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

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:

Section 1. Section 2824 of the public authorities law is amended by adding a new subdivision 9 to read as follows:

9. THE GOVERNING BODY OF EVERY STATE AUTHORITY SHALL ESTABLISH A PROCUREMENT POLICY COMMITTEE THAT SHALL CONSIST OF AT LEAST THREE INDEPENDENT MEMBERS, UNLESS THERE ARE INSUFFICIENT SEATS ON THE GOVERNING BODY ITSELF TO ALLOW FOR THE APPOINTMENT OF AT LEAST THREE INDEPENDENT MEMBERS, IN WHICH CASE THE PROCUREMENT POLICY COMMITTEE SHALL CONSIST OF ALL THE INDEPENDENT MEMBERS OF THE GOVERNING BODY, AND SUCH COMMITTEE SHALL BE RESPONSIBLE FOR ISSUING APPROPRIATE RULES OR GUIDELINES FOR OVERSIGHT OF ALL CONTRACTING MATTERS IN ACCORDANCE WITH RULES OR GUIDELINES ADOPTED BY THE GOVERNING BODY PURSUANT TO SECTION TWENTY-EIGHT HUNDRED SEVENTY-NINE OF THIS ARTICLE.

S 2. Section 2879 of the public authorities law, as amended by chapter 564 of the laws of 1988, paragraph (b) of subdivision 3 as amended by chapter 45 of the laws of 1994, subparagraph (i) of paragraph (b) of subdivision 3 and subdivision 6 as amended, paragraphs (f), (g), (h), (i) and (j) of subdivision 3 as added and paragraphs (k), (l), (m), (n), (o) and (p) of subdivision 3 as relettered by chapter 174 of the laws of 2010, subparagraph (iv) of paragraph (b) of subdivision 3 as amended by chapter 383 of the laws of 1994, paragraph (m) of subdivision 3 as added by chapter 862 of the laws of 1990, paragraph (n) of subdivision 3 and paragraph (a) of subdivision 5 as amended by chapter 531 of the laws of 1993, paragraphs (o) and (p) of subdivision 3 and subdivision 5 as added 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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as renumbered by chapter 844 of the laws of 1992, paragraph (b) of subdivision 5 as amended by chapter 684 of the laws of 1994, subparagraph (iii) of paragraph (b) and paragraphs (c) and (d) of subdivision 5 as amended by chapter 383 of the laws of 2000, is amended to read as follows:

S 2879. Procurement, PUBLIC WORK, CONSTRUCTION AND REVENUE contracts. 1. (A) Every [public] STATE 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 adopt by resolution comprehensive RULES OR guidelines which (I) detail the [corporation's] STATE AUTHORITY'S operative policy and instructions regarding the use, awarding, monitoring and reporting of procurement, PUBLIC WORK, CONSTRUCTION AND REVENUE contracts[. Guidelines], AND (II) DESIGNATE A CONTRACTING OFFICER WHO SHALL BE RESPONSIBLE FOR THE PUBLIC AUTHORITY'S COMPLIANCE WITH, AND ENFORCEMENT OF, SUCH RULES OR GUIDELINES. SUCH RULES OR GUIDELINES SHALL BE CONSISTENT WITH, AND SHALL REQUIRE A STATE AUTHORITY'S CONTRACTING ACTIVITIES TO COMPLY WITH THE PROVISIONS OF THE STATE FINANCE LAW OR ANY OTHER LAW APPLICABLE TO CONTRACTS OF THE STATE, EXCEPT THAT SUCH RULES OR GUIDELINES MAY BE STRICTER THAN THE PROVISIONS OF THE STATE FINANCE LAW OR OTHER LAW APPLICABLE TO STATE CONTRACTS IF A STATE AUTHORITY DETERMINES THAT ADDITIONAL SAFEGUARDS ARE NECESSARY TO ASSURE THE INTEGRITY OF ITS OPERATIONS. RULES OR GUIDELINES approved by the [corporation] STATE AUTHORITY shall be annually reviewed and approved by the [corporation.] GOVERNING BODY OF THE STATE AUTHORITY. NOT MORE THAN NINETY DAYS AFTER THE CLOSE OF THE STATE AUTHORITY'S FISCAL YEAR, THE STATE AUTHORITY SHALL FILE WITH THE COMPTROLLER A COPY OF THE RULES OR GUIDELINES MOST RECENTLY REVIEWED AND APPROVED BY THE STATE AUTHORITY, INCLUDING THE NAME OF THE STATE AUTHORITY'S DESIGNATED CONTRACTING OFFICER. AT THE TIME OF FILING SUCH RULES OR GUIDELINES WITH THE COMPTROLLER, EVERY STATE AUTHORITY SHALL ALSO POST SUCH RULES OR GUIDELINES ON THE STATE AUTHORITY'S INTERNET WEBSITE. PROCUREMENT RULES OR GUIDELINES POSTED ON THE STATE AUTHORITY'S INTERNET WEBSITE SHALL BE MAINTAINED ON SUCH WEBSITE AT LEAST UNTIL THE PROCUREMENT RULES OR GUIDELINES FOR THE FOLLOWING YEAR ARE POSTED ON SUCH WEBSITE.

(B) THE PROCUREMENT, PUBLIC WORK, CONSTRUCTION, AND REVENUE CONTRACTS OF A STATE AUTHORITY SHALL BE SUBJECT TO PRIOR REVIEW AND APPROVAL BY THE COMPTROLLER, IF THE COMPTROLLER, IN HIS OR HER DISCRETION, DETERMINES THAT SUCH REVIEW AND APPROVAL SHALL BE REQUIRED. IF THE COMPTROLLER DETERMINES THAT ANY CONTRACT OR CATEGORY OF CONTRACTS OF A STATE AUTHORITY OR CATEGORY OF STATE AUTHORITIES REQUIRES DIRECT SUPERVISION IN THE FORM OF PRE-APPROVAL OF CONTRACTS AND THE COMPTROLLER SO NOTIFIES ANY STATE AUTHORITY OF SUCH DETERMINATION, THEN NO SUCH CONTRACT OR AGREEMENT BY SUCH STATE AUTHORITY SHALL BE A VALID ENFORCEABLE CONTRACT UNLESS SUCH CONTRACT SHALL FIRST BE APPROVED BY THE COMPTROLLER. IN THE EVENT THAT THE COMPTROLLER NOTIFIES ANY STATE AUTHORITY THAT APPROVAL SHALL BE REQUIRED THEN THE STATE AUTHORITY SHALL (I) INCLUDE IN ALL SUCH CONTRACTS A PROVISION INFORMING THE OTHER PARTIES TO SUCH CONTRACTS THAT THE SAME ARE NOT VALID AND ENFORCEABLE WITHOUT THE COMPTROLLER'S APPROVAL, AND (II) PUBLISH A NOTICE ON SUCH STATE AUTHORITY'S INTERNET WEBSITE DISCLOSING THAT SUCH CONTRACTS SHALL NOT BE VALID AND ENFORCEABLE WITHOUT THE COMPTROLLER'S APPROVAL. NOTHING IN THIS PARAGRAPH SHALL BE DEEMED TO LIMIT THE COMPTROLLER'S EXISTING AUTHORITY TO SUPERVISE THE ACCOUNTS OF PUBLIC AUTHORITIES.

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

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

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

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

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

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

(iii) setting forth responsibilities of contractors;

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

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

identified with a single project or contract and are considered reasonable and allowable under specific state contract or allowability limits.

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

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

(ii) an enterprise in which the minority ownership is real, substantial and continuing;

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

(iv) an enterprise authorized to do business in New York state, independently owned and operated, and not dominant in its field.

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

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

(ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race;

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

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

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

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

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

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

(iv) an enterprise authorized to do business in New York state, independently owned and operated, and not dominant in its field.

(f) Requirements for the designation of one or more senior staff of the [corporation] STATE AUTHORITY to oversee the [corporation's] STATE AUTHORITY'S programs established to promote and assist: (i) participation by certified minority or women-owned business enterprises in the [corporation's] STATE AUTHORITY'S procurement opportunities and facilitation of the award of procurement contracts to such enterprises; (ii) the utilization of certified minority and women-owned business enterprises as subcontractors and suppliers by entities having procurement

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

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

(h) Procedures for maintaining lists of qualified certified minority and women-owned business enterprises, including professional firms that have expressed an interest in doing business with the [corporation] STATE AUTHORITY and ensuring that such lists are updated regularly. The [corporation] STATE AUTHORITY shall also consult the lists of certified minority and women-owned business enterprises maintained by the department of economic development pursuant to article fifteen-A of the executive law.

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

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

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

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

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

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

II. the availability of certified minority and women-owned business enterprises to respond competitively to the potential subcontract opportunities;

(D) A requirement that each [corporation] STATE AUTHORITY provide a current list of certified minority business enterprises to each prospective contractor;

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

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

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

(H) In the implementation of this section, the contracting [corporation] STATE AUTHORITY shall:

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

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

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

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

(k) A listing of the types of provisions to be contained in procurement contracts, including provisions concerning the nature and monitoring of the work to be performed, the use of corporate supplies and facilities, the use of corporate personnel and any other provisions.

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

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

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

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

office of general services, in developing such specifications and make such determinations; and

(ii) with the cooperation of the department of economic development and through cooperative efforts with contractors, providing for the notification of New York state business enterprises of opportunities to participate as subcontractors and suppliers on procurement contracts let by the [corporation] STATE AUTHORITY in an amount estimated to be equal to or greater than one million dollars and promulgating procedures which will assure compliance by contractors with such notification. Once awarded the contract such contractors shall document their efforts to encourage the participation of New York state business enterprises as suppliers and subcontractors on procurement contracts equal to or greater than one million dollars. Documented efforts by a successful contractor shall consist of and be limited to showing that such contractor has (a) solicited bids, in a timely and adequate manner, from New York state business enterprises including certified minority and women-owned business, or (b) contacted the New York state department of economic development to obtain listings of New York state business enterprises, or (c) placed notices for subcontractors and suppliers in newspapers, journals and other trade publications distributed in New York state, or (d) participated in bidder outreach conferences. If the contractor determines that New York state business enterprises are not available to participate on the contract as subcontractors or suppliers, the contractor shall provide a statement indicating the method by which such determination was made. If the contractor does not intend to use subcontractors on the contract, the contractor shall provide a statement verifying such intent; and

(iii) except for procurement contracts for which the [corporation] STATE AUTHORITY would be expending funds received from another state, the [corporation] STATE AUTHORITY shall include in all bid documents provided to potential bidders a statement that information concerning the availability of New York state subcontractors and suppliers is available from the New York state department of economic development, which shall include the directory of certified minority and women-owned businesses, and it is the policy of New York state to encourage the use of New York state subcontractors and suppliers, and to promote the participation of minority and women-owned businesses where possible, in the procurement of goods and services; and

(iv) with the cooperation of the community services division of the department of labor and through cooperative efforts with contractors, providing for the notification of New York state residents of employment opportunities arising in New York state out of procurement contracts let by the [corporation] STATE AUTHORITY in an amount estimated to be equal to or greater than one million dollars; and promulgating procedures which will assure compliance by contractors with such notification by requiring contractors to submit post-award compliance reports documenting their efforts to provide such notification through listing any such positions with the community services division, or providing for such notification in such manner as is consistent with existing collective bargaining contracts or agreements; and

(v) including in each set of documents soliciting bids on procurement contracts to let by the [corporation] STATE AUTHORITY a statement notifying potential bidders located in foreign countries that the [corporation] STATE AUTHORITY may assign or otherwise transfer offset credits created by such procurement contract to third parties located in New York state; providing for the assignment or other form of transfer of

offset credits created by such procurement contracts, directly or indirectly, to third parties located in New York state, in accordance with the written directions of the commissioner of economic development; and providing for the [corporation] STATE AUTHORITY to otherwise cooperate with the department of economic development in efforts to get foreign countries to recognize offset credits assigned or transferred to third parties located in New York state created by such procurement contracts; and

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

(o) For the purposes of this section, a "New York state business enterprise" means 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 which are sought by the [corporation] STATE AUTHORITY and which are substantially performed within New York state.

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

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

5. (a) Each [corporation] STATE AUTHORITY shall notify the commissioner of economic development of the award of a procurement, PUBLIC WORK, CONSTRUCTION OR REVENUE contract for the purchase of goods or services from a foreign business enterprise in an amount equal to or greater than one million dollars simultaneously with notifying the successful bidder therefor. No [corporation] STATE AUTHORITY shall thereafter enter into a procurement, PUBLIC WORK, CONSTRUCTION OR REVENUE contract for said goods or services until at least fifteen days has elapsed, except for procurement contracts awarded on an emergency or critical basis, or where the commissioner of economic development waives the provisions of this sentence. The notification to the commissioner of economic development shall include the name, address and telephone and facsimile number of the foreign business enterprise, a brief description of the goods or services to be obtained pursuant to the proposed procurement contract, the amount of the proposed procurement contract, the term of the proposed procurement, PUBLIC WORK, CONSTRUCTION OR REVENUE contract, and the name of the individual at the foreign business enterprise or acting on behalf of the same who is principally responsible for the proposed procurement, PUBLIC WORK, CONSTRUCTION OR REVENUE contract. Such notification shall be used by the commissioner of economic development solely to provide notification to New York state business enterprises of opportunities to participate as subcontractors and suppliers on such procurement, PUBLIC WORK, CONSTRUCTION OR REVENUE contracts, to promote and encourage the location and development of new business in the state, to assist New York state business enterprises in obtaining offset credits from foreign countries, and to otherwise investigate, study and undertake means of promoting and encouraging the prosperous development and protection of the legitimate interest and welfare of New York state 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

officer of the [corporation] STATE AUTHORITY if 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.

6. Each [corporation] STATE AUTHORITY, as part of the RULES OR guidelines established pursuant to subdivision three of this section, shall establish policies regarding the preparation of publicly available reports on procurement, PUBLIC WORK, CONSTRUCTION AND REVENUE contracts entered into by such [corporation] STATE AUTHORITY. Such policies shall provide, at the minimum, for the preparation of a report no less frequently than annually, summarizing procurement, PUBLIC WORK, CONSTRUCTION AND REVENUE activity by such [corporation] STATE AUTHORITY for the period of the report, including a listing of all procurement, PUBLIC WORK, CONSTRUCTION AND REVENUE contracts entered into, all contracts entered into with New York state business enterprises and the subject matter and value thereof, all contracts entered into with certified minority or women-owned business enterprises and the subject matter and value thereof, all referrals made and all penalties imposed pursuant to section three hundred sixteen of the executive law, all contracts entered into with foreign business enterprises, and the subject matter and value thereof, the selection process used to select such contractors, all procurement, PUBLIC WORK, CONSTRUCTION AND REVENUE contracts which were exempt from the publication requirements of article four-C of the economic development law, the basis for any such exemption and the status of existing procurement, PUBLIC WORK, CONSTRUCTION AND REVENUE contracts.

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

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

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

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

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

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

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

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

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

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

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

S 5. This act shall take effect immediately.