

3570

2013-2014 Regular Sessions

I N   S E N A T E

February 6, 2013

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Introduced by Sen. SMITH -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the executive law, in relation to participation by minority group members and women with respect to certain state contracts; and to amend the state finance law, in relation to performance and payment bond requirements

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

1     Section 1. Subdivisions 3 and 4 of section 311 of the executive law,  
2     subdivision 3 as added by chapter 261 of the laws of 1988, paragraphs  
3     (d) and (e) of subdivision 3 as amended by chapter 55 of the laws of  
4     1992, paragraphs (g) and (h) of subdivision 3 as amended and paragraph  
5     (i) of subdivision 3 as added by section 1 of part BB of chapter 59 of  
6     the laws of 2006 and subdivision 4 as amended by chapter 361 of the laws  
7     of 2009, are amended to read as follows:  
8     3. The director shall have the following powers and duties:  
9     (a) to encourage and assist contracting agencies in their efforts to  
10    increase participation by minority and women-owned business enterprises  
11    on state contracts and subcontracts so as to facilitate the award of a  
12    fair share of such contracts to them AND TO PROVIDE ON THE DIVISION'S  
13    WEBSITE A LIST OF EACH CONTRACTING AGENCY'S MINORITY AND WOMEN-OWNED  
14    BUSINESS ENTERPRISES CERTIFICATION OUTREACH SEMINARS;  
15    (b) to develop standardized forms and reporting documents necessary to  
16    implement this article;  
17    (c) to conduct educational OUTREACH programs TO ENCOURAGE THE CERTIF-  
18    ICATION OF MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES consistent with  
19    the purposes of this article;  
20    (d) to review [periodically] QUARTERLY the practices and procedures of  
21    each contracting agency with respect to compliance with the provisions  
22    of this article, and to require them to file [periodic] QUARTERLY  
23    reports with the division of minority and women's business development

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

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1 as to the level of minority and women-owned business enterprises partic-  
2 ipation in the awarding of agency contracts for goods and services  
3 INCLUDING BUT NOT LIMITED TO THE NUMBER OF STATE CONTRACTS AWARDED TO  
4 CERTIFIED MINORITY-OWNED OR WOMEN-OWNED BUSINESS ENTERPRISES, THE MAXI-  
5 MUM DOLLAR AMOUNT OBLIGATED PURSUANT TO ALL THOSE CONTRACTS, AND THE  
6 TOTAL EXPENDITURES MADE PURSUANT TO ALL SUCH CONTRACTS; THE NUMBER OF  
7 STATE CONTRACTS AWARDED TO CERTIFIED MINORITY OR WOMEN-OWNED BUSINESS  
8 ENTERPRISES, THE MAXIMUM DOLLAR AMOUNT OBLIGATED PURSUANT TO ALL THOSE  
9 CONTRACTS, AND THE TOTAL EXPENDITURES MADE PURSUANT TO ALL SUCH  
10 CONTRACTS; THE NUMBER OF STATE CONTRACTS AWARDED WHICH INCLUDE A UTILI-  
11 ZATION PLAN FOR BUSINESS PARTICIPATION BY CERTIFIED MINORITY OR  
12 WOMEN-OWNED BUSINESS ENTERPRISES, THE MAXIMUM AMOUNT OBLIGATED PURSUANT  
13 TO THOSE CONTRACTS, AND THE TOTAL EXPENDITURES MADE PURSUANT TO ALL SUCH  
14 CONTRACTS; THE NUMBER OF STATE CONTRACTS AWARDED UPON WHICH A WAIVER WAS  
15 GRANTED FROM GOALS REQUIRED BY THE CONTRACTS FOR BUSINESS PARTICIPATION  
16 BY CERTIFIED MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES, AND THE MAXI-  
17 MUM AMOUNT OBLIGATED PURSUANT TO THOSE CONTRACTS; THE NUMBER OF STATE  
18 CONTRACTS AWARDED WHICH REQUIRED GOALS FOR EMPLOYMENT OF MINORITY GROUP  
19 MEMBERS AND WOMEN; AND THE NUMBER OF STATE CONTRACTS AWARDED FOR WHICH  
20 WAIVERS OF EMPLOYMENT GOALS REQUIRED BY THE CONTRACTS HAVE BEEN GRANTED;

21 (e) on January first of each year report to the governor, THE TEMPO-  
22 RARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, THE MINORITY  
23 LEADERS OF THE SENATE AND THE ASSEMBLY, and the chairpersons of the  
24 senate finance and assembly ways and means committees on the [level]  
25 ACTUAL VERSUS PROJECTED LEVELS of minority and women-owned business  
26 enterprises participating in each agency's contracts for goods [and],  
27 services AND CONSTRUCTION, INCLUDING BUT NOT LIMITED TO THE NUMBER OF  
28 STATE CONTRACTS AWARDED TO CERTIFIED MINORITY-OWNED OR WOMEN-OWNED BUSI-  
29 NESS ENTERPRISES, THE MAXIMUM DOLLAR AMOUNT OBLIGATED PURSUANT TO ALL  
30 THOSE CONTRACTS, AND THE TOTAL EXPENDITURES MADE PURSUANT TO ALL SUCH  
31 CONTRACTS, and on activities of the office and effort by each contract-  
32 ing agency to promote employment of minority group members and women,  
33 and to promote and increase participation by certified businesses with  
34 respect to state contracts and subcontracts so as to facilitate the  
35 award of a fair share of state contracts to such businesses. The comp-  
36 troller shall assist the division in collecting information on the  
37 participation of certified business for each contracting agency. Such  
38 report may recommend new activities and programs to effectuate the  
39 purposes of this article;

40 (f) THE DIRECTOR SHALL LIST IN THE DIVISION'S ANNUAL REPORT THE NAMES  
41 OF NON-COMPLIANT AGENCIES AND THE EXTENT OF THEIR NONCOMPLIANCE IN  
42 SUBMITTING ITS QUARTERLY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE  
43 UTILIZATION REPORTS; AND, SHALL IMPLEMENT A MASTER LIST OF ALL THE STATE  
44 AGENCIES REQUIRED TO FILE QUARTERLY COMPLIANCE REPORTS AND SHALL ATTACH  
45 SUCH LIST TO THE DIVISION'S ANNUAL REPORT.

46 (G) to prepare and update [periodically] QUARTERLY a directory of  
47 certified minority and women-owned business enterprises which shall,  
48 wherever practicable, be divided into categories of labor, services,  
49 supplies, equipment, materials and recognized construction trades and  
50 which shall indicate areas or locations of the state where such enter-  
51 prises are available to perform services, AND TO USE THIS INFORMATION TO  
52 CREATE AN INTERNET BASED, CENTRALIZED STATE REGISTRY TO ENABLE APPROPRI-  
53 ATE STATE CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES TO  
54 ACCESS CONTRACT AND SUBCONTRACT OPPORTUNITIES;

55 [(g)] (H) to appoint independent hearing officers who by contract or  
56 terms of employment shall preside over adjudicatory hearings pursuant to

1 section three hundred fourteen of this article for the office and who  
2 are assigned no other work by the office;

3 [(h)] (I) notwithstanding the provisions of section two hundred nine-  
4 ty-six of this chapter, to file a complaint pursuant to the provisions  
5 of section two hundred ninety-seven of this chapter where the director  
6 has knowledge that a contractor may have violated the provisions of  
7 paragraph (a), (b) or (c) of subdivision one of section two hundred  
8 ninety-six of this chapter where such violation is unrelated, separate  
9 or distinct from the state contract as expressed by its terms; and

10 [(i)] (J) to streamline the state certification process to accept  
11 federal and municipal corporation certifications.

12 4. The director [may] SHALL provide assistance to, and facilitate  
13 access to programs serving certified businesses as well as applicants to  
14 ensure that such businesses benefit, as needed, from technical, manage-  
15 rial and financial, and general business assistance; training; market-  
16 ing; organization and personnel skill development; project management  
17 assistance; technology assistance; bond and insurance education assist-  
18 ance; and other business development assistance. In addition, the direc-  
19 tor [may] SHALL, either independently or in conjunction with other state  
20 agencies:

21 (a) develop a clearinghouse of information on programs and services  
22 provided by entities that may assist such businesses;

23 (b) review bonding and paperwork requirements imposed by contracting  
24 agencies that may unnecessarily impede the ability of such businesses to  
25 compete; and

26 (c) seek to maximize utilization by minority and women-owned business  
27 enterprises of available federal resources including but not limited to  
28 federal grants, loans, loan guarantees, surety bonding guarantees, tech-  
29 nical assistance, and programs and services of the federal small busi-  
30 ness administration.

31 S 2. Subdivision 5 of section 312 of the executive law, as added by  
32 chapter 261 of the laws of 1988, is amended to read as follows:

33 5. The director shall promulgate rules and regulations to ensure that  
34 contractors and subcontractors undertake programs of affirmative action  
35 and equal employment opportunity as required by this section. Such rules  
36 and regulations as they pertain to any particular agency shall be devel-  
37 oped after consultation with contracting agencies. Such rules and regu-  
38 lations [may] SHALL require a contractor, after notice in a bid solici-  
39 tation, to submit an equal employment opportunity program [after bid  
40 opening and prior to the award of any contract] AT THE TIME BIDS ARE  
41 SUBMITTED, and [may] SHALL require the contractor or subcontractor to  
42 submit compliance reports relating to the contractor's or subcontrac-  
43 tor's operation and implementation of any equal employment opportunity  
44 program in effect as of the date the contract is executed. The contract-  
45 ing agency [may recommend to the director that] SHALL HAVE THE RIGHT TO  
46 RECOMMEND THAT the director take appropriate action according to the  
47 procedures set forth in section three hundred sixteen of this article  
48 against the contractor for noncompliance with the requirements of this  
49 section. The contracting agency shall be responsible for monitoring  
50 compliance with this section.

51 S 3. Paragraphs (h) and (i) of subdivision 2-a of section 313 of the  
52 executive law, as added by chapter 175 of the laws of 2010, are amended  
53 and a new paragraph (j) is added to read as follows:

54 (h) provide for the collection of statistical data by each agency  
55 concerning actual minority and women-owned business enterprise partic-  
56 ipation; [and]

1 (i) require each agency to consult the most current disparity study  
2 when calculating agency-wide and contract specific participation goals  
3 pursuant to this article[.]; AND

4 (J) ENCOURAGE JOINT VENTURES, PARTNERSHIPS, AND MENTOR-PROTEGE  
5 RELATIONSHIPS AS DEFINED IN SECTION ONE HUNDRED FORTY-SEVEN OF THE STATE  
6 FINANCE LAW, BETWEEN PRIME CONTRACTORS AND MINORITY AND WOMEN-OWNED  
7 BUSINESS ENTERPRISES.

8 S 4. Subdivision 3 and paragraph (a) of subdivision 5 of section 313  
9 of the executive law, as amended by chapter 175 of the laws of 2010, are  
10 amended to read as follows:

11 3. Solely for the purpose of providing the opportunity for [meaning-  
12 ful] INCREASED participation by certified businesses in the performance  
13 of state contracts as provided in this section, state contracts shall  
14 include leases of real property by a state agency to a lessee where: the  
15 terms of such leases provide for the construction, demolition, replace-  
16 ment, major repair or renovation of real property and improvements ther-  
17 eon by such lessee; and the cost of such construction, demolition,  
18 replacement, major repair or renovation of real property and improve-  
19 ments thereon shall exceed the sum of one hundred thousand dollars.  
20 Reports to the director pursuant to section three hundred fifteen of  
21 this article shall include activities with respect to all such state  
22 contracts. Contracting agencies shall include or require to be included  
23 with respect to state contracts for the acquisition, construction, demo-  
24 lition, replacement, major repair or renovation of real property and  
25 improvements thereon, such provisions as [may] SHALL be necessary to  
26 effectuate the provisions of this section in every bid specification and  
27 state contract, including, but not limited to: (a) provisions requiring  
28 contractors to make a good faith effort to solicit active participation  
29 by enterprises identified in the directory of certified businesses  
30 provided to the contracting agency by the office; (b) requiring the  
31 parties to agree as a condition of entering into such contract, to be  
32 bound by the provisions of section three hundred sixteen of this arti-  
33 cle; and (c) requiring the contractor to include the provisions set  
34 forth in paragraphs (a) and (b) of this subdivision in every subcontract  
35 in a manner that the provisions will be binding upon each subcontractor  
36 as to work in connection with such contract. Provided, however, that no  
37 such provisions shall be binding upon contractors or subcontractors in  
38 the performance of work or the provision of services that are unrelated,  
39 separate or distinct from the state contract as expressed by its terms,  
40 and nothing in this section shall authorize the director or any  
41 contracting agency to impose any requirement on a contractor or subcon-  
42 tractor except with respect to a state contract.

43 (a) Contracting agencies shall administer the rules and regulations  
44 promulgated by the director in a good faith effort to meet the maximum  
45 feasible portion of the agency's goals adopted pursuant to this article  
46 and the regulations of the director. Such rules and regulations: shall  
47 require a contractor to submit a utilization plan [after bids are  
48 opened] AT THE TIME BIDS ARE SUBMITTED, when bids are required[, but  
49 prior to the award of a state contract]; shall require the contracting  
50 agency to review the utilization plan submitted by the contractor and to  
51 post the utilization plan and any waivers of compliance issued pursuant  
52 to subdivision six of this section on the website of the contracting  
53 agency within a reasonable period of time as established by the direc-  
54 tor; shall require the contracting agency to notify the contractor in  
55 writing within a period of time specified by the director as to any  
56 deficiencies contained in the contractor's utilization plan; shall

1 require remedy thereof within a period of time specified by the direc-  
2 tor; shall require the contractor to submit [periodic] QUARTERLY compli-  
3 ance reports relating to the operation and implementation of any utili-  
4 zation plan; shall not allow any automatic waivers but shall allow a  
5 contractor to apply for a partial or total waiver of the minority and  
6 women-owned business enterprise participation requirements pursuant to  
7 subdivisions six and seven of this section; shall allow a contractor to  
8 file a complaint with the director pursuant to subdivision eight of this  
9 section in the event a contracting agency has failed or refused to issue  
10 a waiver of the minority and women-owned business enterprise partic-  
11 ipation requirements or has denied such request for a waiver; and shall  
12 allow a contracting agency to file a complaint with the director pursu-  
13 ant to subdivision nine of this section in the event a contractor is  
14 failing or has failed to comply with the minority and women-owned busi-  
15 ness enterprise participation requirements set forth in the state  
16 contract where no waiver has been granted.

17 S 5. Subdivisions 1 and 3 of section 315 of the executive law, subdi-  
18 vision 1 as added by chapter 261 of the laws of 1988 and subdivision 3  
19 as amended by chapter 175 of the laws of 2010, are amended and three new  
20 subdivisions 2-a, 3-a and 8 are added to read as follows:

21 1. Each contracting agency shall be responsible for monitoring state  
22 contracts under its jurisdiction, and recommending matters to the office  
23 respecting non-compliance with the provisions of this article so that  
24 the office [may] SHALL take such action as [is appropriate] STATED IN  
25 SUBDIVISION THREE OF SECTION THREE HUNDRED SIXTEEN OF THIS ARTICLE. EACH  
26 CONTRACTING AGENCY SHALL HAVE THE RIGHT TO RECOMMEND THAT THE DIRECTOR  
27 IMPOSE A SANCTION, PENALTY, OR FINE FOR THREE OR MORE VIOLATIONS OF  
28 SUBDIVISION ONE OF SECTION THREE HUNDRED SIXTEEN OF THIS ARTICLE, to  
29 insure compliance with the provisions of this article, the rules and  
30 regulations of the director issued hereunder and the contractual  
31 provisions required pursuant to this article. All contracting agencies  
32 shall comply with the rules and regulations of the office and are  
33 directed to cooperate with the office and to furnish to the office such  
34 information and assistance as may be required in the performance of its  
35 functions under this article.

36 2-A. EACH CONTRACTING AGENCY WHEN NOTIFYING A CONTRACTOR OF A WINNING  
37 BID AWARD SHALL ALSO NOTIFY ANY MINORITY OR WOMEN-OWNED BUSINESS ENTER-  
38 PRISES AFFILIATED WITH SUCH CONTRACTOR, PER THE CONTRACTOR'S SUBMITTED  
39 UTILIZATION PLAN, OF SUCH CONTRACTOR'S RECEIPT OF THE WINNING BID AWARD.

40 3. (A) Each contracting agency shall report to THE COMMISSIONER OF  
41 ECONOMIC DEVELOPMENT, THE COMMISSIONER OF GENERAL SERVICES AND the  
42 director with respect to activities undertaken to promote employment of  
43 minority group members and women and promote and increase participation  
44 by certified businesses with respect to state contracts and subcon-  
45 tracts. Such reports shall be submitted [periodically, but not less  
46 frequently than annually, as required by the director,] QUARTERLY and  
47 shall include such information as is necessary for the director to  
48 determine whether the contracting agency and contractor have complied  
49 with the purposes of this article, including, without limitation, THE  
50 NUMBER OF STATE CONTRACTS AWARDED TO CERTIFIED MINORITY OR WOMEN-OWNED  
51 BUSINESS ENTERPRISES; THE MAXIMUM DOLLAR AMOUNT OBLIGATED PURSUANT TO  
52 ALL THOSE CONTRACTS, AND THE TOTAL EXPENDITURES MADE PURSUANT TO ALL  
53 SUCH CONTRACTS; THE NUMBER OF STATE CONTRACTS AWARDED WHICH INCLUDE A  
54 UTILIZATION PLAN FOR BUSINESS PARTICIPATION BY CERTIFIED MINORITY OR  
55 WOMEN-OWNED BUSINESS ENTERPRISES, THE MAXIMUM AMOUNT OBLIGATED PURSUANT  
56 TO THOSE CONTRACTS, AND THE TOTAL EXPENDITURES MADE PURSUANT TO ALL SUCH

1 CONTRACTS; a summary of all waivers of the requirements of subdivisions  
2 six and seven of section three hundred thirteen of this article allowed  
3 by the contracting agency during the period covered by the report,  
4 including a description of the basis of the waiver request [and], the  
5 rationale for granting any such waiver AND THE MAXIMUM AMOUNT OBLIGATED  
6 PURSUANT TO THOSE CONTRACTS; THE NUMBER OF STATE CONTRACTS AWARDED WHICH  
7 REQUIRED GOALS FOR EMPLOYMENT OF MINORITY GROUP MEMBERS AND WOMEN; AND  
8 THE NUMBER OF STATE CONTRACTS AWARDED FOR WHICH WAIVERS OF EMPLOYMENT  
9 GOALS REQUIRED BY THE CONTRACTS HAVE BEEN GRANTED. Each agency shall  
10 also include in such annual report whether or not it has been required  
11 to prepare a remedial plan, and, if so, the plan and the extent to which  
12 the agency has complied with each element of the plan.

13 (B) IN ADDITION, EACH CONTRACTING AGENCY SHALL BE RESPONSIBLE FOR THE  
14 COST OF AN INDEPENDENT AUDIT RESULTING FROM THE AGENCY'S REPEATED  
15 VIOLATIONS OF THIS SECTION.

16 3-A. WITHIN THIRTY DAYS AFTER COMPLETION, A COPY OF THE QUARTERLY  
17 MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE REPORT SHALL BE TRANSMITTED  
18 TO THE COMMISSIONER OF ECONOMIC DEVELOPMENT, THE COMMISSIONER OF GENERAL  
19 SERVICES, AND THE DIRECTOR. A CONTRACTING AGENCY, WHICH HAS NOT LET MORE  
20 THAN TWO MILLION DOLLARS IN SERVICE AND/OR CONSTRUCTION CONTRACTS WITHIN  
21 THE APPLICABLE PERIOD MAY APPLY TO THE COMMISSIONER OF ECONOMIC DEVELOP-  
22 MENT, AND THE DIRECTOR FOR A WAIVER OF THE REQUIRED ANNUAL REPORT. THE  
23 WAIVER APPLICATION SHALL BE MADE ON SUCH FORM AS THE COMMISSIONER OF  
24 ECONOMIC DEVELOPMENT AND THE DIRECTOR MAY PRESCRIBE.

25 8. IF A CONTRACTING AGENCY SHALL FAIL TO FILE OR SUBSTANTIALLY  
26 COMPLETE, AS DETERMINED BY THE COMMISSIONER OF ECONOMIC DEVELOPMENT AND  
27 THE DIRECTOR, THE REPORT REQUIRED BY THIS SECTION, THE DIRECTOR SHALL  
28 PROVIDE NOTICE TO THE CONTRACTING AGENCY. THE NOTICE SHALL STATE THE  
29 FOLLOWING:

30 (A) THAT THE FAILURE TO FILE A REPORT AS REQUIRED IS A VIOLATION OF  
31 THIS SECTION, OR IN THE CASE OF AN INSUFFICIENT REPORT, THE MANNER IN  
32 WHICH THE REPORT SUBMITTED IS DEFICIENT;

33 (B) THAT THE CONTRACTING AGENCY HAS THIRTY DAYS TO COMPLY WITH THIS  
34 SECTION OR PROVIDE AN ADEQUATE WRITTEN EXPLANATION TO THE COMMISSIONER  
35 OF ECONOMIC DEVELOPMENT AND THE COMMISSIONER OF GENERAL SERVICES AND THE  
36 DIRECTOR OF THE CONTRACTING AGENCY'S REASONS FOR THE INABILITY TO  
37 COMPLY; AND

38 (C) THAT THE CONTRACTING AGENCY'S CONTINUED FAILURE TO PROVIDE EITHER  
39 THE REQUIRED REPORT OR AN ADEQUATE EXPLANATION WILL RESULT IN AN INDE-  
40 PENDENT AUDIT OF THE CONTRACTING AGENCY, THE COST OF WHICH SHALL BE  
41 BORNE BY THE CONTRACTING AGENCY.

42 S 6. Section 316 of the executive law, as amended by chapter 175 of  
43 the laws of 2010, is amended to read as follows:

44 S 316. [Enforcement] VIOLATIONS AND ENFORCEMENT. 1. IT SHALL BE A  
45 VIOLATION FOR ANY PERSON OR ENTITY TO:

46 A. INTENTIONALLY USE OR ACQUIRE AN MWBE NAME THROUGH DECEIT OR OTHER  
47 DISHONEST MEANS IN ORDER TO NEGOTIATE A LOWER BID FROM A NON-MWBE.

48 B. SUBMIT TO THE DEPARTMENT OF ECONOMIC DEVELOPMENT, DOCUMENTS OR  
49 OTHER MATERIAL AS EVIDENCE OF A GOOD FAITH EFFORT TO COMPLY WITH THE  
50 PROVISIONS OF THIS ARTICLE WITHOUT, IN FACT, HAVING ENTERED INTO ANY  
51 CONTRACT, AGREEMENT, SUBCONTRACT, OR SUB-AGREEMENT WITH AN MWBE FOR THE  
52 USE OR PURCHASE OF SUCH BUSINESS ENTERPRISE'S GOODS OR SERVICES IN THE  
53 PERFORMANCE OF THE AWARDED STATE CONTRACT.

54 C. FAIL TO PROVIDE AN MWBE WITH SUFFICIENT INFORMATION OR OTHER  
55 REQUIRED SUPPORTING DOCUMENTATION IN ORDER FOR THE MWBE TO PREPARE A  
56 PROPER BID.

1 2. Upon receipt by the director of a complaint by a contracting agency  
2 that a contractor has violated the provisions of a state contract which  
3 have been included to comply with the provisions of this article or of a  
4 contractor that a contracting agency has violated such provisions or has  
5 failed or refused to issue a waiver where one has been applied for  
6 pursuant to subdivision six of section three hundred thirteen of this  
7 article or has denied such application, the director shall attempt to  
8 resolve the matter giving rise to such complaint. If efforts to resolve  
9 such matter to the satisfaction of all parties are unsuccessful, the  
10 director shall refer the matter, within thirty days of the receipt of  
11 the complaint, to the division's hearing officers. Upon conclusion of  
12 the administrative hearing, the hearing officer shall submit to the  
13 director his or her decision regarding the alleged violation of the  
14 contract and recommendations regarding the imposition of sanctions,  
15 fines or penalties. The director, within ten days of receipt of the  
16 decision, shall file a determination of such matter and shall cause a  
17 copy of such determination along with a copy of this article to be  
18 served upon the contractor by personal service or by certified mail  
19 return receipt requested. The decision of the hearing officer shall be  
20 final and may only be vacated or modified as provided in article seven-  
21 ty-eight of the civil practice law and rules upon an application made  
22 within the time provided by such article. The determination of the  
23 director as to the imposition of any fines, sanctions or penalties shall  
24 be reviewable pursuant to article seventy-eight of the civil practice  
25 law and rules. The penalties imposed for any violation which is premised  
26 upon either a fraudulent or intentional misrepresentation by the  
27 contractor or the contractor's willful and intentional disregard of the  
28 minority and women-owned participation requirement included in the  
29 contract may include a determination that the contractor shall be ineli-  
30 gible to submit a bid to any contracting agency or be awarded any such  
31 contract for a period not to exceed one year following the final deter-  
32 mination; provided however, if a contractor has previously been deter-  
33 mined to be ineligible to submit a bid pursuant to this section, the  
34 penalties imposed for any subsequent violation, if such violation occurs  
35 within five years of the first violation, may include a determination  
36 that the contractor shall be ineligible to submit a bid to any contract-  
37 ing agency or be awarded any such contract for a period not to exceed  
38 five years following the final determination. The division of minority  
39 and women's business development shall maintain a website listing all  
40 contractors that have been deemed ineligible to submit a bid pursuant to  
41 this section and the date after which each contractor shall once again  
42 become eligible to submit bids.

43 3. THE DIRECTOR SHALL IMPOSE A SANCTION, PENALTY, OR FINE ON ANY  
44 INDIVIDUAL OR ENTITY THAT HAS THREE OR MORE VIOLATIONS OF THIS ARTICLE  
45 WITHIN FIVE YEARS. SUCH FINE SHALL BE PAID BY SUCH INDIVIDUAL OR ENTITY.  
46 SUCH FINE SHALL BE REMITTED AND DEPOSITED INTO A FUND, TO BE MANAGED BY  
47 THE COMMISSIONER OF ECONOMIC DEVELOPMENT. SUCH FUNDS SHALL BE USED TO  
48 SUBSIDIZE THE FACILITATION OF THE PROVISIONS OF THIS ARTICLE. OTHER  
49 SANCTIONS SHALL INCLUDE BARRING SUCH ENTITY OR INDIVIDUAL FROM CONTRACT-  
50 ING WITH SUCH AGENCY FOR A PERIOD NOT TO EXCEED FIVE YEARS.

51 S 7. Subdivision 1 of section 137 of the state finance law, as sepa-  
52 rately amended by section 17 of part MM of chapter 57 and chapter 619 of  
53 the laws of 2008, is amended to read as follows:

54 1. In addition to other bond or bonds, if any, required by law for the  
55 completion of a work specified in a contract for the prosecution of a  
56 public improvement for the state of New York a municipal corporation, a

1 public benefit corporation or a commission appointed pursuant to law, or  
2 in the absence of any such requirement, the comptroller may or the other  
3 appropriate official, respectively, shall nevertheless require prior to  
4 the approval of any such contract a bond guaranteeing prompt payment of  
5 moneys due to all persons furnishing labor or materials to the contrac-  
6 tor or any subcontractors in the prosecution of the work provided for in  
7 such contract. Whenever a municipal corporation issues a permit subject  
8 to compliance with section two hundred twenty of the labor law, such  
9 permittee or its contractor or subcontractors furnishing workers shall  
10 post a payment bond subject to this section. Provided, however, that all  
11 performance bonds and payment bonds may, at the discretion of the head  
12 of the state agency, public benefit corporation or commission, or his or  
13 her designee, be dispensed with for the completion of a work specified  
14 in a contract for the prosecution of a public improvement for the state  
15 of New York for which bids are solicited where the aggregate amount of  
16 the contract is under one hundred thousand dollars and provided further,  
17 that in a case where the contract is not subject to the multiple  
18 contract award requirements of section one hundred thirty-five of this  
19 article, such requirements may be dispensed with where the head of the  
20 state agency, public benefit corporation or commission finds it to be in  
21 the public interest and where the aggregate amount of the contract  
22 awarded or to be awarded is less than two hundred thousand dollars. IN A  
23 CASE WHERE A CONTRACT IS AWARDED TO A SMALL BUSINESS CONCERN OR TO A  
24 MINORITY OR WOMEN-OWNED BUSINESS CONCERN, ALL PERFORMANCE BONDS AND  
25 PAYMENT BONDS MAY BE DISPENSED WITH WHEN THE AGGREGATE AMOUNT OF THE  
26 CONTRACT IS UNDER FIVE HUNDRED THOUSAND DOLLARS. ADVERTISEMENTS FOR BIDS  
27 SHALL PROVIDE INFORMATION AS TO THE REQUIREMENTS FOR, OR DISPENSATION  
28 OF, PERFORMANCE AND PAYMENT BONDS. Provided further, that in a case  
29 where a performance or payment bond is dispensed with, twenty per centum  
30 may be retained from each progress payment or estimate until the entire  
31 contract work has been completed and accepted, at which time the head of  
32 the state agency, public benefit corporation or commission shall, pend-  
33 ing the payment of the final estimate, pay not to exceed seventy-five  
34 per centum of the amount of the retained percentage.

35 S 8. Subdivision 4 of section 139-f of the state finance law, as  
36 amended by chapter 83 of the laws of 1995, is amended to read as  
37 follows:

38 4. Notwithstanding any other provision of this section or other law,  
39 requirements for the furnishing of a performance bond or a payment bond  
40 may be dispensed with at the discretion of the head of the state agency  
41 or corporation, or his or her designee, where the public owner is a  
42 state agency or corporation described in subdivision one-a of this  
43 section and the aggregate amount of the contract awarded or to be  
44 awarded is under fifty thousand dollars and, in a case where the  
45 contract is not subject to the multiple contract award requirements of  
46 section one hundred thirty-five of this article, such requirements may  
47 be dispensed with where the head of the state agency or corporation  
48 finds it to be in the public interest and where the aggregate amount of  
49 the contract awarded or to be awarded is under two hundred thousand  
50 dollars. IN A CASE WHERE A CONTRACT IS AWARDED TO A SMALL BUSINESS  
51 CONCERN OR TO A MINORITY OR WOMEN-OWNED BUSINESS CONCERN, ALL PERFORM-  
52 ANCE BONDS AND PAYMENT BONDS MAY BE DISPENSED WITH WHEN THE AGGREGATE  
53 AMOUNT OF THE CONTRACT IS UNDER FIVE HUNDRED THOUSAND DOLLARS. ADVER-  
54 TISEMENTS FOR PROPOSALS SHALL PROVIDE INFORMATION AS TO THE REQUIREMENTS  
55 FOR, OR DISPENSATION OF, PERFORMANCE AND PAYMENT BONDS. Provided  
56 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 or corporation shall, pending the payment of the final estimate, pay not to exceed seventy-five per centum of the amount of the retained percentage.

S 9. The opening paragraph of section 139-g of the state finance law, as amended by chapter 636 of the laws of 2003, is amended to read as follows:

In every state agency, department and authority which has let more than two million dollars in service and construction contracts AND STATE ASSISTED PROJECT CONTRACTS in the prior fiscal year, the chief executive officer of that agency, department or authority shall, with respect to those contracts AND STATE ASSISTED PROJECT CONTRACTS let by his OR HER agency, department or authority:

S 10. The opening paragraph of subdivision (b) of section 139-g of the state finance law, as amended by chapter 636 of the laws of 2003, is amended to read as follows:

identify all small-business and certified women and minority-owned business concerns which, in the judgment of the chief executive officer of that agency, department or authority, can bid on those contracts AND STATE ASSISTED PROJECT CONTRACTS which are usually and customarily let by that agency, department or authority, OR IN WHICH THAT AUTHORITY PROVIDES A GRANT OR LOAN OR TAX EXEMPT FINANCING, with a reasonable expectation of success. Such chief executive officers shall carry out the provisions of this subdivision:

S 11. Section 139-g of the state finance law is amended by adding a new subdivision (e) to read as follows:

(E) FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING WORDS SHALL HAVE THE FOLLOWING MEANINGS:

(I) "STATE ASSISTED PROJECT CONTRACT" SHALL MEAN ANY WRITTEN AGREEMENT ARISING OUT OF A STATE ASSISTED HOUSING PROJECT OR STATE ASSISTED ECONOMIC DEVELOPMENT PROJECT OR STATE ASSISTED HIGHER EDUCATION PROJECT OR STATE ASSISTED HOSPITAL OR HEALTH CARE FACILITY PROJECT, FOR WHICH THE TOTAL PROJECT COST EXCEEDS TWO MILLION DOLLARS AND FOR WHICH THE PROJECT OWNER IS COMMITTED TO SPEND OR DOES EXPEND FUNDS FOR THE ACQUISITION, CONSTRUCTION, DEMOLITION, REPLACEMENT, MAJOR REPAIR, OR RENOVATION OF REAL PROPERTY AND IMPROVEMENTS THEREON FOR SUCH PROJECT.

(II) "STATE ASSISTED HOUSING PROJECT" SHALL MEAN THOSE PROJECTS WHICH RECEIVE FROM THE NEW YORK STATE HOUSING FINANCE AGENCY TAX-EXEMPT FINANCING FOR ALL OR PART OF THE TOTAL PROJECT COST.

(III) "STATE ASSISTED ECONOMIC DEVELOPMENT PROJECT" SHALL MEAN THOSE PROJECTS WHICH RECEIVE FROM THE NEW YORK FOUNDATION OF SCIENCE TECHNOLOGY AND INNOVATION, OR THE URBAN DEVELOPMENT CORPORATION AND ITS SUBSIDIARIES A GRANT OR LOAN OR TAX-EXEMPT FINANCING FOR ALL OR PART OF THE TOTAL PROJECT COST.

(IV) "STATE ASSISTED HIGHER EDUCATION PROJECT" SHALL MEAN THOSE PROJECTS WHICH RECEIVE FROM THE DORMITORY AUTHORITY OF THE STATE OF NEW YORK A GRANT OR LOAN OR TAX-EXEMPT FINANCING FOR ALL OR PART OF THE TOTAL PROJECT COST.

(V) "STATE ASSISTED HOSPITAL OR HEALTH CARE FACILITY PROJECT" SHALL MEAN THOSE PROJECTS WHICH RECEIVE FROM THE DORMITORY AUTHORITY OF THE STATE OF NEW YORK A GRANT OR LOAN OR TAX-EXEMPT FINANCING FOR ALL OR PART OF THE TOTAL PROJECT COST.

S 12. This act shall take effect immediately, provided however, the amendments to article 15-A of the executive law made by sections one

1 through six of this act shall not affect the expiration of such article  
2 and shall expire therewith.