

# STATE OF NEW YORK

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6770

2021-2022 Regular Sessions

## IN SENATE

May 14, 2021

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Introduced by Sen. KENNEDY -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, in relation to certain contracts for the Buffalo Sewer Authority

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 1181 of the public authorities law, as amended by  
2 chapter 665 of the laws of 1987, is amended to read as follows:

3 § 1181. Construction contracts. If the project, or any portion there-  
4 of, or any addition, betterment or extension to the facilities, shall be  
5 constructed pursuant to a contract for which the estimated cost exceeds  
6 ~~[seven]~~ five hundred thousand dollars prior to the date when work under  
7 the authority's long term control plan is completed, or, after such  
8 date, the amount provided for expenditures of public work in subdivision  
9 one of section one hundred three of the general municipal law, such  
10 contract shall be awarded to the lowest responsible bidder after adver-  
11 tisement for bids. The board may make rules and regulations for the  
12 submission of bids and the construction of the project or such portion  
13 thereof or such addition, betterment, or extension. No contract shall be  
14 entered into for construction of the project or any portion thereof or  
15 any addition, betterment or extension to the facilities, or for the  
16 purchase of materials, unless the contractor shall give an undertaking  
17 with a sufficient surety or sureties approved by the authority and in an  
18 amount fixed by the authority, for the faithful performance of the  
19 contract. As to contracts entered into for construction, such undertak-  
20 ing shall provide, among other things, that the person or corporation  
21 entering into such contract with the authority, will pay for all materi-  
22 als furnished and services rendered for the performance of the contract  
23 and that any person or corporation furnishing such materials or render-  
24 ing such services may maintain an action to recover for the same against

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

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1 the obligor in the undertaking as though such person or corporation was  
2 named therein, provided the action is brought within one year after the  
3 time the cause of action accrued. Nothing in this section shall be  
4 construed to limit the power of the authority to construct the project  
5 or any portion thereof or any addition, betterment or extension to the  
6 facilities directly by the officers, agents, and employees of the  
7 authority or otherwise than by contract. The authority may proceed  
8 jointly with the state of New York in the construction of any highway  
9 which also includes sewage and storm water facilities and by agreement  
10 with the state of New York fix and determine the amount which shall  
11 constitute the contribution by the authority toward the cost of the  
12 construction by the state of New York of such facilities in connection  
13 with the construction or improvement of any highway. The portion of the  
14 cost to be paid by the authority shall be deposited with the state comp-  
15 troller, who is authorized to receive and accept the same. Upon  
16 completion of any project authorized by this section the commissioner of  
17 transportation shall render to the authority an itemized statement show-  
18 ing in full (a) the amount of money deposited as hereinbefore provided,  
19 and (b) all disbursements made pursuant to this section. Any surplus  
20 money shall be paid to such authority on the warrant of the comptroller  
21 on vouchers therefore approved by the commissioner of transportation.

22 § 2. The public authorities law is amended by adding a new section  
23 1181-a to read as follows:

24 § 1181-a. Small business set-aside contracts for the authority. 1.  
25 Definitions. As used in this section, unless a different meaning clearly  
26 appears from the context:

27 (a) "Minority business concern" shall mean a business enterprise in  
28 which at least fifty-one percent is owned by persons who are Native  
29 American or Alaskan native, Asian American, Black or African-American,  
30 Hispanic or Latino, or Native Hawaiian or Pacific Islander.

31 (b) "Small business" shall mean a business that is independently owned  
32 and operated, and which is not dominant in the field of operation. The  
33 authority shall establish a detailed definition by resolution adopted at  
34 a public meeting based on factors such as limits in number of employees,  
35 annual revenues, and/or personal net worth of owners.

36 (c) "Small business set-aside" shall mean a request for which bids are  
37 to be invited and accepted only from small businesses by the general  
38 manager.

39 2. The general manager has the authority to designate as small busi-  
40 ness set-asides specified contracts for purchases, services, or  
41 construction. The designation shall be made prior to the advertisement  
42 for bids as provided by law, and when the advertisement is published it  
43 shall indicate the purchases or work that have been designated as small  
44 business set-asides. To effectuate the purposes of this section, the  
45 general manager may exercise this authority whenever there is a reason-  
46 able expectation that bids will be obtained from at least three small  
47 businesses capable of furnishing the desired property or service at a  
48 fair and reasonable price.

49 3. In the case of contracts designated as small business set-asides,  
50 invitations to bid shall be confined to small businesses and bids from  
51 other businesses shall be rejected. The purchase, contract or expendi-  
52 ture of funds shall be awarded to the lowest responsible bidder among  
53 the small businesses, considering conformity with specifications and  
54 terms, in accordance with the authority's purchasing guidelines.

55 4. A portion of small business set-asides shall be set aside in turn  
56 as exclusively as possible, to small businesses owned or controlled by

1 minority business concerns, and such businesses shall constitute not  
2 less than twenty-five percent of the successful bidders under this  
3 title.

4 5. If the total number of small businesses responding to the invita-  
5 tion to bid and considered capable of meeting the specifications and  
6 terms of the invitation to bid is less than three, or if the general  
7 manager determines that acceptance of the best bid will result in the  
8 payment of an unreasonable price, the general manager shall reject all  
9 bids and withdraw the designation of small business set-aside.

10 6. If the general manager withdraws the designation of small business  
11 set-aside, the authority shall notify the bidders of the reason why the  
12 bids were rejected. Invitations to bid containing the same or rewritten  
13 specifications and terms shall then be re-issued without the designation  
14 of small business set-aside.

15 § 3. This act shall take effect immediately.