation document accompany-
53 ing each solicitation set forth the expected degree of minority and
54 women-owned business enterprise participation based, in part, on:

55 I. the potential subcontract opportunities available in the prime
56 procurement contract; and

1 II. the availability of certified minority and women-owned business
2 enterprises to respond competitively to the potential subcontract oppor-
3 tunities;

4 (D) A requirement that each [corporation] STATE AUTHORITY provide a
5 current list of certified minority business enterprises to each prospec-
6 tive contractor;

7 (E) Provisions relating to joint ventures, under which a bidder may
8 count toward meeting its minority business enterprise participation
9 goal, the minority and women-owned business enterprise portion of the
10 joint venture;

11 (F) Provisions under which the [corporation] STATE AUTHORITY may waive
12 obligations of the contractor relating to minority and women-owned busi-
13 ness enterprise participation after a showing of good faith efforts to
14 comply with the requirements of this act pursuant to the waiver
15 provisions contained in subdivision six of section three hundred thir-
16 teen of the executive law;

17 (G) A requirement that the [corporation] STATE AUTHORITY verify that
18 minority and women-owned business enterprises listed in a successful bid
19 are actually participating to the extent listed in the project for which
20 the bid was submitted;

21 (H) In the implementation of this section, the contracting [corpo-
22 ration] STATE AUTHORITY shall:

23 I. consider, where practicable, the severability of construction
24 projects and other bundled contracts;

25 II. implement a program that will enable the [corporation] STATE
26 AUTHORITY to evaluate each contract to determine the appropriateness of
27 the goal pursuant to paragraph (i) of this subdivision;

28 III. consider compliance with the requirements of any federal law
29 concerning opportunities for minority and women-owned business enter-
30 prises which effectuates the purpose of this section; and

31 IV. consult the most recent disparity study pursuant to article
32 fifteen-A of the executive law.

33 (k) A listing of the types of provisions to be contained in procure-
34 ment contracts, including provisions concerning the nature and monitor-
35 ing of the work to be performed, the use of corporate supplies and
36 facilities, the use of corporate personnel and any other provisions.

37 (l) Provisions regarding procurement contracts which involve former
38 officers or employees of the [corporation] STATE AUTHORITY.

39 (m) Procedures regarding procurement contracts which are exempt from
40 the publication requirements of article four-C of the economic develop-
41 ment law; PROVIDED THAT SUCH PROCEDURES SHALL NOT PERMIT ANY EXEMPTION
42 BEYOND THE EXEMPTIONS SPECIFICALLY PERMITTED BY ARTICLE FOUR-C OF THE
43 ECONOMIC DEVELOPMENT LAW.

44 (n) Policies to promote the participation by New York state business
45 enterprises and New York state residents in procurement contracts,
46 including, but not limited to:

47 (i) providing for the [corporation] STATE AUTHORITY to collect and to
48 consult the specifications of New York state business enterprises in
49 developing specifications for any procurement contract for the purchase
50 of goods where possible, practicable, feasible and consistent with open
51 bidding, except for procurement contracts for which the [corporation]
52 STATE AUTHORITY would be expending funds received from another state.
53 The [corporation] STATE AUTHORITY shall, where feasible, make use of the
54 stock item specification forms prepared by the commissioner of general
55 services, and where necessary, consult with the commissioner of the

1 office of general services, in developing such specifications and make
2 such determinations; and
3 (ii) with the cooperation of the department of economic development
4 and through cooperative efforts with contractors, providing for the
5 notification of New York state business enterprises of opportunities to
6 participate as subcontractors and suppliers on procurement contracts let
7 by the [corporation] STATE AUTHORITY in an amount estimated to be equal
8 to or greater than one million dollars and promulgating procedures which
9 will assure compliance by contractors with such notification. Once
10 awarded the contract such contractors shall document their efforts to
11 encourage the participation of New York state business enterprises as
12 suppliers and subcontractors on procurement contracts equal to or great-
13 er than one million dollars. Documented efforts by a successful contrac-
14 tor shall consist of and be limited to showing that such contractor has
15 (a) solicited bids, in a timely and adequate manner, from New York state
16 business enterprises including certified minority and women-owned busi-
17 ness, or (b) contacted the New York state department of economic devel-
18 opment to obtain listings of New York state business enterprises, or (c)
19 placed notices for subcontractors and suppliers in newspapers, journals
20 and other trade publications distributed in New York state, or (d)
21 participated in bidder outreach conferences. If the contractor deter-
22 mines that New York state business enterprises are not available to
23 participate on the contract as subcontractors or suppliers, the contrac-
24 tor shall provide a statement indicating the method by which such deter-
25 mination was made. If the contractor does not intend to use subcontract-
26 tors on the contract, the contractor shall provide a statement verifying
27 such intent; and
28 (iii) except for procurement contracts for which the [corporation]
29 STATE AUTHORITY would be expending funds received from another state,
30 the [corporation] STATE AUTHORITY shall include in all bid documents
31 provided to potential bidders a statement that information concerning
32 the availability of New York state subcontractors and suppliers is
33 available from the New York state department of economic development,
34 which shall include the directory of certified minority and women-owned
35 businesses, and it is the policy of New York state to encourage the use
36 of New York state subcontractors and suppliers, and to promote the
37 participation of minority and women-owned businesses where possible, in
38 the procurement of goods and services; and
39 (iv) with the cooperation of the community services division of the
40 department of labor and through cooperative efforts with contractors,
41 providing for the notification of New York state residents of employment
42 opportunities arising in New York state out of procurement contracts let
43 by the [corporation] STATE AUTHORITY in an amount estimated to be equal
44 to or greater than one million dollars; and promulgating procedures
45 which will assure compliance by contractors with such notification by
46 requiring contractors to submit post-award compliance reports document-
47 ing their efforts to provide such notification through listing any such
48 positions with the community services division, or providing for such
49 notification in such manner as is consistent with existing collective
50 bargaining contracts or agreements; and
51 (v) including in each set of documents soliciting bids on procurement
52 contracts to let by the [corporation] STATE AUTHORITY a statement noti-
53 fying potential bidders located in foreign countries that the [corpo-
54 ration] STATE AUTHORITY may assign or otherwise transfer offset credits
55 created by such procurement contract to third parties located in New
56 York state; providing for the assignment or other form of transfer of

1 offset credits created by such procurement contracts, directly or indi-
2 rectly, to third parties located in New York state, in accordance with
3 the written directions of the commissioner of economic development; and
4 providing for the [corporation] STATE AUTHORITY to otherwise cooperate
5 with the department of economic development in efforts to get foreign
6 countries to recognize offset credits assigned or transferred to third
7 parties located in New York state created by such procurement contracts;
8 and

9 (vi) promulgating procedures which will assure compliance with the
10 federal equal employment opportunity act of 1972 (P.L. 92-261), as
11 amended, by contractors of the [corporation] STATE AUTHORITY.

12 (o) For the purposes of this section, a "New York state business
13 enterprise" means a business enterprise, including a sole proprietor-
14 ship, partnership, or corporation, which offers for sale or lease or
15 other form of exchange, goods which are sought by the [corporation]
16 STATE AUTHORITY and which are substantially manufactured, produced or
17 assembled in New York state, or services which are sought by the [corpo-
18 ration] STATE AUTHORITY and which are substantially performed within New
19 York state.

20 (p) For the purposes of this section, a "New York resident" means a
21 natural person who maintains a fixed, permanent and principal home
22 located within New York state and to which such person, whenever tempo-
23 rarily located, always intends to return.

24 4. Each [corporation] STATE AUTHORITY shall have the power from time
25 to time to amend such procurement, PUBLIC WORK, CONSTRUCTION AND REVENUE
26 contract RULES OR guidelines in accordance with the provisions of this
27 section.

28 5. (a) Each [corporation] STATE AUTHORITY shall notify the commission-
29 er of economic development of the award of a procurement, PUBLIC WORK,
30 CONSTRUCTION OR REVENUE contract for the purchase of goods or services
31 from a foreign business enterprise in an amount equal to or greater than
32 one million dollars simultaneously with notifying the successful bidder
33 therefor. No [corporation] STATE AUTHORITY shall thereafter enter into a
34 procurement, PUBLIC WORK, CONSTRUCTION OR REVENUE contract for said
35 goods or services until at least fifteen days has elapsed, except for
36 procurement contracts awarded on an emergency or critical basis, or
37 where the commissioner of economic development waives the provisions of
38 this sentence. The notification to the commissioner of economic develop-
39 ment shall include the name, address and telephone and facsimile number
40 of the foreign business enterprise, a brief description of the goods or
41 services to be obtained pursuant to the proposed procurement contract,
42 the amount of the proposed procurement contract, the term of the
43 proposed procurement, PUBLIC WORK, CONSTRUCTION OR REVENUE contract, and
44 the name of the individual at the foreign business enterprise or acting
45 on behalf of the same who is principally responsible for the proposed
46 procurement, PUBLIC WORK, CONSTRUCTION OR REVENUE contract. Such notifi-
47 cation shall be used by the commissioner of economic development solely
48 to provide notification to New York state business enterprises of oppor-
49 tunities to participate as subcontractors and suppliers on such procure-
50 ment, PUBLIC WORK, CONSTRUCTION OR REVENUE contracts, to promote and
51 encourage the location and development of new business in the state, to
52 assist New York state business enterprises in obtaining offset credits
53 from foreign countries, and to otherwise investigate, study and under-
54 take means of promoting and encouraging the prosperous development and
55 protection of the legitimate interest and welfare of New York state
56 business enterprises, industry and commerce.

(b) As used in this section, the following terms shall have the following meanings, unless a different meaning appears from the context:

(i) "Foreign business enterprise" shall mean a business enterprise, including a sole proprietorship, partnership or corporation, which offers for sale, lease or other form of exchange, goods which are sought by the [corporation] STATE AUTHORITY and which are substantially produced outside New York state, or services, other than construction services, sought by the [corporation] STATE AUTHORITY which are substantially performed outside New York state. For purposes of construction services, foreign business enterprise shall mean a business enterprise, including a sole proprietorship, partnership or corporation, which has its principal place of business outside New York state.

(ii) "New York state business enterprise" shall mean a business enterprise, including a sole proprietorship, partnership or corporation, which offers for sale or lease or other form of exchange, goods which are sought by the [corporation] STATE AUTHORITY and which are substantially manufactured, produced or assembled in New York state, or services, other than construction services, which are sought by the [corporation] STATE AUTHORITY and which are substantially performed within New York state. For purposes of construction services, a New York state business enterprise shall mean a business enterprise, including a sole proprietorship, partnership, or corporation, which has its principal place of business in New York state.

(iii) "Discriminatory jurisdiction" shall mean any other country, nation, province, state or political subdivision thereof which employs a preference or price distorting mechanism to the detriment of or otherwise discriminates against a New York state business enterprise in the procurement of goods and services by the same or a non-governmental entity influenced by the same. Such discrimination may include, but is not limited to, any law, regulation, procedure or practice, terms or license, authorization, or funding or bidding rights which requires or encourages any agency or instrumentality of the state or political subdivision thereof or non-governmental entity influenced by the same to discriminate against a New York state business enterprise.

(c) In including any additional business enterprises on invitations to bid for the procurement of goods or services, PUBLIC WORK, CONSTRUCTION PROJECTS OR REVENUE OR OTHER CONSIDERATIONS, the chief executive officer of the [corporation] STATE AUTHORITY shall not include any foreign business enterprise which has its principal place of business located in a discriminatory jurisdiction contained on the list prepared by the commissioner of economic development pursuant to subdivision six of section one hundred sixty-five of the state finance law, except, however, business enterprises which are New York state business enterprises as defined by this section. The [corporation] STATE AUTHORITY may waive the application of the provisions of this section whenever the chief executive officer of the [corporation] STATE AUTHORITY determines in writing that it is in the best interests of the state to do so. The chief executive officer of the [corporation] STATE AUTHORITY shall deliver each such waiver to the COMPTROLLER AND THE commissioner of economic development.

(d) A [corporation] STATE AUTHORITY shall not enter into a contract with a foreign business enterprise which has its principal place of business located in a discriminatory jurisdiction contained on the list prepared by the commissioner of economic development pursuant to subdivision six of section one hundred sixty-five of the state finance law. The provisions of this section may be waived by the chief executive

1 officer of the [corporation] STATE AUTHORITY if the chief executive
2 officer of the [corporation] STATE AUTHORITY determines in writing that
3 it is in the best interests of the state to do so. The chief executive
4 officer of the [corporation] STATE AUTHORITY shall deliver each such
5 waiver to the COMPTROLLER AND THE commissioner of economic development.

6 6. Each [corporation] STATE AUTHORITY, as part of the RULES OR guide-
7 lines established pursuant to subdivision three of this section, shall
8 establish policies regarding the preparation of publicly available
9 reports on procurement, PUBLIC WORK, CONSTRUCTION AND REVENUE contracts
10 entered into by such [corporation] STATE AUTHORITY. Such policies shall
11 provide, at the minimum, for the preparation of a report no less
12 frequently than annually, summarizing procurement, PUBLIC WORK,
13 CONSTRUCTION AND REVENUE activity by such [corporation] STATE AUTHORITY
14 for the period of the report, including a listing of all procurement,
15 PUBLIC WORK, CONSTRUCTION AND REVENUE contracts entered into, all
16 contracts entered into with New York state business enterprises and the
17 subject matter and value thereof, all contracts entered into with certi-
18 fied minority or women-owned business enterprises and the subject matter
19 and value thereof, all referrals made and all penalties imposed pursuant
20 to section three hundred sixteen of the executive law, all contracts
21 entered into with foreign business enterprises, and the subject matter
22 and value thereof, the selection process used to select such contrac-
23 tors, all procurement, PUBLIC WORK, CONSTRUCTION AND REVENUE contracts
24 which were exempt from the publication requirements of article four-C of
25 the economic development law, the basis for any such exemption and the
26 status of existing procurement, PUBLIC WORK, CONSTRUCTION AND REVENUE
27 contracts.

28 7. Each [corporation] STATE AUTHORITY shall annually prepare and
29 approve a report on procurement, PUBLIC WORK, CONSTRUCTION AND REVENUE
30 contracts which shall include the RULES OR guidelines, as specified in
31 subdivision three of this section, an explanation of the RULES OR guide-
32 lines and any amendments thereto since the last annual report. Such
33 report on procurement, PUBLIC WORK, CONSTRUCTION AND REVENUE contracts
34 may be a part of any other annual report that the [corporation] STATE
35 AUTHORITY is required to make.

36 8. (a) [Each corporation] NOT MORE THAN NINETY DAYS AFTER THE CLOSE OF
37 A STATE AUTHORITY'S FISCAL YEAR, EACH STATE AUTHORITY shall [annually]
38 submit its ANNUAL report on procurement, PUBLIC WORK, CONSTRUCTION AND
39 REVENUE contracts to the division of the budget and copies thereof to
40 the [department of audit and control] OFFICE OF THE STATE COMPTROLLER,
41 the department of economic development, the senate finance committee and
42 the assembly ways and means committee.

43 (b) Each [corporation] STATE AUTHORITY shall make available to the
44 public copies of its report on procurement, PUBLIC WORK, CONSTRUCTION
45 AND REVENUE contracts upon reasonable request therefor AND SHALL POST
46 SUCH REPORT ON THE STATE AUTHORITY'S INTERNET WEBSITE AT THE SAME TIME
47 AS SUCH REPORT IS SUBMITTED AS REQUIRED BY THIS SECTION. EACH REPORT ON
48 PROCUREMENT, PUBLIC WORK, CONSTRUCTION AND REVENUE CONTRACTS POSTED ON
49 THE STATE AUTHORITY'S INTERNET WEBSITE SHALL BE MAINTAINED ON SUCH
50 WEBSITE AT LEAST UNTIL THE REPORT FOR THE FOLLOWING YEAR IS POSTED ON
51 SUCH WEBSITE.

52 [9. Nothing contained in this section shall be deemed to alter, affect
53 the validity of, modify the terms of or impair any contract or agreement
54 made or entered into in violation of, or without compliance with, the
55 provisions of this section.]

1 S 3. Paragraph (a) of subdivision 1 and subdivisions 5 and 12 of
2 section 2880 of the public authorities law, as added by chapter 183 of
3 the laws of 1987, are amended to read as follows:

4 (a) "Corporation" means every [public] STATE authority [and public
5 benefit corporation a majority of the governing board members of which
6 are either appointed by the governor or serve as members by virtue of
7 their service as an officer of a state department, division, agency,
8 board or bureau, or combination thereof], AS DEFINED IN SECTION TWO OF
9 THIS CHAPTER.

10 5. Statement filing. Each corporation shall, within thirty days after
11 the statement's adoption, file a copy of such statement, and amendments
12 thereto, with the state comptroller, the state director of the budget,
13 the [chairman] CHAIRPERSON of the senate finance committee, and the
14 [chairman] CHAIRPERSON of the assembly ways and means committee. AT THE
15 TIME OF FILING SUCH STATEMENT, EVERY CORPORATION SHALL ALSO POST SUCH
16 STATEMENT ON THE CORPORATION'S INTERNET WEBSITE. EACH STATEMENT POSTED
17 ON THE CORPORATION'S INTERNET WEBSITE SHALL BE UPDATED TO REFLECT ANY
18 AMENDMENTS THERETO, AND, AS AMENDED, SHALL BE MAINTAINED PERMANENTLY ON
19 SUCH WEBSITE.

20 12. Public access. (a) Each corporation shall make available to the
21 public, upon a reasonable request therefor, copies of its statement and
22 annual report AND SHALL POST SUCH STATEMENT AND ANNUAL REPORT ON THE
23 CORPORATION'S INTERNET WEBSITE AT THE SAME TIME AS SUCH STATEMENT AND
24 ANNUAL REPORT ARE FILED AS REQUIRED BY THIS SECTION. EACH STATEMENT
25 POSTED ON THE CORPORATION'S INTERNET WEBSITE SHALL BE UPDATED TO REFLECT
26 ANY AMENDMENTS THERETO, AND, AS AMENDED, SHALL BE MAINTAINED PERMANENTLY
27 ON SUCH WEBSITE, AND EACH ANNUAL REPORT POSTED ON THE CORPORATION'S
28 INTERNET WEBSITE SHALL BE MAINTAINED ON SUCH WEBSITE AT LEAST UNTIL THE
29 ANNUAL REPORT FOR THE FOLLOWING YEAR IS POSTED ON SUCH WEBSITE.

30 (b) Each contractor doing business with a corporation shall be given a
31 copy of that corporation's statement.

32 S 4. The public authorities law is amended by adding a new section
33 2898 to read as follows:

34 S 2898. CONTRACT APPROVAL BY THE COMPTROLLER. ANY CONTRACT OF SALE OF
35 PROPERTY MADE FOR OR BY ANY STATE AUTHORITY SHALL BE SUBJECT TO THE
36 PRIOR REVIEW AND APPROVAL OF THE COMPTROLLER IN ACCORDANCE WITH THE
37 PROVISIONS OF SECTION TWENTY-EIGHT HUNDRED SEVENTY-NINE OF THIS ARTICLE,
38 IF THE COMPTROLLER, IN HIS OR HER DISCRETION, DETERMINES THAT SUCH
39 REVIEW AND APPROVAL SHALL BE REQUIRED. NOTHING IN THIS SECTION SHALL BE
40 DEEMED TO LIMIT THE COMPTROLLER'S EXISTING AUTHORITY TO SUPERVISE THE
41 ACCOUNTS OF PUBLIC AUTHORITIES.

42 S 5. This act shall take effect immediately.