

# STATE OF NEW YORK

9346

## IN ASSEMBLY

March 6, 2024

Introduced by M. of A. PRETLOW -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, in relation to allowing the power authority to create the New York State small business development program; and providing for the repeal of such provisions upon expiration thereof

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

1 Section 1. The public authorities law is amended by adding a new  
2 section 1009-b to read as follows:

3 § 1009-b. Power authority of the state of New York small business  
4 development program. 1. For the purposes of this section, the following  
5 terms shall have the following meanings:

6 (a) "Authority" means the power authority of the state of New York and  
7 the canal corporation.

8 (b) "Chairperson" means the chairperson of the authority.

9 (c) "Small business" means a business in the construction trades  
10 which:

11 (i) is independently owned and operated;

12 (ii) has annual revenues not exceeding a fiscal limitation of ten  
13 million dollars or such lesser amount as established by the authority  
14 pursuant to this section; and

15 (iii) meets additional criteria as otherwise established by the chair-  
16 person and the head of supplier diversity. The authority shall establish  
17 both general and specific definitions for different industries to the  
18 extent necessary to reflect differing characteristics of such segments  
19 based on the criteria used by the United States small business adminis-  
20 tration for loans to small businesses as set forth in sections 121.301  
21 through 121.305, or for awarding government procurements as set forth in  
22 sections 121.401 through 121.413, of subpart A of part 121 of chapter I  
23 of title 13 of the Code of Federal Regulations, as amended, and such  
24 other criteria as determined by the authority.

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

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1 (d) "Small business development program" is the program established by  
2 the authority pursuant to this section to provide small businesses  
3 accepted into the program with the opportunity:

4 (i) for up to five years, to compete for and, where awarded, to  
5 perform certain authority contracts to be designated by the authority  
6 for inclusion in the program under this subparagraph; and

7 (ii) to be a participant in a small business development program and  
8 if such participant successfully completed contracts under subparagraph  
9 (i) of this paragraph, for up to five additional years, such small busi-  
10 ness shall have access to the following:

11 (1) additional opportunities to compete with other designated small  
12 businesses in the program for certain contracts to be designated for  
13 inclusion under this subparagraph and, where awarded, to perform such  
14 authority contracts, and

15 (2) authority-provided assistance, as determined by the authority, for  
16 a small business to obtain bonding for contracts that are competitively  
17 awarded pursuant to any other provision of law.

18 (e) "Small business development program contract" means a non-federal-  
19 ly funded, unless authorized by the applicable federal funding agency,  
20 contract designated by the authority, in an estimated amount of not more  
21 than one million five hundred thousand dollars for contracts under  
22 subparagraph (i) of paragraph (d) of this subdivision and five million  
23 dollars for contracts under subparagraph (ii) of paragraph (d) of this  
24 subdivision, for which bids or proposals are to be invited and accepted  
25 only from businesses that are enrolled in the small business development  
26 program and have been selected by the authority to compete for the  
27 contract.

28 2. (a) Pursuant to this section, the authority may establish a small  
29 business development program. In connection therewith, the authority may  
30 determine the criteria pursuant to which a small business shall be  
31 eligible for and selected to participate in the program under subpara-  
32 graphs (i) and (ii) of paragraph (d) of subdivision one of this section,  
33 the number of participants to participate in each of such components of  
34 the program, and the criteria for the competitive selection of the firms  
35 that will provide small businesses with capacity building development  
36 services.

37 (b) Under the small business development program, the chairperson or  
38 such chairperson's designee is authorized, notwithstanding any other  
39 provision of law:

40 (i) to designate which eligible contracts shall be small business  
41 development program contracts under subparagraphs (i) and (ii) of para-  
42 graph (d) of subdivision one of this section;

43 (ii) to establish standards for qualifying small business development  
44 program participants to compete for a small business development program  
45 contract, provided that no less than three qualified small businesses in  
46 the program must be solicited to perform the contract;

47 (iii) to determine when bids or proposals for a small business devel-  
48 opment program contract should be restricted to small business develop-  
49 ment program participants which, prior to the receipt of bids or  
50 proposals, have been qualified by the authority for such competition;

51 (iv) to waive requirements for the solicitation and award for small  
52 business development program contracts, except as set forth in this  
53 section, pursuant to sections twelve hundred nine, twelve hundred  
54 sixty-five-a and twenty-eight hundred seventy-nine of this chapter and  
55 any other provision of law;

1 (v) to assist small business development program participants that  
2 have been awarded small business development program contracts to obtain  
3 any surety bond or contract of insurance required of them in connection  
4 with such contract notwithstanding any provision of section two thousand  
5 five hundred four of the insurance law to the contrary; and

6 (vi) for small businesses that have been accepted into the small busi-  
7 ness development program under subparagraph (ii) of paragraph (d) of  
8 subdivision one of this section, to provide technical assistance in  
9 obtaining bid, payment, and performance bonding for authority contracts  
10 that are not small business development program contracts, where the  
11 small business is otherwise qualified for such contract, and notwith-  
12 standing any other provision of law.

13 3. (a) If the total number of qualified small business development  
14 program participants that respond to a competition and are considered  
15 capable of meeting the specifications and terms of the invitation to  
16 compete is less than three, or if the chairperson or the chairperson's  
17 designee determines that acceptance of the best offer will result in the  
18 payment of an unreasonable price, the authority may reject all offers  
19 and withdraw the designation of such contract as a small business devel-  
20 opment program contract.

21 (b) If the authority withdraws the designation of a contract as a  
22 small business development program contract, the firms, if any, that  
23 made offers shall be notified. Invitations to compete containing the  
24 same or rewritten specifications and terms shall then be reissued as a  
25 small business development program contract for one or more additional  
26 contract periods.

27 4. A program provider shall provide services and assistance to a small  
28 business as designated by the authority, which may include the follow-  
29 ing:

30 (a) business training in the skills necessary to operate a successful  
31 business and to compete for and perform a contract;

32 (b) technical assistance to such small business to assess such outcome  
33 if the small business competes for but is not awarded a contract;

34 (c) if the small business development program contract is awarded to  
35 such small business, guidance, advice, and technical assistance to such  
36 small business in the performance of the contract; and

37 (d) other technical assistance to such small business to facilitate  
38 learning, training and other issues which may arise.

39 5. The authority may delegate to the chairperson or such chairperson's  
40 designee, the authority's responsibilities set forth in this section.

41 6. The small business development program contracts authorized by this  
42 section shall, for the initial year of the program, be in an aggregate  
43 amount of not less than ten million dollars, and shall not exceed one  
44 hundred million dollars, with the maximum amount in future years to be  
45 set by the chairperson.

46 7. The authority shall submit a report, no later than September thir-  
47 tieth, two thousand twenty-five, and annually thereafter, to the gover-  
48 nor, the temporary president of the senate, and the speaker of the  
49 assembly regarding procurements made pursuant to this section. Such  
50 report shall include a description of each procurement made pursuant to  
51 this section and the rationale for why the contract was selected as a  
52 small business development program contract, information regarding the  
53 procurement process for each such small business development program  
54 contract and the name or names of the small businesses that fulfilled  
55 such contract, the project identification number and a description for  
56 each such project performed pursuant to the contract, the contractual

1 completion date for each contract, the status of each such project, the  
2 contract price, including executed modifications, whether a project  
3 received surety bond or insurance contract assistance pursuant to  
4 subparagraph (vi) of paragraph (b) of subdivision two of this section,  
5 the total dollar value of monies paid to minority-owned and women-owned  
6 business enterprises and service-disabled veteran-owned business enter-  
7 prises pursuant to this section itemized by year and including the total  
8 dollar values for the five years preceding the respective annual  
9 report's release date. Such report shall additionally identify the  
10 authority-provided program providers and describe their competitive  
11 selection process, describe the technical assistance and advice provided  
12 by the authority and the mentors to program participants, and describe  
13 the business training provided by such providers. For annual reports,  
14 any new procurements and changes during the period covered by the report  
15 shall be identified separately.

16 § 2. This act shall take effect immediately and shall expire December  
17 31, 2029, when upon such date the provisions of this act shall be deemed  
18 repealed.