

4916

2013-2014 Regular Sessions

I N   S E N A T E

May 1, 2013

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

AN ACT to amend the state finance law, in relation to the state procure-  
ment council and special provisions regarding joint ventures; and  
providing for the expiration and repeal of such provisions upon expi-  
ration thereof

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

1     Section 1. Paragraph n of subdivision 2 of section 161 of the state  
2     finance law, as added by chapter 173 of the laws of 2010, is amended to  
3     read as follows:  
4     n. Recommend to the commissioner necessary legislative changes or  
5     modifications to existing or proposed rules, regulations and procedures  
6     that would increase access to the state's procurement process by minori-  
7     ty-owned business enterprises and women-owned business enterprises and  
8     create model language to be used by agencies when issuing requests for  
9     bids or proposals to other solicitations or offers that would increase  
10    the ability of small businesses to participate in state procurements,  
11    INCLUDING THROUGH TEAMING AND JOINT VENTURES AS DEFINED IN SUBDIVISION  
12    NINE OF SECTION ONE HUNDRED SIXTY-FIVE OF THIS ARTICLE.  
13    S 2. Section 165 of the state finance law is amended by adding a new  
14    subdivision 9 to read as follows:  
15    9. SPECIAL PROVISIONS REGARDING JOINT VENTURES.  
16    A. DEFINITIONS. AS USED IN THIS SUBDIVISION:  
17    (I) "DISABLED VETERAN BUSINESS ENTERPRISE" IS AN INDEPENDENTLY OWNED  
18    AND OPERATED BUSINESS ENTERPRISE IN WHICH A DISABLED VETERAN HAS A REAL,  
19    SUBSTANTIAL, AND CONTINUING OWNERSHIP OF FIFTY-ONE PER CENT OR GREATER  
20    AND HAS AND EXERCISES INDEPENDENT CONTROL OF THE DAY TO DAY DECISIONS OF  
21    THE ENTERPRISE, AND WHICH HAS BEEN CERTIFIED AS A DISADVANTAGED BUSINESS  
22    ENTERPRISE PURSUANT TO THE FEDERAL DEPARTMENT OF TRANSPORTATION OR OTHER

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

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1 FEDERAL AGENCY PROCEDURES, OR CERTIFIED AS A DISABILITY-OWNED BUSINESS  
2 ENTERPRISE BY A NATIONAL CERTIFICATION ORGANIZATION SATISFACTORY TO THE  
3 COMMISSIONER. THE TERM "DISABLED VETERAN" HAS THE SAME MEANING AS IN  
4 PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION EIGHTY-FIVE OF THE CIVIL  
5 SERVICE LAW AND ADDITIONALLY MEANS A MEMBER OF THE ARMED FORCES OF THE  
6 UNITED STATES WHO SERVED IN TIME OF WAR OR WHO SERVED IN AN AREA DESIG-  
7 NATED BY THE PRESIDENT OF THE UNITED STATES BY EXECUTIVE ORDER AS A  
8 "COMBAT ZONE" AT ANY TIME DURING THE PERIOD DESIGNATED BY THE PRESIDENT  
9 BY EXECUTIVE ORDER AS THE PERIOD OF COMBATANT ACTIVITIES IN SUCH ZONE,  
10 AND WHO WAS HONORABLY DISCHARGED OR RELEASED UNDER HONORABLE CIRCUM-  
11 STANCES FROM SUCH SERVICE, AND WHO IS A CITIZEN OF THE UNITED STATES AND  
12 A RESIDENT OF THE STATE OF NEW YORK.

13 (II) "DIVERSITY BUSINESS ENTERPRISE" OR "DIVERSITY BUSINESS ENTER-  
14 PRISES" REFERS INDIVIDUALLY OR COLLECTIVELY, ACCORDING TO CONTEXT, TO A  
15 MINORITY BUSINESS ENTERPRISE, A WOMEN'S BUSINESS ENTERPRISE, AND/OR A  
16 DISABLED VETERAN BUSINESS ENTERPRISE.

17 (III) "JOINT VENTURE" MEANS A BUSINESS, A PARTNERSHIP, SOLE PROPRIE-  
18 TORSHIP, OR A CORPORATION FORMED UNDER THE LIMITED LIABILITY CORPORATION  
19 LAW OR THE BUSINESS CORPORATION LAW BY A DIVERSITY BUSINESS ENTERPRISE  
20 AND ONE OR MORE NEW YORK BUSINESS ENTERPRISES FOR A SPECIFIC PROJECT IN  
21 WHICH THE PARTIES CONTRIBUTE EQUITY, ASSETS, AND EXPERTISE.

22 (IV) "NEW YORK BUSINESS ENTERPRISE" MEANS A BUSINESS ENTITY FORMED IN  
23 THIS STATE, WHOSE PRIMARY RESIDENCE IS LOCATED IN THIS STATE, WHICH  
24 REALIZES MORE THAN HALF ITS GROSS REVENUES FROM ACTIVITIES CONDUCTED IN  
25 THIS STATE AND WHICH HAS MORE THAN HALF ITS FULL TIME EMPLOYEES LOCATED  
26 IN THIS STATE. A NEW YORK BUSINESS ENTERPRISE MAY BE A PARTNERSHIP, SOLE  
27 PROPRIETORSHIP, OR A CORPORATION FORMED UNDER THE LIMITED LIABILITY  
28 CORPORATION LAW, OR A CORPORATION FOR PROFIT FORMED UNDER THE BUSINESS  
29 CORPORATION LAW, OR EXISTING ON ITS EFFECTIVE DATE AND THERETOFORE  
30 FORMED UNDER ANY OTHER GENERAL STATUTE OR BY ANY SPECIAL ACT OF THIS  
31 STATE FOR A PURPOSE OR PURPOSES FOR WHICH A CORPORATION MAY BE FORMED  
32 UNDER SUCH BUSINESS CORPORATION LAW, OTHER THAN A CORPORATION WHICH MAY  
33 BE FORMED UNDER THE COOPERATIVE CORPORATIONS LAW.

34 (V) "TEAMING" MEANS A COOPERATIVE AGREEMENT BETWEEN ONE OR MORE DIVER-  
35 SITY BUSINESS ENTERPRISES AND ONE OR MORE NEW YORK BUSINESS ENTERPRISES  
36 EXECUTED BY A WRITTEN INSTRUMENT THAT DEFINES THE COMMON PURPOSE,  
37 PERFORMANCE GOALS, APPROACH, FINANCING, LIABILITY, AND ACCOUNTABILITY  
38 FOR A PROJECT, THAT IS SATISFACTORY TO THE COMMISSIONER FOR THE PURPOSES  
39 OF CONTRACTING PURSUANT TO THIS SUBDIVISION.

40 B. THE COMMISSIONER SHALL TAKE SUCH STEPS AS MAY BE NECESSARY TO  
41 DEVELOP AND IMPLEMENT A PILOT PROGRAM TO INSURE THAT CENTRALIZED  
42 CONTRACTS PROVIDED PURSUANT TO THIS ARTICLE ALSO INCLUDE PROVISION FOR  
43 JOINT VENTURES AND TEAMING ARRANGEMENTS AS DEFINED HEREIN, PROVIDED THAT  
44 IN ANY SUCH JOINT VENTURE OR TEAMING ARRANGEMENT:

45 (I) THE DIVERSITY BUSINESS ENTERPRISE SHALL PERFORM A SHARE OF THE  
46 WORK NECESSARY TO SUCH CONTRACT EQUAL TO ITS OWNERSHIP OF STOCK, DIVI-  
47 DENDS, PROFIT, OR CONTROL OF A JOINT VENTURE, WHICHEVER IS GREATER, OR  
48 TO ITS POTENTIAL PROFITABILITY RETURN IN THE CASE OF TEAMING, AND

49 (II) THE AGREEMENT IS DEMONSTRATED TO THE SATISFACTION OF THE COMMIS-  
50 SIONER TO BRING RESOURCES AND EXPERTISE TO THE PROJECT THAT WOULD NOT  
51 OTHERWISE BE AVAILABLE WITHIN THE SCOPE OF EXPERTISE, ABILITIES, ACTIV-  
52 ITIES OF THE DIVERSITY BUSINESS ENTERPRISE, OR WHICH WOULD BE OTHERWISE  
53 LIMITED BY RESOURCES AVAILABLE TO THE DIVERSITY BUSINESS ENTERPRISE IF  
54 SUCH ENTERPRISE SOUGHT TO PERFORM THE WORK ITSELF, AND

55 (III) THE PROPOSAL OFFERS, IN THE JUDGEMENT OF THE COMMISSIONER, THE  
56 SERVICES OR COMMODITIES AT A PRICE EQUAL TO OR LESS THAN WOULD OTHERWISE

1 BE CHARGED BY AN ENTITY WHICH IS NOT A JOINT VENTURE OR WHICH IS NOT  
2 INVOLVED IN SUCH TEAMING AGREEMENT, AND

3 (IV) THE JOINT VENTURE OR TEAMING ENTITY MEETS REQUIREMENTS AND CRITE-  
4 RIA OF THE COMMISSIONER IN SUCH AREAS AS FINANCING, LIABILITY, ACCOUNT-  
5 ABILITY, USE OF RESOURCES AND OTHER CRITERIA AND REQUIREMENTS THAT  
6 DEMONSTRATE SIGNIFICANT ENGAGEMENT BY THE DIVERSITY BUSINESS ENTERPRISE,  
7 PROVIDED THAT AN ENTITY WHICH QUALIFIES AS A NEW YORK BUSINESS ENTER-  
8 PRISE AT THE TIME OF THE EXECUTION OF A CONTRACT SHALL NOT BE DISQUALI-  
9 FIED FOR FAILING TO MEET EMPLOYMENT AND GROSS REVENUE CRITERIA DURING  
10 THE COURSE OF THE CONTRACT IF THE VARIATION IN REVENUES AND/OR EMPLOY-  
11 MENT IS NO MORE THAN TWENTY PER CENT MORE THAN SUCH CRITERIA WOULD  
12 OTHERWISE ALLOW.

13 C. A JOINT VENTURE IN WHICH A MINORITY BUSINESS ENTERPRISE OR A  
14 WOMEN-OWNED BUSINESS ENTERPRISE HAS AN OWNERSHIP OF GREATER THAN FIFTY  
15 PERCENT SHALL BE ELIGIBLE FOR OPPORTUNITIES FOR PARTICIPATION ON  
16 CONTRACTS FOR MINORITY AND WOMEN OWNED BUSINESS ENTERPRISES PURSUANT TO  
17 ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW.

18 D. IN IMPLEMENTING THE PILOT PROGRAM THE COMMISSIONER MAY, IN ADDITION  
19 TO OTHER CONTRACT REQUIREMENTS IMPOSED ON CONTRACTS AND CONTRACTORS OR  
20 VENDORS PURSUANT TO SECTION ONE HUNDRED SIXTY-THREE OF THIS ARTICLE,  
21 REQUIRE CONSIDERATION OF ADDITIONAL FACTORS INCLUDING DISTANCE FROM THE  
22 JOB OR PROJECT, THE AMOUNT OR LEVEL OF GREEN TECHNOLOGY, FINANCIAL OR  
23 EXPERT RESOURCES OF THE CONTRACTOR OR JOINT VENTURE OR TEAMING ARRANGE-  
24 MENTS, ANCILLARY COSTS SUCH AS REQUIREMENTS TO BRING OR HIRE ON A  
25 CONSULTANT BASIS EXPERTISE FROM OTHER AREAS OR STATES, THE FRESHNESS OR  
26 NEWNESS OF THE PRODUCT BEING PURCHASED AND THE IMPACT OF EXTENDED TRANS-  
27 PORTATION ON IT, AND OTHER SIMILAR FACTORS. THE COMMISSIONER SHALL  
28 ADDITIONALLY WEIGH ANY CONSIDERATION IN THE AWARDING OF A CONTRACT BY  
29 THE PERCENTAGE OF THE JOINT VENTURE OR TEAMING ARRANGEMENT ALLOCATED OF  
30 THE DIVERSITY BUSINESS ENTERPRISE.

31 E. THE COMMISSIONER SHALL REPORT ANNUALLY ON THE FIRST OF JANUARY OF  
32 EACH YEAR, BEGINNING IN THE SECOND YEAR AFTER ENACTMENT OF THIS PROGRAM,  
33 CONCERNING THE PILOT PROGRAM AUTHORIZED BY THIS SECTION. THE REPORT  
34 SHALL NOTE CONTRACTS LET TO JOINT VENTURES, AND THE DEVELOPMENT OF  
35 DIVERSITY BUSINESS ENTERPRISES AS A RESULT OF SUCH JOINT VENTURES. THE  
36 COMMISSIONER SHALL USE METRICS WHICH SHOW THE EFFECT OF THE PROGRAM ON  
37 THE DEVELOPMENT AND STRENGTHENING OF DIVERSITY BUSINESS ENTERPRISES, AND  
38 SHALL INCLUDE RECOMMENDATIONS FOR THE EXPANSION, ALTERATION, AND PERMAN-  
39 ENTIZATION OF THE PROGRAM.

40 S 3. This act shall take effect immediately and shall expire and be  
41 deemed repealed on the thirty-first of December of the fifth full year  
42 following the effective date of this act.