



## **LEGISLATIVE UPDATE FEBRUARY 2018**

### **BUDGET UPDATE**

The Governor presented his 2018-2019 Executive budget to the Legislature in late January and has now submitted his 30-day amendments. The Legislature has held joint hearings and is now reviewing and will determine what will be included in their one-house budgets the week of March 5. The current schedule calls for both the Senate and Assembly to introduce and pass their bills by March 14. Negotiations and conference committee hearings will follow with the goal of passing a final budget by March 29, 2018.

The following issues as found in the Governor's briefing documents are of interest:

#### **MWBE S7508A/A9508A Part Q**

Reauthorizes and extends the provisions of law relating to participation by minority and women-owned business enterprises in state contracts and expands upon those provisions based upon the findings of the 2016 Disparity Study.

Purpose: This bill would extend the provisions of law relating to participation by minority and women-owned business enterprises (MWBE) in state contracts for five years, and implement certain findings and recommendations of the 2016 MWBE Disparity Study.

Department of Economic Development's Division of Minority and Women's Business Development (the "Division") to promote employment and business opportunities on state contracts for minority and women-owned businesses ("MWBE"). Under this statute, state agencies and authorities are charged with establishing business participation goals for businesses owned by minorities and women. This authorization and the requirements of the program will expire on December 31, 2018.

This bill would extend the sunset provision to December 31, 2023 and would also increase opportunities for MWBEs based upon the findings of the 2016 MWBE Disparity Study (the "Study").

By way of background, the United States Supreme Court, in *City of Richmond v. J.A. Croson, Co.*, 488 U.S. 469 (1989) and its progeny, held that state and local programs providing racial preferences must continuously demonstrate a "significant statistical disparity between the number of qualified minority contractors willing and able to perform

a particular service and the number of such contractors actually engaged” to reflect the existence of discriminatory exclusion. The 2016 Study demonstrated there was continued evidence of statistically significant underutilization of available MWBEs in the State, thus supporting the continuation of the program. To remedy the underutilization of available MWBEs, the Study identified several recommendations to enhance and improve the program.

This bill applies those recommendations and makes changes to improve program operation, including:

- Increase the value of state contracts to \$50,000 for non-construction and \$200,000 for construction;
- Update diversity practices definition to include diverse leadership of businesses and MWBE mentorship;
- Increase agency and authority discretionary purchasing threshold to \$400,000;
- Expand program requirements to include all municipalities on contracts let with appropriated state dollars and requires units of local government subject to Article 15-A to set goals on contracts and submit reports to the Director;
- Provide the Director with the authority to set the personal net worth (“PNW”) requirement for MWBE certification via regulation, exclude holding companies from PNW, replace exclusion of equity in personal residence exclusion with cash value of home;
- Create a workforce program with goals for minority group members and women;
- Enhance opportunities for MWBE prime contractors by establishing bidding credits for low-bid construction projects of up to \$1.4 million and increases the size of procurements that can include bidding credits each year with inflation;
- Expand authority of statewide advocate to audit agencies and investigate complaints from MWBEs of violations of Article 15-A by agencies and contractors;
- Require agencies to submit a remedial plan if they fail to make a good faith effort to maximize MWBE participation rather than upon failure to achieve the goals in the Study;
- Establishes MWBE fraud as a criminal offense; and
- Makes other additional technical changes.

Budget Implications: Enactment of this bill is necessary to implement the FY 2019 Executive Budget, which includes funding to support the MWBE program.

Effective Date: This bill would take effect on April 1, 2018.

### **DESIGN-BUILD S7508A/A9508A Part R**

Expand definition of an authorized entity that may utilize design-build contracts in the Infrastructure Investment Act

Purpose: This bill would expand the set of authorized entities that may utilize design-build contracts, as established in the Infrastructure Investment Act (the Act), to include the Dormitory Authority, the New York State Urban Development Corporation, the Office of General Services, the Department of Health, and New York State Olympic Regional Development Authority.

Summary of Provisions and Statement in Support: This bill would expand the provisions of the Act to enable the Dormitory Authority, the New York State Urban Development Corporation, the Office of General Services, the Department of Health, and New York State Olympic Regional Development Authority to award a contract to a single entity for both the design and construction (design-build) aspects of a project in order to optimize quality, cost and efficiency. The types of capital projects for which design-build contracts can be used would be amended to be consistent with the existing definition of “capital asset” in State Finance Law.

Budget Implications: Enactment of this bill is necessary to implement the FY 2019 Executive Budget because the design-build contracting processes authorized by this bill will foster enhanced quality and allow for additional process and procedural efficiencies relative to the construction of state infrastructure projects. This will result in lower initial construction costs as well as reduced long term maintenance and rehabilitation costs for these projects.

Effective Date: This bill would take effect immediately.

### **MTA CAPITAL CONSTRUCTION S7508A/A9508A Part**

This legislation would establish a process for the recoupment of costs for major capital construction by MTA within a city of a population of one million or more.

Purpose: This legislation would establish a process for an additional financing option for major capital construction by the Metropolitan Transportation Authority (MTA) within a city of a population of one million or more.

Summary of Provisions and Statement in Support: The MTA and its affiliates have two vitally important obligations to ensure transit service for riders. First, the current infrastructure must be kept and maintained in a state of good repair. Second, the MTA’s system must continue to evolve and develop infrastructure to improve service. The MTA has made historic and significant investment into its transit facilities. This investment results in significant private economic benefit to surrounding properties where such investments are made. This bill would require that any heightened tax revenues due to increased property valuation should, at a reasonable level, be directed toward funding the MTA’s capital programs. This proposal will further the MTA’s transit goals. Specifically, it will protect and promote the sound enhancement, renewal and expansion of the transportation facilities of the MTA and the New York city transit authority, including the planning, design, acquisition, construction, reconstruction, rehabilitation and improvement of such facilities.

Budget Implications: Enactment of this bill is necessary to implement the FY 2019 Executive Budget.

Effective Date: This bill would take effect on April 1, 2018.

## **MTA PROCUREMENT S7508A/A9508A Part N**

This legislation would provide necessary procurement reform to the Metropolitan Transportation Authority and its affiliates.

Purpose: This bill would provide necessary procurement reform to the Metropolitan Transportation Authority (MTA) and its affiliates.

Summary of Provisions and Statement in Support: The need to implement service improvements rapidly is particularly urgent given the need to repair, upgrade and replace aging transit infrastructure. To maximize the MTA's ability to respond to these needs in a timely manner, this bill would make the following procurement reforms:

- Increase the sealed bidding threshold for MTA to \$1 million for purchases and public works;
- Eliminate the 15 Day Notice Period required under the Omnibus Procurement Act; and
- Vest special termination powers with the MTA Board of Directors.

Budget Implications: Enactment of this bill is necessary to implement the FY 2019 Executive Budget.

Effective Date: This act shall take effect on April 1, 2018.

## **NYS CHIEF PROCUREMENT OFFICER S7510/A9510 Part K**

Establishment of a NYS Chief Procurement Officer

Purpose: This bill would create a Chief Procurement Officer to oversee all State procurements.

Summary of Provisions and Statement in Support: This bill would authorize the creation of a Chief Procurement Officer in the Executive Chamber, who shall serve as the principal officer tasked with oversight of state procurements. The Chief Procurement Officers' duties would include:

- Oversight of the integrity and uniformity of procurement practices across the State;
- Disclosing reportable matters to the State Inspector General;
- Ensuring state procurement staff are prepared and positioned to conduct effective and ethical procurements; and
- Serving as a member or chair of the Procurement Council Public authorities will also be required to provide the Chief Procurement Officer with reports on procurements as required pursuant to Public Authorities Law § 2879.

Budget Implications: Enactment of this bill is necessary to implement the FY 2019 Executive Budget.

Effective Date: This bill would take effect on the sixtieth day after enactment.

## **GOVERNMENT VENDOR POLITICAL CONTRIBUTIONS S7510/A9510 Part L**

Amendment of Government Vendor Contributions

Purpose: This bill would prohibit campaign contributions from parties involved in State procurement.

Summary of Provisions and Statement in Support: This bill would prohibit campaign contributions by persons or entities that are actively bidding on or have recently bid on any government procurement contract. The prohibition would apply to contributions to office-holders and candidates associated with the branch of government requesting the procurement, and the prohibition would extend until the close of the bidding period, or until six months after the final contract award for the winner.

Budget Implications: Enactment of this bill is necessary to implement the FY 2019 Executive Budget.

Effective Date: This bill would take effect on the one hundred eightieth day after enactment.

## **CONTRACTOR SINGLE CODES S7510/A9510 Part M**

Report on the feasibility of single identifying codes or numbers

Purpose: This bill would explore the feasibility of implementing a single identifying code for contractors, vendors, and other State payees to improve the State's oversight and monitoring of business activities.

Summary of Provisions and Statement in Support: In order to improve the oversight and monitoring of State business, this bill would require a study concerning the feasibility of assigning a single identifying code to contractors, vendors, and other payees to track such entities and expenditures. The group would be required to submit its findings and recommendations to the Governor and Legislature on or before September 1, 2018.

Budget Implications: Enactment of this bill is necessary to implement the FY 2019 Executive Budget.

Effective Date: This bill would take effect immediately. The provisions of this act shall take effect immediately, provided, however, that the applicable effective date of each part of this act shall be as specifically set forth in the last section of such part.

## **WORKPLACE SEXUAL HARASSMENT S7511A/A9511A Part I**

Amending various laws to combat sexual harassment in the workplace.

Purpose: This bill would amend various provisions of laws to combat sexual harassment in the workplace.

Summary of Provisions and Statement in Support: This bill would enact a multi-facilitated proposal to target sexual harassment in the workplace, ensure accountability,

and combat the culture of silence that victims face. These measures will ensure that all employees are provided with a safer work environment.

- Subpart A would require that any contractor that does business with the state to report on the number of sexual harassment violations and nondisclosure agreements executed by the contractor. The contractor must also report on its training practices related to sexual harassment prevention.

- Subpart B would prohibit an employer from requiring, as a condition of employment, an employee to sign a written contract restricting his or her ability to seek justice in any forum relating to unlawful discriminatory practices based on sexual harassment.

- Subpart C would prevent taxpayer funds from being used for settlements against individuals relating to sexual assault and harassment, and to ensure such individuals are held accountable for their conduct.

- Subpart D would prohibit public entities from entering into sexual harassment or assault settlements that include non-disclosure clauses, unless it is the express preference of the victim.

- Subpart E would establish a unit within the Joint Commission on Public Ethics to receive and investigate complaints of sexual harassment, and establish civil penalties for those found liable for such conduct.

- Subpart F would establish uniform standards for sexual harassment policies for all branches of state and local governments.

Budget Implications: Enactment of this bill is necessary to implement the FY 2019 Executive Budget.

Effective Date: This bill would take effect immediately; provided, however, that the applicable effective date of Subparts A through F of this act shall be as specifically set forth in the last section of such Subparts.

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