§ 5-a. Certification of registration to collect sales and compensating use taxes by certain contractors, affiliates and subcontractors. 1. For purposes of this section, the following terms shall have the specified meanings:

(a) "Affiliate" means a person which directly, indirectly or constructively
(1) controls another person;
(2) is controlled by another person; or
(3) is, along with another person, under the control of a common parent.
"Control" means possession of the power to direct, or cause the direction of, the management and policies of another person.
(b) "Commodities" means commodities as defined in article eleven of the state finance law.
(c) (1) "Contract" means an agreement between a contractor and a covered agency for the purchase by the covered agency, pursuant to article eleven of the state finance law, of commodities or services having a value in excess of one hundred thousand dollars.
The term "contract" shall also include a centralized contract, as defined in article eleven of the state finance law, with a value in excess of one hundred thousand dollars.
(2) The term "contract" shall not include:
(A) a purchase by a covered agency of commodities or services with a value in excess of one hundred thousand dollars based upon a formal mini-bid solicitation pursuant to a centralized contract;
(B) a grant or an intergovernmental agreement; or
(C) a purchase of commodities or services from a "preferred source," as such term is defined in article eleven of the state finance law.
(3) Multiple purchases of commodities or services by a covered agency from the same contractor during a state fiscal year shall not be aggregated for purposes of determining whether the greater than one hundred thousand dollar threshold described in this subdivision has been met.
(d) "Contractor" means a person awarded a contract.
(e) "Covered agency" means a "state agency" for purposes of article eleven of the state finance law, the legislature, the judiciary, or a public authority or public benefit corporation at least one of whose members is appointed by the governor.
(f) "Department" means the department of taxation and finance.
(g) "Person" means an individual, partnership, limited liability company, society, association, joint stock company, or corporation; provided, however, that a "person" shall not include a "public corporation" or an "education corporation," as such terms are defined in section sixty-six of the general construction law, a not-for-profit corporation whose contracts are subject to approval in accordance with article eleven-B of the state finance law, a board of cooperative educational services created pursuant to article forty of the education law, or a soil and water conservation district created pursuant to section five of the soil and water conservation districts law.
(h) "Sales and compensating use taxes" means state and local sales and compensating use taxes imposed by article twenty-eight and pursuant to the authority of article twenty-nine of this chapter, which are administered by the commissioner.
(i) "Sales tax quarter" means a quarterly period ending on the last day of February, May, August or November.
(j) "Services" means services as defined in article eleven of the state finance law.
(k) "Subcontractor" means a person engaged by a contractor or another subcontractor to perform a portion of the contractor's obligations under a contract.

(1) "State" means the state of New York.

(m) "Taxable services" means services, the receipts from the sale of which are taxable by article twenty-eight or article twenty-nine of this chapter.

(n) The terms "receipts," "sale," "tangible personal property" and "vendor" have the meanings given in article twenty-eight of this chapter.

2. (a) Notwithstanding any provision of law to the contrary, before a contract may take effect, the contractor must comply with the requirements of subparagraphs one and two of this paragraph.

(1) The contractor must file a written certification with the department, made under penalty of perjury, stating that:

(A) if the contractor made sales delivered by any means to locations within the state of tangible personal property or taxable services having a value in excess of three hundred thousand dollars during the immediately preceding consecutive four sales tax quarters, the contractor is registered for sales and compensating use tax purposes with the department under sections eleven hundred thirty-four and twelve hundred fifty-three of this chapter. If the contractor did not make sales delivered by any means to locations within the state of tangible personal property or taxable services having a value in excess of three hundred thousand dollars during such four sales tax quarters, then the contractor shall so certify;

(B) if any affiliate of the contractor made sales delivered by any means to locations within the state of tangible personal property or taxable services having a value in excess of three hundred thousand dollars during the immediately preceding consecutive four sales tax quarters, to the best of the contractor's knowledge, each such affiliate is registered for sales and compensating use tax purposes with the department under sections eleven hundred thirty-four and twelve hundred fifty-three of this chapter. If the contractor does not have any affiliates, or does not have any affiliates which made sales delivered by any means to locations within the state of tangible personal property or taxable services having a value in excess of three hundred thousand dollars during such four sales tax quarters, then the contractor shall so certify; and

(C) if any subcontractor made sales delivered by any means to locations within the state of tangible personal property or taxable services having a value in excess of three hundred thousand dollars during the immediately preceding consecutive four sales tax quarters, to the best of the contractor's knowledge, each such subcontractor is registered for sales and compensating use tax purposes with the department under sections eleven hundred thirty-four and twelve hundred fifty-three of this chapter. If the contractor does not have any subcontractors, or there are no subcontractors which made sales delivered by any means to locations within the state of tangible personal property or taxable services having a value in excess of three hundred thousand dollars during such four sales tax quarters, then the contractor shall so certify.

(D) The certification required by this subparagraph shall include such additional information as the department deems necessary for the proper administration of this section.

(E) The certification required by this subparagraph need only be filed with the department once and, once filed, shall be deemed to satisfy the requirements of this subparagraph for purposes of any subsequent
contract to which the contractor is a party; provided, however, that if
the contractor, or an affiliate or subcontractor, is not certified as
registered with the department for sales and compensating use tax
purposes on the contractor's original certification, and such
contractor, affiliate or subcontractor makes sales delivered by any
means to locations within the state of tangible personal property or
taxable services having a value in excess of three hundred thousand
dollars during any consecutive four sales tax quarters which follow the
sales tax quarter in which the contractor's original certification was
made, then the contractor shall, as soon as possible after such
occurrence, file an amended written certification with the department,
made under penalty of perjury, indicating that such contractor,
affiliate or subcontractor, as applicable, is registered with the
department for sales and compensating use tax purposes.

(2) The contractor shall also provide the procuring covered agency
with a written certification, made under penalty of perjury, stating
that:
(A) the contractor has filed the certification prescribed by this
section with the department, and that such certification is correct and
complete, or
(B) such certification is not required to be filed with the
department, and explaining the reasons for such determination.
(C) the certification required by this subparagraph shall be included
in the procurement record (as such term is defined in article eleven of
the state finance law), or similar documentation if the state
comptroller is not required by law to approve the contract.
(D) any question as to the accuracy of the contractor certification
described in clause (B) of this subparagraph shall be resolved by the
contracting covered agency, in consultation, as necessary, with the
state comptroller and the department.
(b) A contractor, affiliate of the contractor, or subcontractor which
registers for sales and compensating use tax purposes under sections
eleven hundred thirty-four and twelve hundred fifty-three of this
chapter in order to comply with the provisions of this subdivision shall
be a vendor and shall comply with and be subject to the provisions of
articles twenty-eight and twenty-nine of this chapter.
(c) The certification requirements prescribed by this subdivision in
order for a contract to take effect shall be in addition to any other
requirements prescribed by law relating to the formation of contracts to
which a covered agency is a party.
3. (a) If a contract has taken effect, and the terms of such contract
provide that it may be renewed upon expiration of an initial or
subsequent term, then the contractor shall, no later than the day prior
to the commencement date of the applicable renewal term, certify to the
contracting covered agency in writing, and under penalty of perjury,
that:
(1) the contractor has filed the certification prescribed by this
section with the department, and that such certification is correct and
complete, or
(2) that such certification is not required to be filed with the
department, and explains the reasons for such determination.
(3) Any question as to the accuracy of the contractor certification
described in subparagraph two of this paragraph shall be resolved by the
contracting covered agency, in consultation, as necessary, with the
state comptroller and the department.
(b) The certification required by paragraph (a) of this subdivision
shall be made a part of the procurement record (as such term is defined
in article eleven of the state finance law), or similar documentation if
the state comptroller is not required by law to approve the contract.

(c) If the contractor fails to make the certification required by
paragraph (a) of this subdivision, or if, during the term of the
contract, the department or the covered agency discovers that such
certification is false, then such failure or false certification shall
be a material breach of the contract, and the contract shall be subject
to termination if the covered agency determines that such action is in
the best interests of the state.

(d) A contractor, affiliate of the contractor, or subcontractor which
registers for sales and compensating use tax purposes under sections
eleven hundred thirty-four and twelve hundred fifty-three of this
chapter in order to comply with the provisions of paragraph (a) of this
subdivision shall be a vendor and shall comply with and be subject to
the provisions of articles twenty-eight and twenty-nine of this chapter.

4. The provisions of this section shall not apply to a contract if the
procuring covered agency and the state comptroller, or other approving
authority if the state comptroller is not required to approve the
contract, find in writing that the contract is necessary to address an
"emergency," within the meaning of article eleven of the state finance
law, or to ensure the public health, safety or welfare. Such written
finding shall explain the reasons supporting such determination.