

5713

2015-2016 Regular Sessions

I N S E N A T E

May 29, 2015

Introduced by Sen. DeFRANCISCO -- (at request of the State Comptroller)
-- 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 allowing the state comptroller to excuse non-material deviations in a procurement; in relation to participation by state agencies in a system used by the comptroller to compile vendor responsibility information; in relation to defining information technology for procurement purposes; in relation to authorizing the commissioner of the office of general services and state agencies to develop alternative procurement methods not otherwise authorized by law under certain circumstances; in relation to authorizing competitive negotiation concluding with a best and final offer; in relation to clarifying the use of best and final offers for invitations for bids and requests for proposals for goods, services and technology; in relation to providing unsuccessful offerors a reasonable opportunity for debriefing; in relation to requiring competition and increased oversight for private vendor preferred source opportunities; in relation to increasing the threshold for construction bonds and requiring performance bonds for certain installation projects; in relation to clarifying the use of contracts let by another governmental agency; in relation to reports on centralized contracts; in relation to increasing the threshold for the state comptroller's approval of certain contracts and clarifying the valuation of non-cash contracts by the state comptroller; and to amend the education law, in relation to defining construction related services

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

1 Section 1. Subdivision 12 of section 163 of the state finance law, as
2 added by chapter 83 of the laws of 1995, is amended to read as follows:
3 12. Review by the office of the state comptroller. Review by the
4 office of the state comptroller shall be in accordance with section one

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

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hundred twelve of this chapter. WHERE THE CONTRACTING AGENCY HAS NOT COMPLIED WITH ONE OR MORE PROVISIONS OF THIS ARTICLE, THE STATE COMPTROLLER MAY APPROVE THE AWARDED CONTRACT IF:

A. THE CONTRACTING AGENCY DETERMINES AND CERTIFIES, BASED UPON A PREPONDERANCE OF THE EVIDENCE DOCUMENTED IN THE PROCUREMENT RECORD, THAT THE NONCOMPLIANCE WAS A NON-MATERIAL DEVIATION FROM ONE OR MORE PROVISIONS OF THIS ARTICLE. FOR THE PURPOSES OF THIS SUBDIVISION "NON-MATERIAL DEVIATION" SHALL MEAN THAT SUCH NONCOMPLIANCE DID NOT PREJUDICE OR FAVOR ANY VENDOR OR POTENTIAL VENDOR, SUCH NONCOMPLIANCE DID NOT SUBSTANTIALLY AFFECT THE FAIRNESS OF THE COMPETITIVE PROCESS, AND THAT A NEW PROCUREMENT WOULD NOT BE IN THE BEST INTEREST OF THE STATE. SUCH DETERMINATION BY THE CONTRACTING AGENCY AND THE STATE COMPTROLLER SHALL BE DOCUMENTED IN THE PROCUREMENT RECORD; AND

B. THE STATE COMPTROLLER CONCURS IN SUCH DETERMINATION.

S 2. The state finance law is amended by adding a new section 163-c to read as follows:

S 163-C. VENDOR RESPONSIBILITY; ONLINE SYSTEM PARTICIPATION. 1. DEFINITIONS. AS USED IN THIS SECTION THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

A. "ENROLLMENT" SHALL MEAN THE ESTABLISHMENT OF AN ONLINE SERVICES ACCOUNT WITH THE STATE COMPTROLLER, INCLUDING, BUT NOT LIMITED TO, THE CREATION OF A UNIQUE USER IDENTIFICATION AND PASSWORD. ENROLLMENT PROVIDES A USER ACCESS TO THE SYSTEM.

B. "ONLINE SERVICES" SHALL MEAN THE SERVICES PROVIDED ELECTRONICALLY AND SECURELY BY THE STATE COMPTROLLER FOR THE BENEFIT OF NEW YORK'S CUSTOMERS, CLIENTS AND BUSINESS PARTNERS. SUCH ONLINE SERVICES MAY BE EXPANDED AND ENHANCED AS TECHNOLOGY ALLOWS.

C. "STATE AGENCY" OR "STATE AGENCIES" SHALL MEAN ALL STATE DEPARTMENTS, BOARDS, COMMISSIONS, OFFICES OR INSTITUTIONS. SUCH TERM SHALL NOT INCLUDE THE LEGISLATURE OR THE JUDICIARY.

D. "STATE CONTRACT" OR "CONTRACT" SHALL MEAN AND INCLUDE ANY WRITTEN AGREEMENT FOR THE ACQUISITION OF GOODS, SERVICES OR CONSTRUCTION OF ANY KIND BETWEEN A VENDOR AND A STATE AGENCY, OR A WRITTEN AGREEMENT OR OTHER INSTRUMENT WHEREIN A STATE AGENCY AGREES TO GIVE CONSIDERATION OTHER THAN THE PAYMENT OF MONEY AS CONTEMPLATED IN SUBDIVISION THREE OF SECTION ONE HUNDRED TWELVE OF THIS CHAPTER.

E. "SUBCONTRACTOR" SHALL MEAN AN INDIVIDUAL, SOLE PROPRIETORSHIP, PARTNERSHIP, JOINT VENTURE OR CORPORATION, WHICH IS ENGAGED IN A SUBCONTRACT BY A VENDOR PURSUANT TO A STATE CONTRACT AND SUCH SUBCONTRACT IS VALUED AT ONE HUNDRED THOUSAND DOLLARS OR MORE AND IS KNOWN AT THE TIME OF THE AWARD OF THE STATE CONTRACT TO THE VENDOR.

F. "SYSTEM" SHALL MEAN THE ON-LINE SOFTWARE, DATA AND RELATED RESOURCES MAINTAINED BY THE COMPTROLLER TO COMPILE VENDOR RESPONSIBILITY INFORMATION.

G. "TERMS OF SERVICE" SHALL MEAN THE TERMS AND CONDITIONS DEVELOPED BY THE STATE COMPTROLLER AND AGREED TO BY EACH AUTHORIZED USER PRIOR TO GAINING ACCESS TO ONLINE SERVICES. TERMS OF SERVICE SHALL INCLUDE A DESCRIPTION OF THE SERVICES, OBLIGATIONS OF THE STATE COMPTROLLER AND THE AUTHORIZED USER, A DESCRIPTION OF THE STATE COMPTROLLER'S PRIVACY POLICY, AUTHORIZED USER CODE OF CONDUCT, AND INDEMNITY FOR THE STATE COMPTROLLER AND THE STATE OF NEW YORK. TERMS OF SERVICE ARE SUBJECT TO CHANGE AS PRESCRIBED BY THE STATE COMPTROLLER. AUTHORIZED USERS MAY VIEW CHANGES VIA THE STATE COMPTROLLER'S INTERNET SITE.

H. "VENDOR" SHALL INCLUDE ANY PERSON, PARTNERSHIP, CORPORATION OR LIMITED LIABILITY COMPANY OR ANY BUSINESS ENTITY BIDDING ON A STATE PROCUREMENT OR OTHERWISE AWARDED A STATE CONTRACT.

1 I. "VENDOR RESPONSIBILITY" SHALL MEAN THAT A VENDOR HAS THE CAPACITY
2 TO FULLY PERFORM THE TERMS OF A CONTRACT AND THE INTEGRITY AND BUSINESS
3 ETHICS TO JUSTIFY AN AWARD OF PUBLIC DOLLARS. A DETERMINATION OF VENDOR
4 RESPONSIBILITY SHALL INCLUDE CONSIDERATION OF FACTORS INCLUDING, BUT NOT
5 LIMITED TO, FINANCIAL AND ORGANIZATIONAL CAPACITY, LEGAL AUTHORITY,
6 INTEGRITY AND PAST PERFORMANCE ON GOVERNMENTAL CONTRACTS.

7 2. A. STATE AGENCIES SHALL ENROLL WITH THE STATE COMPTROLLER TO ACCESS
8 THE SYSTEM MAINTAINED BY THE COMPTROLLER TO COMPILE VENDOR RESPONSIBIL-
9 ITY INFORMATION. STATE AGENCIES SHALL AGREE TO AND ABIDE BY THE TERMS OF
10 SERVICE FOR SUCH SYSTEM AS THE STATE COMPTROLLER DEEMS NECESSARY.

11 B. FOR EACH CONTRACT OR SUBCONTRACT BETWEEN A VENDOR AND A SUBCONTRAC-
12 TOR WHERE, PURSUANT TO LAW OR BY DIRECTION OF THE STATE AGENCY, DISCLO-
13 SURE FOR VENDOR RESPONSIBILITY IS REQUIRED, THE STATE AGENCY SHALL:

14 (I) PROVIDE NOTICE TO VENDORS BIDDING FOR PROCUREMENTS ADMINISTERED BY
15 THE STATE AGENCY THAT ANY VENDOR AND SUBCONTRACTOR, SUBMITTING A VENDOR
16 RESPONSIBILITY QUESTIONNAIRE SHALL DO SO VIA THE SYSTEM MAINTAINED TO
17 COMPILE VENDOR RESPONSIBILITY INFORMATION;

18 (II) PROVIDE VENDORS WITH INSTRUCTIONS ON HOW TO ELECTRONICALLY ACCESS
19 THE SYSTEM AND PROVIDE CONTACT INFORMATION FOR ASSISTANCE WITH ENROLL-
20 MENT. THIS INFORMATION SHALL BE MADE AVAILABLE PRIOR TO THE TIME WHEN
21 VENDORS ARE REQUIRED TO SUBMIT DISCLOSURE FOR VENDOR RESPONSIBILITY; AND

22 (III) ACCESS THE SYSTEM TO OBTAIN AND EVALUATE ANY DATA SUBMITTED BY A
23 VENDOR PROPOSED FOR CONTRACT AWARD. STATE AGENCIES SHALL ENSURE THE
24 SUBMISSION FILED BY THE VENDOR MEETS SUCH SYSTEM'S TIMELINESS STANDARDS.
25 SUCH PROVISIONS APPLY REGARDLESS OF WHETHER THE CONTRACT IS SUBJECT TO
26 PRE-REVIEW AND APPROVAL BY THE STATE COMPTROLLER.

27 C. FOR CONTRACTS WHERE VENDOR DISCLOSURE IS NOT OTHERWISE REQUIRED,
28 THE STATE AGENCY AT ITS DISCRETION, MAY REQUIRE VENDORS BIDDING ON
29 PROCUREMENTS, AND/OR SUBCONTRACTORS, TO SUBMIT A VENDOR RESPONSIBILITY
30 QUESTIONNAIRE VIA THE SYSTEM. NOTHING CONTAINED IN THIS PARAGRAPH SHALL
31 BE CONSTRUED TO ALTER THE EXISTING AUTHORITY OF THE STATE COMPTROLLER TO
32 REQUIRE THE SUBMISSION OF A VENDOR RESPONSIBILITY QUESTIONNAIRE IN
33 CONJUNCTION WITH HIS OR HER DUTY TO REVIEW AND APPROVE STATE CONTRACTS
34 PRIOR TO SUCH CONTRACTS BECOMING EFFECTIVE.

35 D. STATE AGENCIES SHALL PROVIDE ACCESS TO THE SYSTEM TO USERS WITHIN
36 THEIR ORGANIZATION, AS DEEMED APPROPRIATE BY THE HEAD OF THE STATE AGEN-
37 CY OR HIS OR HER DESIGNEE. STATE AGENCY USERS PROVIDED WITH SUCH ACCESS
38 SHALL BE THOSE INDIVIDUALS, WHO, AS PART OF THEIR OFFICIAL JOB DUTIES,
39 ARE REQUIRED TO ASSESS AND/OR REVIEW VENDOR RESPONSIBILITY FOR THE AGEN-
40 CY'S CONTRACTS.

41 S 3. Subdivisions 7 and 10 of section 160 of the state finance law,
42 subdivision 7 as amended by section 30 of part L of chapter 55 of the
43 laws of 2012 and subdivision 10 as added by chapter 83 of the laws of
44 1995, are amended to read as follows:

45 7. "Service" or "services" means the performance of a task or tasks
46 and may include a material good or a quantity of material goods, and
47 which is the subject of any purchase or other exchange. For the purposes
48 of this article, INFORMATION technology shall be deemed a service.
49 Services, as defined in this article, shall not apply to those contracts
50 for architectural, engineering or surveying services, or those contracts
51 approved in accordance with article eleven-B of this chapter.

52 10. "[Technology] INFORMATION TECHNOLOGY" means either a good or a
53 service or a combination thereof, [that results in a technical method of
54 achieving a practical purpose or in improvements in productivity] USED
55 IN THE APPLICATION OF ANY COMPUTER OR ELECTRONIC INFORMATION EQUIPMENT
56 OR INTERCONNECTED SYSTEM THAT IS USED IN THE ACQUISITION, STORAGE,

MANIPULATION, MANAGEMENT, MOVEMENT, CONTROL, DISPLAY, SWITCHING, INTER-CHANGE, TRANSMISSION, OR RECEPTION OF DATA INCLUDING, BUT NOT LIMITED TO, HARDWARE, SOFTWARE, FIRMWARE, PROGRAMS, SYSTEMS, NETWORKS, INFRASTRUCTURE, MEDIA, AND RELATED MATERIAL USED TO AUTOMATICALLY AND ELECTRONICALLY COLLECT, RECEIVE, ACCESS, TRANSMIT, DISPLAY, STORE, RECORD, RETRIEVE, ANALYZE, EVALUATE, PROCESS, CLASSIFY, MANIPULATE, MANAGE, ASSIMILATE, CONTROL, COMMUNICATE, EXCHANGE, CONVERT, CONVERGE, INTERFACE, SWITCH, OR DISSEMINATE DATA OF ANY KIND OR FORM. Goods may be either new or used.

S 4. Paragraphs g and i of subdivision 2 of section 161 of the state finance law, as added by chapter 83 of the laws of 1995, are amended to read as follows:

g. Consult with and advise the commissioner on strategic INFORMATION technology investments that will facilitate electronic access to the terms and conditions of existing procurement contracts, promote electronic commerce including, but not limited to, payment to vendors, promote and enhance the efficiency of the procurement of products and services by or for state agencies and produce useful information that supports state procurement operations, management, analysis and decision making including, but not limited to, data concerning the status and use of procurement contracts and the number and type of contracts and award recipients;

i. Establish and, from time to time, amend guidelines for the procurement of services and INFORMATION technology in accordance with the provisions of this article. Such guidelines shall ensure the wise and prudent use of public money in the best interest of the taxpayers of the state; guard against favoritism, improvidence, extravagance, fraud and corruption; and ensure that service contracts are awarded on the basis of best value, including, but not limited to, the following criteria: quality, cost, and efficiency;

S 5. Paragraph k of subdivision 1 and subdivisions 6 and 7 of section 163 of the state finance law, paragraph k of subdivision 1 as added by section 36 of part L of chapter 55 of the laws of 2012, subdivision 6 as amended by section 1 of part P of chapter 55 of the laws of 2013 and subdivision 7 as amended by section 10 of part L of chapter 55 of the laws of 2012, are amended to read as follows:

k. "Authorized user" or "non-state agency purchaser" means (i) any officer, body or agency of the state or of a political subdivision or a district therein, or fire company or volunteer ambulance service as such are defined in section one hundred of the general municipal law, to make purchases of commodities, services and INFORMATION technology through the office of general services' centralized contracts, pursuant to the provisions of section one hundred four of the general municipal law; (ii) any county extension service association as authorized under subdivision eight of section two hundred twenty-four of the county law; (iii) any association or other entity as specified in and in accordance with section one hundred nine-a of the general municipal law; (iv) any association, consortium or group of privately owned or municipal, federal or state owned or operated hospitals, medical schools, other health related facilities or voluntary ambulance services, which have entered into a contract and made mutual arrangements for the joint purchase of commodities, services and INFORMATION technology pursuant to section twenty-eight hundred three-a of the public health law; (v) any institution for the instruction of the deaf or of the blind listed in section forty-two hundred one of the education law; (vi) any qualified non-profit-making agency for the blind approved by the commissioner of the office of chil-

1 dren and family services or the office of temporary and disability
2 assistance; (vii) any qualified charitable non-profit-making agency for
3 the severely disabled approved by the commissioner of education; (viii)
4 any hospital or residential health care facility as defined in section
5 twenty-eight hundred one of the public health law; (ix) any private
6 not-for-profit mental hygiene facility as defined in section 1.03 of the
7 mental hygiene law; (x) any public authority or public benefit corpo-
8 ration of the state, including the port authority of New York and New
9 Jersey and the interstate environmental commission; (xi) any public
10 library, association library, library system, cooperative library
11 system, the New York Library Association, and the New York State Associ-
12 ation of Library Boards or any other library except those which are
13 operated by for profit entities; (xii) any other association or entity
14 as specified in state law, to make purchases of commodities, services
15 and INFORMATION technology through the office of general services'
16 centralized contracts. Such qualified non-profit-making agencies for the
17 blind and severely disabled may make purchases from the correctional
18 industries program of the department of corrections and community super-
19 vision subject to rules pursuant to the correction law.

20 6. Discretionary buying thresholds. Pursuant to guidelines established
21 by the state procurement council: the commissioner may purchase services
22 and commodities in an amount not exceeding eighty-five thousand dollars
23 without a formal competitive process; state agencies may purchase
24 services and commodities in an amount not exceeding fifty thousand
25 dollars without a formal competitive process; and state agencies may
26 purchase commodities or services from small business concerns or those
27 certified pursuant to article fifteen-A of the executive law, or commod-
28 ities or INFORMATION technology that are recycled or remanufactured, or
29 commodities that are food, including milk and milk products, grown,
30 produced or harvested in New York state in an amount not exceeding two
31 hundred thousand dollars without a formal competitive process.

32 7. Method of procurement. Consistent with the requirements of subdivi-
33 sions three and four of this section, state agencies shall select among
34 permissible methods of procurement including, but not limited to, an
35 invitation for bid, request for proposals or other means of solicitation
36 pursuant to guidelines issued by the state procurement council. State
37 agencies may accept bids electronically including submission of the
38 statement of non-collusion required by section one hundred thirty-nine-d
39 of this chapter and, starting April first, two thousand twelve, and
40 ending March thirty-first, two thousand fifteen, may, for commodity,
41 service and INFORMATION technology contracts require electronic
42 submission as the sole method for the submission of bids for the solici-
43 tation. State agencies shall undertake no more than eighty-five such
44 electronic bid solicitations, none of which shall be reverse auctions,
45 prior to April first, two thousand fifteen. In addition, state agencies
46 may conduct up to twenty reverse auctions through electronic means,
47 prior to April first, two thousand fifteen. Prior to requiring the elec-
48 tronic submission of bids, the agency shall make a determination, which
49 shall be documented in the procurement record, that electronic
50 submission affords a fair and equal opportunity for offerers to submit
51 responsive offers. Within thirty days of the completion of the eighty-
52 fifth electronic bid solicitation, or by April first, two thousand
53 fifteen, whichever is earlier, the commissioner shall prepare a report
54 assessing the use of electronic submissions and make recommendations
55 regarding future use of this procurement method. In addition, within
56 thirty days of the completion of the twentieth reverse auction through

1 electronic means, or by April first, two thousand fifteen, whichever is
2 earlier, the commissioner shall prepare a report assessing the use of
3 reverse auctions through electronic means and make recommendations
4 regarding future use of this procurement method. Such reports shall be
5 published on the website of the office of general services. Except where
6 otherwise provided by law, procurements shall be competitive, and state
7 agencies shall conduct formal competitive procurements to the maximum
8 extent practicable. State agencies shall document the determination of
9 the method of procurement and the basis of award in the procurement
10 record. Where the basis for award is the best value offer, the state
11 agency shall document, in the procurement record and in advance of the
12 initial receipt of offers, the determination of the evaluation criteria,
13 which whenever possible, shall be quantifiable, and the process to be
14 used in the determination of best value and the manner in which the
15 evaluation process and selection shall be conducted.

16 S 6. Paragraph (a) of subdivision 2 of section 112 of the state
17 finance law, as amended by section 18 of part L of chapter 55 of the
18 laws of 2012, is amended to read as follows:

19 (a) Before any contract made for or by any state agency, department,
20 board, officer, commission, or institution, except the office of general
21 services, shall be executed or become effective, whenever such contract
22 exceeds fifty thousand dollars in amount and before any contract made
23 for or by the office of general services shall be executed or become
24 effective, whenever such contract exceeds eighty-five thousand dollars
25 in amount, it shall first be approved by the comptroller and filed in
26 his or her office, with the exception of contracts established as a
27 centralized contract through the office of general services [and
28 purchase orders or other procurement transactions issued under such
29 centralized contracts] THAT WERE NOT AWARDED PURSUANT TO SUBDIVISION
30 SIXTEEN OF SECTION ONE HUNDRED SIXTY-THREE OF THIS CHAPTER. The comp-
31 troller shall make a final written determination with respect to
32 approval of such contract within ninety days of the submission of such
33 contract to his or her office unless the comptroller shall notify, in
34 writing, the state agency, department, board, officer, commission, or
35 institution, prior to the expiration of the ninety day period, and for
36 good cause, of the need for an extension of not more than fifteen days,
37 or a reasonable period of time agreed to by such state agency, depart-
38 ment, board, officer, commission, or institution and provided, further,
39 that such written determination or extension shall be made part of the
40 procurement record pursuant to paragraph f of subdivision one of section
41 one hundred sixty-three of this chapter.

42 S 7. Section 163 of the state finance law is amended by adding a new
43 subdivision 16 to read as follows:

44 16. ALTERNATIVE PROCUREMENT METHODS FOR THE ACQUISITION OF NON-CON-
45 STRUCTION RELATED COMMODITIES AND SERVICES, OR INFORMATION TECHNOLOGY.
46 A. WHEN THE COMMISSIONER OR A STATE AGENCY DETERMINES THAT IT IS IN THE
47 BEST INTEREST OF THE STATE TO DEVELOP A PROCUREMENT METHOD NOT AUTHOR-
48 IZED BY THIS SECTION FOR NON-CONSTRUCTION RELATED COMMODITIES AND
49 SERVICES, OR INFORMATION TECHNOLOGY, THE COMMISSIONER OR STATE AGENCY IS
50 HEREBY AUTHORIZED TO DEVELOP AND USE SUCH METHOD FOR A SPECIFIC CONTRACT
51 AWARD. SUCH DETERMINATION SHALL BE MADE IN WRITING AND SHALL INCLUDE
52 DOCUMENTATION FOR THE PROCUREMENT RECORD THAT SUCH ALTERNATIVE PROCURE-
53 MENT METHOD: (I) WOULD SERVE THE INTEREST OF THE STATE BETTER THAN OTHER
54 METHODS CURRENTLY AVAILABLE UNDER THIS SECTION; (II) CAN BE APPLIED ON A
55 COMPETITIVE, FAIR AND EQUITABLE BASIS; AND (III) CONTAINS AN APPROPRIATE
56 EVALUATION METHODOLOGY THAT CONSIDERS BOTH COST AND QUALITATIVE EVALU-

1 ATION FACTORS. SUCH ALTERNATIVE PROCUREMENT METHOD SHALL BE SUBJECT TO
2 ALL OTHER APPLICABLE PROVISIONS OF THIS SECTION. THE COMMISSIONER OR A
3 STATE AGENCY MAY NOT UNDERTAKE AN ALTERNATIVE PROCUREMENT METHOD UNTIL
4 THE COMPTROLLER HAS DETERMINED THAT THE PROPOSED ALTERNATIVE PROCUREMENT
5 METHOD IS IN THE BEST INTEREST OF THE STATE; CAN BE APPLIED ON A COMPET-
6 ITIVE, FAIR AND EQUITABLE BASIS; AND UTILIZES AN APPROPRIATE EVALUATION
7 METHODOLOGY THAT CONSIDERS BOTH COST AND QUALITATIVE EVALUATION FACTORS.

8 B. WHEN USING AN ALTERNATIVE PROCUREMENT METHOD AUTHORIZED BY THIS
9 SUBDIVISION, THE COMMISSIONER OR AGENCY SHALL INCLUDE IN ITS SOLICITA-
10 TION A DETAILED DESCRIPTION OF THE PROPOSED METHOD OF AWARD. IN ADVANCE
11 OF THE INITIAL RECEIPT OF OFFERS OR BIDS, THE COMMISSIONER OR STATE
12 AGENCY SHALL DETERMINE AND DOCUMENT IN THE PROCUREMENT RECORD THE EVALU-
13 ATION CRITERIA AND PROCESS TO BE USED IN THE DETERMINATION OF THE
14 SPECIFIC CONTRACT AWARD AND THE PROCESS BY WHICH THE EVALUATION AND
15 SELECTION SHALL BE CONDUCTED. IN ADDITION TO THE REQUIREMENTS SET FORTH
16 IN PARAGRAPH G OF SUBDIVISION NINE OF THIS SECTION, THE PROCUREMENT
17 RECORD SHALL DOCUMENT THE BASIS UPON WHICH THE AGENCY HAS DETERMINED
18 THAT POTENTIAL VENDORS WILL BE ABLE TO RESPOND WITH VIABLE BIDS TO SUCH
19 ALTERNATIVE PROCUREMENT.

20 C. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION FIVE OF SECTION THREE
21 HUNDRED FIFTY-FIVE OF THE EDUCATION LAW TO THE CONTRARY OR SECTION
22 SIXTY-TWO HUNDRED EIGHTEEN OF THE EDUCATION LAW, BEFORE ANY CONTRACT
23 AWARDED UNDER THIS SECTION WHICH EXCEEDS FIFTY THOUSAND DOLLARS IN
24 AMOUNT BECOMES EFFECTIVE IT MUST BE APPROVED BY THE COMPTROLLER AND
25 FILED IN HIS OR HER OFFICE.

26 D. FOR EACH PROCUREMENT AWARDED PURSUANT TO THIS SECTION, THE COMMIS-
27 SIONER OR STATE AGENCY SHALL SUBMIT TO THE GOVERNOR, THE COMPTROLLER AND
28 THE HEADS OF THE FISCAL COMMITTEES OF EACH HOUSE OF THE STATE LEGISLA-
29 TURE NO LATER THAN THE MID-POINT OF THE INITIAL TERM OF THE RESULTANT
30 CONTRACT A REPORT ASSESSING THE VALIDITY OF THE PROCUREMENT METHOD AND
31 COMPARING ITS RESULTS TO PROCUREMENT METHODS FOR COMMODITIES AND
32 SERVICES OR INFORMATION TECHNOLOGY.

33 S 8. Section 163 of the state finance law is amended by adding a new
34 subdivision 17 to read as follows:

35 17. COMPETITIVE NEGOTIATION. A. WHERE THE BASIS OF AWARD IS BEST VALUE
36 AND AFTER COMPLETING AN INITIAL EVALUATION AND SCORING, A STATE AGENCY
37 MAY CHOOSE TO EITHER MAKE AN AWARD TO THE BEST VALUE OFFERER PURSUANT TO
38 SUBDIVISION FOUR OF THIS SECTION OR UNDERTAKE COMPETITIVE NEGOTIATIONS
39 WITH ALL OFFERERS OF PROPOSALS SUSCEPTIBLE OF BEING SELECTED FOR
40 CONTRACT AWARD, SO LONG AS THE AGENCY RESERVES THE RIGHT TO CONDUCT SUCH
41 COMPETITIVE NEGOTIATIONS IN THE SOLICITATION. THE NEGOTIATIONS SHALL BE
42 CONDUCTED AS PROVIDED IN PARAGRAPH D OF THIS SUBDIVISION.

43 B. COMPETITIVE NEGOTIATION MAY ONLY BE USED WHERE:

44 (I) AT LEAST TWO OFFERERS ARE DEEMED SUSCEPTIBLE OF BEING SELECTED FOR
45 CONTRACT AWARD;

46 (II) IN THE EVENT THAT THE SOLICITATION INCLUDES OPTIONAL COMPONENTS,
47 THE SOLICITATION SHALL REQUIRE ALL OFFERERS TO PROVIDE A PROPOSAL FOR
48 ALL OPTIONS OR OTHERWISE BE DEEMED NONRESPONSIVE; AND

49 (III) THE AGENCY HAS DETERMINED THAT USE OF COMPETITIVE NEGOTIATION
50 WILL MAXIMIZE THE AGENCY'S ABILITY TO OBTAIN BEST VALUE, BASED ON THE
51 AGENCY'S NEED AND THE SPECIFICATIONS SET FORTH IN THE SOLICITATION.

52 C. THE AGENCY MUST DOCUMENT IN THE PROCUREMENT RECORD AND IN ADVANCE
53 OF THE INITIAL RECEIPT OF OFFERS:

54 (I) THE METHODOLOGY, WHICH SHALL BE QUANTIFIABLE AND BASED ON A
55 COMPARISON OF THE PROPOSALS' PRICE AND TECHNICAL MERIT, THAT WILL BE

EMPLOYED TO ARRIVE AT A COMPETITIVE RANGE THAT WILL DETERMINE WHICH PROPOSALS ARE TO BE CONSIDERED SUSCEPTIBLE TO AWARD; AND

(II) A FAIR AND IMPARTIAL NEGOTIATION PROCEDURE, FORMULATED WITH THE GOAL OF ENSURING SUSTAINED COMPETITION UNTIL AN AWARD IS RENDERED AND OBTAINING THE BEST VALUE FOR THE STATE.

D. THE AGENCY SHALL CONDUCT WRITTEN OR ORAL NEGOTIATIONS WITH ALL RESPONSIBLE OFFERERS WHO SUBMIT PROPOSALS IN THE COMPETITIVE RANGE. IN THE COURSE OF SUCH NEGOTIATIONS, THE AGENCY SHALL:

(I) ADVISE THE OFFERER OF WAYS IN WHICH ITS PROPOSAL MAY BE IMPROVED SO THAT THE OFFERER IS GIVEN AN OPPORTUNITY TO BETTER MEET THE AGENCY'S NEEDS;

(II) CLARIFY ANY UNCERTAINTIES, AMBIGUITIES OR NON-MATERIAL DEVIATIONS IN THE PROPOSAL;

(III) ADVISE THE OFFERER OF ANY TECHNICAL COMPONENTS IN ITS PROPOSAL THAT MAY NOT BE NECESSARY TO SATISFY THE AGENCY'S REQUIREMENTS AND REQUEST MODIFICATIONS AS APPROPRIATE;

(IV) PROVIDE THE OFFERER A REASONABLE OPPORTUNITY TO SUBMIT ANY COST, TECHNICAL OR OTHER REVISIONS TO ITS PROPOSAL IN RESPONSE TO ISSUES IDENTIFIED DURING NEGOTIATIONS; AND

(V) DOCUMENT ANY ORAL NEGOTIATIONS FOR THE PROCUREMENT RECORD.

E. NEGOTIATIONS MAY BE TAILORED TO EACH OFFERER'S PROPOSAL PROVIDED, HOWEVER, SUCH NEGOTIATIONS SHALL BE CONDUCTED WITH EACH OFFERER WITHIN THE COMPETITIVE RANGE WITHOUT DISCLOSING INFORMATION CONCERNING ANY OTHER OFFERERS' PROPOSALS OR THE EVALUATION PROCESS. NEGOTIATIONS SHALL CULMINATE IN A TECHNICAL SOLUTION FROM EACH OFFERER REMAINING WITHIN THE COMPETITIVE RANGE THAT IS DEEMED ACCEPTABLE TO MEET THE AGENCY'S NEED AS SET FORTH IN THE SOLICITATION. AFTER DISCUSSION OF THESE TECHNICAL SOLUTIONS IS COMPLETED, THE AGENCY SHALL SOLICIT A BEST AND FINAL PRICE PROPOSAL FROM ALL OFFERERS WITHIN THE COMPETITIVE RANGE. THE BEST AND FINAL PRICE SOLICITATION SHALL ENSURE THAT ALL OFFERERS ARE AFFORDED AN EQUAL OPPORTUNITY TO RESPOND WITHIN A SPECIFIED PERIOD OF TIME.

F. WHERE AN AGENCY CHOOSES TO UNDERTAKE COMPETITIVE NEGOTIATIONS INSTEAD OF MAKING A BEST VALUE AWARD AFTER AN INITIAL EVALUATION AND SCORING, THE FINAL AWARD SHALL BE MADE TO THE LOWEST RESPONSIBLE OFFERER AFTER RECEIVING A BEST AND FINAL PRICE ON A REVISED ACCEPTABLE PROPOSAL.

S 9. Subdivision 9 of section 163 of the state finance law is amended by adding a new paragraph c-1 to read as follows:

C-1. WHERE A STATE AGENCY DETERMINES THAT NON-MATERIAL CHANGES TO THE SPECIFICATIONS AS SET FORTH IN THE SOLICITATION WOULD BE IN THE BEST INTEREST OF THE STATE AND, WHEN PROVIDED FOR IN THE SOLICITATION, STATE AGENCIES MAY REQUEST BEST AND FINAL OFFERS, WHICH SHALL BE IN WRITING AND SOLICITED IN THE SAME MANNER FROM ALL OFFERERS DETERMINED TO BE SUSCEPTIBLE OF BEING SELECTED FOR CONTRACT AWARD, WITH THE INTENT OF ALLOWING AN OFFERER TO REVISE ITS COST; PROVIDED, HOWEVER, THAT A STATE AGENCY MAY NOT MAKE A MODIFICATION TO THE SOLICITATION IF SUCH MODIFICATION WOULD PREJUDICE ANY BIDDER OR POTENTIAL BIDDER AND, PROVIDED FURTHER, THAT NO BEST AND FINAL OFFER MAY BE ACCEPTED OR CONSIDERED BY A STATE AGENCY UNLESS SUCH BEST AND FINAL OFFER IS SUBMITTED IN RESPONSE TO A REQUEST BY THE STATE AGENCY.

S 9-a. Paragraph c of subdivision 9 of section 163 of the state finance law, as amended by chapter 137 of the laws of 2008, is amended to read as follows:

c. Where provided in the solicitation, state agencies may require clarification from offerers for purposes of assuring a full understanding of responsiveness to the solicitation requirements. Where provided for in the solicitation, revisions may be permitted from all offerers

1 determined to be susceptible of being selected for contract award, prior
2 to award. Offerers shall be accorded fair and equal treatment with
3 respect to their opportunity for discussion and revision of offers. [A
4 state agency shall, upon request, provide a debriefing to any unsuccessful
5 offerer that responded to a request for proposal or an invitation
6 for bids, regarding the reasons that the proposal or bid submitted by
7 the unsuccessful offerer was not selected for an award. The opportunity
8 for an unsuccessful offerer to seek a debriefing shall be stated in the
9 solicitation, which shall provide a reasonable time for requesting a
10 debriefing.]

11 S 9-b. Subdivision 9 of section 163 of the state finance law is
12 amended by adding a new paragraph h to read as follows:

13 H. (I) WITHIN FIFTEEN DAYS OF THE SELECTION OF A SUCCESSFUL OFFEROR BY
14 A STATE AGENCY AND PRIOR TO THE SUBMISSION FOR APPROVAL OF A CONTRACT TO
15 THE OFFICE OF THE STATE COMPTROLLER IF THAT CONTRACT IS SUBJECT TO THE
16 APPROVAL OF THE COMPTROLLER, ALL UNSUCCESSFUL OFFERORS SHALL BE ADVISED
17 IN WRITING OF THE COMPLETION OF THE SELECTION PROCESS AND THAT THEIR
18 OFFER WAS NOT SELECTED FOR THIS AWARD. THIS NOTICE SHALL DISCLOSE THE
19 IDENTITY OF THE SUCCESSFUL OFFEROR.

20 (II) FOR ANY CONTRACT ESTABLISHED AS A CENTRALIZED CONTRACT BY THE
21 OFFICE OF GENERAL SERVICES, WITHIN FIFTEEN DAYS OF SELECTION OF THE
22 SUCCESSFUL OFFEROR BY THE OFFICE OF GENERAL SERVICES, ALL UNSUCCESSFUL
23 OFFERORS SHALL BE ADVISED OF THE COMPLETION OF THE SELECTION PROCESS AND
24 THAT THEIR OFFER WAS NOT SELECTED FOR AWARD. THIS NOTICE SHALL DISCLOSE
25 THE IDENTITY OF THE SUCCESSFUL OFFEROR.

26 (III) THE OPPORTUNITY FOR AN UNSUCCESSFUL OFFEROR THAT RESPONDED TO A
27 REQUEST FOR PROPOSALS OR AN INVITATION FOR BIDS TO SEEK A DEBRIEFING
28 SHALL BE STATED IN THE REQUEST FOR PROPOSALS OR INVITATION FOR BIDS,
29 WHICH SHALL PROVIDE A REASONABLE TIME FOR REQUESTING A DEBRIEFING.

30 (IV) THE STATE AGENCY, UPON THE TIMELY REQUEST OF AN UNSUCCESSFUL
31 OFFEROR, SHALL PROVIDE A REASONABLE OPPORTUNITY FOR A DISCUSSION WITH
32 AGENCY PERSONNEL WHO WERE INVOLVED IN AND ARE KNOWLEDGEABLE ABOUT THE
33 PROCUREMENT EVALUATION PROCESS. SUCH DEBRIEFING, SHALL INCLUDE, BUT NEED
34 NOT BE LIMITED TO: (A) THE REASONS THAT THE PROPOSAL OR BID SUBMITTED BY
35 THE UNSUCCESSFUL OFFEROR WAS NOT SELECTED FOR AWARD; (B) THE QUALITATIVE
36 AND QUANTITATIVE ANALYSIS EMPLOYED BY THE AGENCY IN ASSESSING THE RELATIVE
37 MERITS OF THE OFFERS; (C) THE APPLICATION OF EACH OF THE SELECTION
38 CRITERIA TO THE UNSUCCESSFUL OFFEROR'S PROPOSAL OR BID; AND (D) THE
39 REASONS FOR THE SELECTION OF THE WINNING PROPOSAL OR BID. SUCH PERSONNEL
40 SHALL ALSO PROVIDE, TO THE EXTENT PRACTICABLE, ADVICE AND GUIDANCE TO
41 THE UNSUCCESSFUL OFFEROR CONCERNING METHODS OF IMPROVING PROPOSALS OR
42 BIDS BY SUCH OFFEROR.

43 S 10. Subdivision 7 of section 162 of the state finance law, as
44 amended by chapter 426 of the laws of 2002, is amended to read as
45 follows:

46 7. Partnering with preferred sources. The commissioner of the appropriate
47 appointing agency as identified in paragraph e of subdivision six
48 of this section, shall conduct one or more pilot studies whereby a
49 private vendor may be accorded preferred source status for purposes of
50 this section. The pilot studies shall seek to ascertain the benefits of
51 partnerships between private industry and those entities accorded
52 preferred source status as specified in this section. Preferred source
53 status under a partnering arrangement may only be accorded when a
54 proposal to a soliciting agency for commodities or services includes a
55 binding agreement with one or more of the entities accorded preferred
56 source status under this section AND WHERE AT LEAST FIFTY PERCENT OF ALL

LABOR INVOLVED IN DELIVERING SERVICES OR COMMODITIES TO THE STATE BY THE PRIVATE VENDOR IS BEING PROVIDED DIRECTLY BY THE INDIVIDUALS OF THE CLASS OF PREFERRED SOURCE INCLUDING, BUT NOT LIMITED TO, INMATES, THE DISABLED, VETERANS AND THE BLIND. PRIVATE VENDOR OPPORTUNITIES FOR PREFERRED SOURCES SHALL BE COMPETITIVELY AWARDED AND THE PROCUREMENT SUMMARY, VENDOR RESPONSIBILITY SUMMARY AND CONTRACT AGREEMENT SHALL BE BROUGHT BEFORE THE PROCUREMENT COUNCIL FOR REVIEW. THE STATE SHALL NOT ACCESS THE SERVICES OF SUCH PRIVATE VENDOR UNLESS A MAJORITY OF THE COUNCIL APPROVES. The binding agreement shall provide that:

(i) The preferred source shall perform the majority of the work necessary to such offering, and

(ii) The partnering proposal includes bona fide long term employment opportunities for persons who could otherwise be new clients of an entity previously accorded preferred source status herein, and

(iii) The partnering proposal offers the solicited services or commodities at a price less than the price that otherwise would be charged by a preferred source.

S 11. Paragraph b of subdivision 3 of section 162 of the state finance law, as amended by section 164 of subpart B of part C of chapter 62 of the laws of 2011, is amended to read as follows:

b. After January first, nineteen hundred ninety-six, upon the application of the commissioner of corrections and community supervision, the commissioner of the office of children and family services, the office of temporary and disability assistance, the commissioner of mental health or the commissioner of education, or a non-profit-making facilitating agency designated by one of the said commissioners pursuant to paragraph e of subdivision six of this section, the state procurement council may recommend that the commissioner: (i) add commodities or services to, or (ii) in order to insure that such list reflects current production and/or availability of commodities and services, delete at the request of a preferred source, commodities or services from, the list established by paragraph a of this subdivision. The council may make a non-binding recommendation to the relevant preferred source to delete a commodity or service from such list. Additions may be made only for new services or commodities, or for services or commodities that are substantially different from those reflected on said list for that provider. The decision to recommend the addition of services or commodities shall be based upon a review of relevant factors as determined by the council including costs and benefits to be derived from such addition and shall include an analysis by the office of general services conducted pursuant to subdivision six of this section; PROVIDED, HOWEVER, THAT THE PROCUREMENT COUNCIL SHALL NOT RECOMMEND TO THE COMMISSIONER ANY APPLICATION THAT DOES NOT INCLUDE AT LEAST FIFTY PERCENT OF ALL LABOR INVOLVED IN DELIVERING SERVICES OR COMMODITIES TO THE STATE BEING PROVIDED DIRECTLY BY THE INDIVIDUALS OF THE CLASS OF PREFERRED SOURCE INCLUDING, BUT NOT LIMITED TO, INMATES, THE DISABLED, VETERANS AND THE BLIND. Unless the state procurement council shall make a recommendation to the commissioner on any such application within one hundred twenty days of receipt thereof, such application shall be deemed recommended. In the event that the state procurement council shall deny any such application, the commissioner or non-profit-making agency which submitted such application may, within thirty days of such denial, appeal such denial to the commissioner of general services who shall review all materials submitted to the state procurement council with respect to such application and who may request such further information or material as is deemed necessary. Within sixty days of receipt of all informa-

tion or materials deemed necessary, the commissioner shall render a written final decision on the application which shall be binding upon the applicant and upon the state procurement council.

S 12. Subdivisions 1 and 2 of section 137 of the state finance law, subdivision 1 as separately amended by section 17 of part MM of chapter 57 and chapter 619 of the laws of 2008 and subdivision 2 as amended by chapter 137 of the laws of 1985, are amended to read as follows:

1. (A) In addition to other bond or bonds, if any, required by law for the completion of a work specified in a contract for the prosecution of a public improvement for the state of New York a municipal corporation, a public benefit corporation or a commission appointed pursuant to law, or in the absence of any such requirement, the comptroller may or the other appropriate official, respectively, shall nevertheless require prior to the approval of any such contract a bond guaranteeing prompt payment of moneys due to all persons furnishing labor or materials to the contractor or any subcontractors in the prosecution of the work provided for in such contract. Whenever a municipal corporation issues a permit subject to compliance with section two hundred twenty of the labor law, such permittee or its contractor or subcontractors furnishing workers shall post a payment bond subject to this section. [Provided, however, that]

(B) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH A OF THIS SUBDIVISION, all performance bonds and payment bonds may, at the discretion of the head of the state agency, public benefit corporation or commission, or his or her designee, be dispensed with for the completion of a work specified in a contract for the prosecution of a public improvement for the state of New York for which bids are solicited where the aggregate amount of the contract is under [one] FIVE hundred thousand dollars [and]; provided [further], that in a case where the contract is not subject to the multiple contract award requirements of section one hundred thirty-five of this article, such requirements may be dispensed with where the head of the state agency, public benefit corporation or commission finds it to be in the public interest and where the aggregate amount of the contract awarded or to be awarded is less than two hundred thousand dollars. Provided further, that in a case where a performance or payment bond is dispensed with, twenty per centum may be retained from each progress payment or estimate until the entire contract work has been completed and accepted, at which time the head of the state agency, public benefit corporation or commission shall, pending the payment of the final estimate, pay not to exceed seventy-five per centum of the amount of the retained percentage. THE PROVISIONS OF THIS PARAGRAPH SHALL NOT APPLY TO ANY PERFORMANCE BONDS REQUIRED IN CONNECTION WITH A MAJOR INSTALLATION PURSUANT TO PARAGRAPH D OF SUBDIVISION TEN OF SECTION ONE HUNDRED SIXTY-THREE OF THIS CHAPTER. FOR THE PURPOSES OF THIS PARAGRAPH "MAJOR INSTALLATION" SHALL HAVE THE SAME MEANING AS PROVIDED IN SECTION ONE HUNDRED SIXTY-THREE OF THIS CHAPTER.

2. A copy of such payment bond shall be kept in the office of the head of the department or bureau having charge of the public improvement in connection with which the bond was given and a copy shall also be kept in the office of the comptroller [or other appropriate official]; such copies shall be open to public inspection.

S 13. Subdivision 1 of section 163 of the state finance law is amended by adding a new paragraph 1 to read as follows:

L. "MAJOR INSTALLATION" MEANS ANY PROJECT REQUIRING BUILDING CONSTRUCTION OR SITE WORK OR AN INSTALLATION WHERE THE TOTAL CHARACTER OF THE WORK IS NOT CONSTRUCTION BUT INSTEAD THE PURCHASE, PURSUANT TO

1 THIS SECTION, AND INSTALLATION OF A LARGE PIECE OF EQUIPMENT WHERE THE
2 VALUE OF SUCH PURCHASE IS ONE MILLION DOLLARS OR MORE.

3 S 14. Paragraph d of subdivision 10 of section 163 of the state
4 finance law, as added by chapter 83 of the laws of 1995, is amended to
5 read as follows:

6 d. It shall be in the discretion of the commissioner or state agency
7 to require a bond or other guarantee of performance, and to approve the
8 amount, form and sufficiency thereof; PROVIDED, HOWEVER, THAT IN THE
9 CASE OF A MAJOR INSTALLATION, SUCH BOND OR GUARANTEE OF PERFORMANCE
10 SHALL BE REQUIRED, AND THE COMMISSIONER OR STATE AGENCY MAY, IN ITS
11 DISCRETION, REQUIRE A BOND GUARANTEEING THE PROMPT PAYMENT OF MONEYS AS
12 SET FORTH IN PARAGRAPH A OF SUBDIVISION ONE OF SECTION ONE HUNDRED THIR-
13 TY-SEVEN OF THIS CHAPTER.

14 S 15. Paragraph e of subdivision 10 of section 163 of the state
15 finance law, as amended by chapter 137 of the laws of 2008, is amended
16 to read as follows:

17 e. The commissioner may authorize purchases required by state agencies
18 or other authorized purchasers by letting a contract pursuant to a writ-
19 ten agreement, or by approving the use of a contract let by any depart-
20 ment, agency or instrumentality of the United States government and/or
21 any department, agency, office, political subdivision or instrumentality
22 of any state or states. A state agency purchaser shall document in the
23 procurement record its rationale for the use of a contract let by any
24 department, agency or instrumentality of the United States government or
25 any department, agency, office, political subdivision or instrumentality
26 of any other state or states. Such rationale shall include, but need not
27 be limited to, a determination of need, a consideration of the procure-
28 ment method by which the contract was awarded, an analysis of alterna-
29 tive procurement sources including an explanation why a competitive
30 procurement or the use of a centralized contract let by the commissioner
31 is not in the best interest of the state, and the reasonableness of
32 cost. THE AUTHORITY TO USE A CONTRACT LET BY ANOTHER GOVERNMENTAL ENTITY
33 PURSUANT TO THIS PARAGRAPH IS INTENDED TO BENEFIT THE STATE BY USING
34 CONTRACTS IN PLACE THAT PROVIDE FOR THE SAME SERVICE OR COMMODITY SOUGHT
35 BY A STATE AGENCY AT A PRICE DETERMINED TO BE REASONABLE BY THE STATE
36 AGENCY. SUCH CONTRACTS ARE NOT INTENDED TO BE USED PRIMARILY TO AVOID
37 COMPETITIVE BIDDING. USE OF MULTIPLE AWARD CONTRACTS PURSUANT TO THIS
38 PARAGRAPH SHALL FOLLOW THE SAME BASIS OF SELECTION AMONG THE MULTIPLE
39 AWARDEES AS WAS PRESCRIBED BY THE ORIGINAL CONTRACTING GOVERNMENTAL
40 ENTITY.

41 S 16. Subdivision 15 of section 163 of the state finance law is
42 amended by adding a new paragraph d to read as follows:

43 D. IN ADDITION TO OTHER REPORTS REQUIRED BY THIS SUBDIVISION, THE
44 COMMISSIONER OF GENERAL SERVICES SHALL PREPARE A REPORT ON THE SAVINGS
45 ACHIEVED FROM ALL CONTRACTS ESTABLISHED AS A CENTRALIZED CONTRACT
46 THROUGH THE OFFICE OF GENERAL SERVICES PURSUANT TO THIS SECTION, THE
47 IMPACT OF SUCH CONTRACTS ON SMALL, MINORITY AND WOMEN-OWNED AND
48 SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES, AND THE EFFECTIVE-
49 NESS OF SUCH CONTRACTS IN FULFILLING THE PURCHASING NEEDS OF ALL AUTHOR-
50 IZED USERS OF SUCH CONTRACTS. SUCH REPORT SHALL BE SUBMITTED BY SUCH
51 COMMISSIONER TO THE GOVERNOR, THE STATE COMPTROLLER, AND THE HEADS OF
52 THE FISCAL COMMITTEES OF EACH HOUSE OF THE STATE LEGISLATURE NO LATER
53 THAN JANUARY FIFTEENTH, TWO THOUSAND SIXTEEN, AND THEREAFTER ANNUALLY ON
54 OR BEFORE SUCH DATE.

1 S 17. Subdivision 3 of section 112 of the state finance law, as
2 amended by chapter 319 of the laws of 1992, is amended to read as
3 follows:

4 3. A contract or other instrument wherein the state or any of its
5 officers, agencies, boards or commissions agrees to give a consideration
6 other than the payment of money, when the value or reasonably estimated
7 value of such consideration exceeds [ten] TWENTY-FIVE thousand dollars,
8 shall not become a valid enforceable contract unless such contract or
9 other instrument shall first be approved by the comptroller and filed in
10 his office. FOR PURPOSES OF THIS SUBDIVISION, WHERE CONSIDERATION CANNOT
11 BE DETERMINED IN TERMS OF MONETARY VALUE, IT SHALL BE VALUED IN TERMS OF
12 INTRINSIC VALUE.

13 S 18. Section 350 of the education law is amended by adding a new
14 subdivision 14 to read as follows:

15 14. "CONSTRUCTION RELATED SERVICES" MEANS STUDIES, SURVEYS,
16 CONSTRUCTION MANAGEMENT, CONSTRUCTION INSPECTION, EXCAVATION AND SIMILAR
17 EFFORTS ASSOCIATED WITH CONSTRUCTION OR THE ACQUISITION OF PUBLIC WORKS.

18 S 19. This act shall take effect immediately; provided, however,
19 section two of this act shall take effect on the one hundred eightieth
20 day after it shall have become a law; provided, further, however, that
21 the provisions of sections one, five, seven, eight, nine, nine-a,
22 nine-b, thirteen, fourteen, fifteen and sixteen of this act shall apply
23 to any procurement initiated on or after such date; provided, further
24 however, that the amendments to section 163 of the state finance law
25 made by sections one, five, seven, eight, nine, nine-a, nine-b, thir-
26 teen, fourteen, fifteen and sixteen of this act shall not affect the
27 repeal of such section as provided in subdivision 5 of section 362 of
28 chapter 83 of the laws of 1995, as amended, and shall be deemed repealed
29 therewith.