

STATE OF NEW YORK

2321

2021-2022 Regular Sessions

IN ASSEMBLY

January 14, 2021

Introduced by M. of A. SIMON, GLICK, HYNDMAN -- Multi-Sponsored by -- M. of A. COOK, GOTTFRIED, SEAWRIGHT -- read once and referred to the Committee on Governmental Operations

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 establishing a mentor-protege program for small and minority and women-owned business concerns and 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 by section 1 of
5 part BB of chapter 59 of the laws of 2006, subdivision 4 as amended by
6 chapter 361 of the laws of 2009, and paragraphs (f), (i) and (j) of
7 subdivision 3 and the opening paragraph of subdivision 4 as amended and
8 paragraph (d-1) of subdivision 3 and paragraphs (d) and (e) of subdivi-
9 sion 4 as added by chapter 96 of the laws of 2019, are amended to read
10 as follows:

11 3. The director shall have the following powers and duties:

12 (a) to encourage and assist contracting agencies in their efforts to
13 increase participation by minority and women-owned business enterprises
14 on state contracts and subcontracts so as to facilitate the award of a
15 fair share of such contracts to them and to provide on the division's
16 website a list of each contracting agency's minority and women-owned
17 business enterprises certification outreach seminars;

18 (b) to develop standardized forms and reporting documents necessary to
19 implement this article;

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

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1 (c) to conduct educational outreach programs to encourage the certifi-
2 cation of minority and women-owned business enterprises consistent with
3 the purposes of this article;

4 (d) to review [~~periodically~~] quarterly the practices and procedures of
5 each contracting agency with respect to compliance with the provisions
6 of this article, and to require them to file [~~periodic~~] quarterly
7 reports with the division of minority and women's business development
8 as to the level of minority and women-owned business enterprises partic-
9 ipation in the awarding of agency contracts for goods and services
10 including but not limited to the number of state contracts awarded to
11 certified minority-owned or women-owned business enterprises, the maxi-
12 mum dollar amount obligated pursuant to all those contracts, and the
13 total expenditures made pursuant to all such contracts; the number of
14 state contracts awarded to certified minority or women-owned business
15 enterprises, the maximum dollar amount obligated pursuant to all those
16 contracts, and the total expenditures made pursuant to all such
17 contracts; the number of state contracts awarded which include a utili-
18 zation plan for business participation by certified minority or women-
19 owned business enterprises, the maximum amount obligated pursuant to
20 those contracts, and the total expenditures made pursuant to all such
21 contracts; the number of state contracts awarded upon which a waiver was
22 granted from goals required by the contracts for business participation
23 by certified minority or women-owned business enterprises, and the maxi-
24 mum amount obligated pursuant to those contracts; the number of state
25 contracts awarded which required goals for employment of minority group
26 members and women; and the number of state contracts awarded for which
27 waivers of employment goals required by the contracts have been granted;

28 (d-1) to require all contracting state agencies to develop a four-year
29 growth plan to determine a means of promoting and increasing partic-
30 ipation by minority-owned and women-owned business enterprises with
31 respect to state contracts and subcontracts. Every four years, beginning
32 September fifteenth, two thousand twenty, each contracting state agency
33 shall submit a four-year growth plan as part of its annual report to the
34 governor and legislature pursuant to section one hundred sixty-four of
35 this chapter.

36 (e) on January first of each year report to the governor, the tempo-
37 rary president of the senate, the speaker of the assembly, the minority
38 leaders of the senate and the assembly, and the chairpersons of the
39 senate finance and assembly ways and means committees on the [~~level~~]
40 actual versus projected levels of minority and women-owned business
41 enterprises participating in each agency's contracts for goods [~~and~~],
42 services and construction, including but not limited to the number of
43 state contracts awarded to certified minority-owned or women-owned busi-
44 ness enterprises, the maximum dollar amount obligated pursuant to all
45 those contracts, and the total expenditures made pursuant to all such
46 contracts, and on activities of the office and effort by each contract-
47 ing agency to promote employment of minority group members and women,
48 and to promote and increase participation by certified businesses with
49 respect to state contracts and subcontracts so as to facilitate the
50 award of a fair share of state contracts to such businesses. The comp-
51 troller shall assist the division in collecting information on the
52 participation of certified business for each contracting agency. Such
53 report may recommend new activities and programs to effectuate the
54 purposes of this article;

55 (f) the director shall list in the division's annual report the names
56 of non-compliant agencies and the extent of their noncompliance in

1 submitting its quarterly minority and women-owned business enterprise
2 utilization reports; and, shall implement a master list of all the state
3 agencies required to file quarterly compliance reports and shall attach
4 such list to the division's annual report.

5 (g) to prepare and update, [~~no less than annually,~~] quarterly a direc-
6 tory of certified minority and women-owned business enterprises which
7 shall, wherever practicable, be divided into categories of labor,
8 services, supplies, equipment, materials and recognized construction
9 trades and which shall indicate areas or locations of the state where
10 such enterprises are available to perform services, and to use this
11 information to create an internet based, centralized state registry to
12 enable appropriate state certified minority and women-owned business
13 enterprises to access contract and subcontract opportunities;

14 [~~(g)~~] (h) to appoint independent hearing officers who by contract or
15 terms of employment shall preside over adjudicatory hearings pursuant to
16 section three hundred fourteen of this article for the office and who
17 are assigned no other work by the office;

18 [~~(h)~~] (i) notwithstanding the provisions of section two hundred nine-
19 ty-six of this chapter, to file a complaint pursuant to the provisions
20 of section two hundred ninety-seven of this chapter where the director
21 has knowledge that a contractor may have violated the provisions of
22 paragraph (a), (b) or (c) of subdivision one of section two hundred
23 ninety-six of this chapter where such violation is unrelated, separate
24 or distinct from the state contract as expressed by its terms; [~~and~~]

25 [~~(i)~~] (j) to streamline the state certification process to accept
26 federal and municipal corporation certifications[~~+~~]; and

27 [~~(j)~~] (k) to make publicly available records of all waivers of compli-
28 ance reported pursuant to paragraph (b) of subdivision six of section
29 three hundred thirteen of this article on the division's website.

30 4. The director shall provide assistance to, and facilitate access to
31 programs serving certified businesses as well as applicants to ensure
32 that such businesses benefit, as needed, from technical, managerial and
33 financial, and general business assistance; training; marketing; organ-
34 ization and personnel skill development; project management assistance;
35 technology assistance; bond and insurance education assistance; and
36 other business development assistance. The director shall maintain a
37 toll-free number at the department of economic development to be used to
38 answer questions concerning the MWBE certification process. In addition,
39 the director [~~may~~] shall, either independently or in conjunction with
40 other state agencies:

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

43 (b) review bonding and paperwork requirements imposed by contracting
44 agencies that may unnecessarily impede the ability of such businesses to
45 compete; [~~and~~]

46 (c) seek to maximize utilization by minority and women-owned business
47 enterprises of available federal resources including but not limited to
48 federal grants, loans, loan guarantees, surety bonding guarantees, tech-
49 nical assistance, and programs and services of the federal small busi-
50 ness administration[~~+~~];

51 (d) conduct outreach events, training workshops, seminars, and other
52 such educational programs throughout the state, including all regional
53 offices, to state agencies, external stakeholders, and the public, to
54 promote awareness and utilization of minority and women-owned business
55 enterprises; and

(e) identify and establish mentorship opportunities and other business development programs to increase capacity and better prepare MWBEs for bidding on contracts with state agencies upon successful completion of the mentorship opportunity. Such mentorship opportunities shall be intended to ensure that mentor and mentee are connected based on a commercially useful function.

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

5. The director shall promulgate rules and regulations to ensure that contractors and subcontractors undertake programs of affirmative action and equal employment opportunity as required by this section. Such rules and regulations as they pertain to any particular agency shall be developed after consultation with contracting agencies. Such rules and regulations ~~[may]~~ shall require a contractor, after notice in a bid solicitation, to submit an equal employment opportunity program ~~[after bid opening and prior to the award of any contract]~~ at the time bids are submitted, and ~~[may]~~ shall require the contractor or subcontractor to submit compliance reports relating to the contractor's or subcontractor's operation and implementation of any equal employment opportunity program in effect as of the date the contract is executed. The contracting agency ~~[may recommend to the director that]~~ shall have the right to recommend that the director take appropriate action according to the procedures set forth in section three hundred sixteen of this article against the contractor for noncompliance with the requirements of this section. The contracting agency shall be responsible for monitoring compliance with this section.

§ 3. Subdivisions 2-a, 3 and paragraph (a) of subdivision 5 of section 313 of the executive law, as amended by chapter 96 of the laws of 2019, are amended to read as follows:

2-a. The director shall promulgate rules and regulations that will accomplish the following:

(a) provide for the certification and decertification of minority and women-owned business enterprises for all agencies through a single process that meets applicable requirements;

(b) require that each contract solicitation document accompanying each solicitation set forth the expected degree of minority and women-owned business enterprise participation based, in part, on:

(i) the potential subcontract opportunities available in the prime procurement contract;

(ii) the availability, as contained within the study, of certified minority and women-owned business enterprises to respond competitively to the potential subcontract opportunities as reflected in the division's directory of certified minority and women-owned business enterprises; and

(iii) the findings of the disparity study;

(c) require that each agency provide a current list of certified minority business enterprises to each prospective contractor or direct them to the division's directory of certified minority and women-owned business enterprises for such purpose;

(d) allow a contractor that is a certified minority-owned or women-owned business enterprise to use the work it performs to meet requirements for use of certified minority-owned or women-owned business enterprises as subcontractors;

(e) establish criteria for agencies to credit the participation of minority and women-owned business enterprises towards the achievement of the minority and women-owned business enterprise participation goals on

1 a state contract based on the commercially useful function provided by
2 each minority and women-owned business enterprise on the contract;

3 (f) provide for joint ventures, which a bidder may count toward meet-
4 ing its minority and women-owned business enterprise participation;

5 (g) consistent with subdivision six of this section, provide for
6 circumstances under which an agency may waive obligations of the
7 contractor relating to minority and women-owned business enterprise
8 participation;

9 (h) require that an agency verify that minority and women-owned busi-
10 ness enterprises listed in a successful bid are actually participating
11 to the extent listed in the project for which the bid was submitted;

12 (i) provide for the collection of statistical data by each agency
13 concerning actual minority and women-owned business enterprise partic-
14 ipation;

15 (j) require each agency to consult the most current disparity study
16 when calculating agency-wide and contract specific participation goals
17 pursuant to this article; ~~and~~

18 (k) encourage joint ventures, partnerships, and mentor-protege
19 relationships as defined in section one hundred forty-seven of the state
20 finance law, between prime contractors and minority and women-owned
21 business enterprises; and

22 Such rules shall set forth the maximum personal net worth of a minori-
23 ty group member or woman who may be relied upon to certify a business as
24 a minority-owned business enterprise or women-owned business enterprise,
25 and may establish different maximum levels of personal net worth for
26 minority group members and women on an industry-by-industry basis for
27 such industries as the director shall determine. Such regulations relat-
28 ing to the classification of the industry-by-industry personal net worth
29 thresholds above the fifteen million dollar threshold shall consider the
30 personal net worth of the owners of both certified and non-certified
31 businesses, including but not limited to, prime contractors and subcon-
32 tractors, as well as any such other factors needed to establish such
33 thresholds. The provisions of the regulations pertaining to personal net
34 worth shall, to the extent practicable, be implemented by June thirti-
35 eth, two thousand twenty and shall consider adjustments for inflation
36 annually on January first of the previous year according to the consumer
37 price index.

38 3. Solely for the purpose of providing the opportunity for meaningful
39 participation by certified businesses in the performance of state
40 contracts as provided in this section, state contracts shall include
41 leases of real property by a state agency to a lessee where: the terms
42 of such leases provide for the construction, demolition, replacement,
43 major repair or renovation of real property and improvements thereon by
44 such lessee; and the cost of such construction, demolition, replacement,
45 major repair or renovation of real property and improvements thereon
46 shall exceed the sum of one hundred thousand dollars. Reports to the
47 director pursuant to section three hundred fifteen of this article shall
48 include activities with respect to all such state contracts. Contracting
49 agencies shall include or require to be included with respect to state
50 contracts for the acquisition, construction, demolition, replacement,
51 major repair or renovation of real property and improvements thereon,
52 such provisions as ~~may~~ shall be necessary to effectuate the provisions
53 of this section in every bid specification and state contract, includ-
54 ing, but not limited to: (a) provisions requiring contractors to make a
55 good faith effort to solicit active participation by enterprises identi-
56 fied in the directory of certified businesses; (b) requiring the parties

1 to agree as a condition of entering into such contract, to be bound by
2 the provisions of section three hundred sixteen of this article; and (c)
3 requiring the contractor to include the provisions set forth in para-
4 graphs (a) and (b) of this subdivision in every subcontract in a manner
5 that the provisions will be binding upon each subcontractor as to work
6 in connection with such contract. Provided, however, that no such
7 provisions shall be binding upon contractors or subcontractors in the
8 performance of work or the provision of services that are unrelated,
9 separate or distinct from the state contract as expressed by its terms,
10 and nothing in this section shall authorize the director or any
11 contracting agency to impose any requirement on a contractor or subcon-
12 tractor except with respect to a state contract.

13 (a) Contracting agencies shall administer the rules and regulations
14 promulgated by the director in a good faith effort to achieve the maxi-
15 mum feasible participation by minority and women owned business enter-
16 prises adopted pursuant to this article and the regulations of the
17 director. Such rules and regulations: shall require a contractor to
18 submit a utilization plan [~~after bids are opened~~ at the time bids are
19 submitted, when bids are required, [~~but prior to the award of a state~~
20 ~~contract~~]; shall require the contracting agency to review the utiliza-
21 tion plan submitted by the contractor and to post the utilization plan
22 and any waivers of compliance issued pursuant to subdivision six of this
23 section on the website of the contracting agency; shall require the
24 contracting agency to notify the contractor in writing within a period
25 of time specified by the director as to any deficiencies contained in
26 the contractor's utilization plan; shall require remedy thereof within a
27 period of time specified by the director; shall require the contractor
28 to submit [~~periodic~~ quarterly compliance reports relating to the opera-
29 tion and implementation of any utilization plan; shall not allow any
30 automatic waivers but shall allow a contractor to apply for a partial or
31 total waiver of the minority and women-owned business enterprise partic-
32 ipation requirements pursuant to subdivisions six and seven of this
33 section; shall allow a contractor to file a complaint with the director
34 pursuant to subdivision eight of this section in the event a contracting
35 agency has failed or refused to issue a waiver of the minority and
36 women-owned business enterprise participation requirements or has denied
37 such request for a waiver; and shall allow a contracting agency to file
38 a complaint with the director pursuant to subdivision nine of this
39 section in the event a contractor is failing or has failed to comply
40 with the minority and women-owned business enterprise participation
41 requirements set forth in the state contract where no waiver has been
42 granted.

43 § 4. Subdivisions 1 and 3 of section 315 of the executive law, as
44 amended by chapter 96 of the laws of 2019, are amended to read as
45 follows:

46 1. Each contracting agency shall be responsible for monitoring state
47 contracts under its jurisdiction, and recommending matters to the office
48 respecting non-compliance with the provisions of this article so that
49 the office [~~may~~ shall take such action as [~~is appropriate~~ stated in
50 subdivision three of section three hundred sixteen of this article. Each
51 contracting agency shall have the right to recommend that the director
52 impose a sanction, penalty, or fine for three or more violations of
53 subdivision one of section three hundred of this article, to ensure
54 compliance with the provisions of this article, the rules and regu-
55 lations of the director issued hereunder and the contractual provisions
56 required pursuant to this article. All contracting agencies shall comply

1 with the rules and regulations of the office and are directed to cooper-
2 ate with the office and to furnish to the office such information and
3 assistance as may be required in the performance of its functions under
4 this article.

5 3. ~~[Each contracting agency shall report to the director with respect
6 to activities undertaken to promote employment of minority group members
7 and women and promote and increase participation by certified businesses
8 with respect to state contracts and subcontracts. Such reports shall be
9 submitted no later than May fifteenth of every year and shall include
10 such information as is necessary for the director to determine whether
11 the contracting agency and any contractor to the contracting agency have
12 complied with the purposes of this article, including, without limita-
13 tion, a summary of all waivers of the requirements of subdivisions six
14 and seven of section three hundred thirteen of this article allowed by
15 the contracting agency during the period covered by the report, includ-
16 ing a description of the basis of the waiver request and the rationale
17 for granting any such waiver and any instances in which the contract
18 agency has deemed a contractor to have committed a violation pursuant to
19 section three hundred sixteen of this article and such other information
20 as the director shall require. Each agency shall also include in such
21 annual report whether or not it has been required to prepare a remedial
22 plan, and, if so, the plan and the extent to which the agency has
23 complied with each element of the plan.]~~

24 (a) Each contracting agency shall prepare a quarterly report and submit copies to the commissioner
25 of economic development, the commissioner of general services, and the
26 director as to the level of minority and women-owned business enter-
27 prises participation in the awarding of agency contracts for goods and
28 services, including but not limited to, the number of state contracts
29 awarded to certified minority or women-owned business enterprises; the
30 maximum dollar amount obligated pursuant to such contracts, and the
31 total expenditures made pursuant to all such contracts; the number of
32 state contracts awarded upon which a waiver was granted from goals
33 required by the contracts for business participation by certified minor-
34 ity or women-owned business enterprises, and the maximum amount obli-
35 gated pursuant to such contracts; the number of state contracts awarded
36 which required goals for employment of minority group members and women;
37 and the number of state contracts awarded for which waivers of employ-
38 ment goals required by the contracts have been granted;

39 (b) In addition, each contracting agency shall be responsible for the
40 cost of an independent audit resulting from the agency's repeated
41 violations of this section.

42 (c) Within thirty days after completion, a copy of the quarterly
43 minority and women-owned business enterprise report shall be transmitted
44 to the commissioner of economic development, the commissioner of general
45 services, and the director. A contracting agency, which has not let more
46 than two million dollars in service and/or construction contracts within
47 the applicable period may apply to the commissioner of economic develop-
48 ment, and the director for a waiver of the required annual report. The
49 waiver application shall be made on such form as the commissioner of
50 economic development and the director may prescribe.

51 (d) If a contracting agency shall fail to file or substantially
52 complete, as determined by the commissioner of economic development and
53 the director, the report required by this section, the director shall
54 provide notice to the contracting agency. The notice shall state the
55 following:

(i) that the failure to file a report as required is a violation of this section, or in case of an insufficient report, the manner in which the report submitted is deficient;

(ii) that the contracting agency has thirty days to comply with this section or provide an adequate written explanation to the commissioner of economic development, the commissioner of general services and the director of the contracting agency's reasons for the inability to comply; and

(iii) that the contracting agency's continued failure to provide either the required report or an adequate explanation will result in an independent audit of the contracting agency, the cost of which shall be borne by the contracting agency.

§ 5. Section 316 of the executive law, as amended by chapter 175 of the laws of 2010, is amended to read as follows:

§ 316. ~~[Enforcement]~~ Violations and enforcement. 1. It shall be a violation for any person or entity to:

(a) intentionally use or acquire an MWBE name through deceit or other dishonest means in order to negotiate a lower bid from a non-MWBE.

(b) submit to the department of economic development, documents or other material as evidence of a good faith effort to comply with the provisions of this article without, in fact, having entered into any contract, agreement, subcontract, or sub-agreement with an MWBE for the use or purchase of such business enterprise's goods or services in the performance of the awarded state contract.

(c) fail to provide an MWBE with sufficient information or other required supporting documentation in order for the MWBE to prepare a proper bid.

2. Upon receipt by the director of a complaint by a contracting agency that a contractor has violated the provisions of a state contract which have been included to comply with the provisions of this article or of a contractor that a contracting agency has violated such provisions or has failed or refused to issue a waiver where one has been applied for pursuant to subdivision six of section three hundred thirteen of this article or has denied such application, the director shall attempt to resolve the matter giving rise to such complaint. If efforts to resolve such matter to the satisfaction of all parties are unsuccessful, the director shall refer the matter, within thirty days of the receipt of the complaint, to the division's hearing officers. Upon conclusion of the administrative hearing, the hearing officer shall submit to the director his or her decision regarding the alleged violation of the contract and recommendations regarding the imposition of sanctions, fines or penalties. The director, within ten days of receipt of the decision, shall file a determination of such matter and shall cause a copy of such determination along with a copy of this article to be served upon the contractor by personal service or by certified mail return receipt requested. The decision of the hearing officer shall be final and may only be vacated or modified as provided in article seventy-eight of the civil practice law and rules upon an application made within the time provided by such article. The determination of the director as to the imposition of any fines, sanctions or penalties shall be reviewable pursuant to article seventy-eight of the civil practice law and rules. The penalties imposed for any violation which is premised upon either a fraudulent or intentional misrepresentation by the contractor or the contractor's willful and intentional disregard of the minority and women-owned participation requirement included in the contract may include a determination that the contractor shall be ineli-

gible to submit a bid to any contracting agency or be awarded any such contract for a period not to exceed one year following the final determination; provided however, if a contractor has previously been determined to be ineligible to submit a bid pursuant to this section, the penalties imposed for any subsequent violation, if such violation occurs within five years of the first violation, may include a determination that the contractor shall be ineligible to submit a bid to any contracting agency or be awarded any such contract for a period not to exceed five years following the final determination. The division of minority and women's business development shall maintain a website listing all contractors that have been deemed ineligible to submit a bid pursuant to this section and the date after which each contractor shall once again become eligible to submit bids.

3. The director shall impose a sanction, penalty, or fine on any individual or entity that has three or more violations of this article within five years. Such fine shall be paid by such individual or entity. Such fine shall be remitted and deposited into a fund, to be managed by the commissioner of economic development. Such funds shall be used to subsidize the facilitation of the provisions of this article. Other sanctions shall include barring such entity or individual from contracting with such agency for a period not to exceed five years.

§ 6. Subdivision 1 of section 137 of the state finance law, as separately amended by section 17 of part MM of chapter 57 and by chapter 619 of the laws of 2008, is amended to read as follows:

1. In addition to other bond or bonds, if any, required by law for the completion of a work specified in a contract for the prosecution of a public improvement for the state of New York a municipal corporation, a public benefit corporation or a commission appointed pursuant to law, or in the absence of any such requirement, the comptroller may or the other appropriate official, respectively, shall nevertheless require prior to the approval of any such contract a bond guaranteeing prompt payment of moneys due to all persons furnishing labor or materials to the contractor or any subcontractors in the prosecution of the work provided for in such contract. Whenever a municipal corporation issues a permit subject to compliance with section two hundred twenty of the labor law, such permittee or its contractor or subcontractors furnishing workers shall post a payment bond subject to this section. Provided, however, that all performance bonds and payment bonds may, at the discretion of the head of the state agency, public benefit corporation or commission, or his or her designee, be dispensed with for the completion of a work specified in a contract for the prosecution of a public improvement for the state of New York for which bids are solicited where the aggregate amount of the contract is under one hundred fifty thousand dollars and provided further, that in a case where the contract is not subject to the multiple contract award requirements of section one hundred thirty-five of this article, such requirements may be dispensed with where the head of the state agency, public benefit corporation or commission finds it to be in the public interest and where the aggregate amount of the contract awarded or to be awarded is less than two hundred thousand dollars. The head of the state agency, public benefit corporation or commission, or his or her designee, shall adjust the aggregate contract amounts listed in this subdivision every year to account for increases in the costs of construction. Advertisements for bids shall provide information on the requirements for, or dispensation of, performance and payment bonds. Provided further, that in a case where a performance or payment bond is dispensed with, twenty per centum may be retained from each progress

1 payment or estimate until the entire contract work has been completed
2 and accepted, at which time the head of the state agency, public benefit
3 corporation or commission shall, pending the payment of the final esti-
4 mate, pay not to exceed seventy-five per centum of the amount of the
5 retained percentage.

6 § 7. Subdivision 4 of section 139-f of the state finance law, as
7 amended by chapter 83 of the laws of 1995, is amended to read as
8 follows:

9 4. Notwithstanding any other provision of this section or other law,
10 requirements for the furnishing of a performance bond or a payment bond
11 may be dispensed with at the discretion of the head of the state agency
12 or corporation, or his or her designee, where the public owner is a
13 state agency or corporation described in subdivision one-a of this
14 section and the aggregate amount of the contract awarded or to be
15 awarded is under fifty thousand dollars and, in a case where the
16 contract is not subject to the multiple contract award requirements of
17 section one hundred thirty-five of this article, such requirements may
18 be dispensed with where the head of the state agency or corporation
19 finds it to be in the public interest and where the aggregate amount of
20 the contract awarded or to be awarded is under ~~[two]~~ three hundred thou-
21 sand dollars. The head of the state agency, public benefit corporation
22 or commission, or his or her designee, shall adjust the aggregate
23 contract amounts listed in this subdivision every year to account for
24 increases in the costs of construction. Advertisements for bids shall
25 provide information on the requirements for, or dispensation of,
26 performance and payment bonds. Provided further, that in a case where a
27 performance or payment bond is dispensed with, twenty per centum may be
28 retained from each progress payment or estimate until the entire
29 contract work has been completed and accepted, at which time the head of
30 the state agency or corporation shall, pending the payment of the final
31 estimate, pay not to exceed seventy-five per centum of the amount of the
32 retained percentage.

33 § 8. The opening paragraph of section 139-g of the state finance law,
34 as amended by chapter 636 of the laws of 2003, is amended to read as
35 follows:

36 In every state agency, department and authority which has let more
37 than two million dollars in service and construction contracts and state
38 assisted project contracts in the prior fiscal year, the chief executive
39 officer of that agency, department or authority shall, with respect to
40 those contracts and state assisted project contracts let by his or her
41 agency, department or authority:

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

45 identify all small-business and certified women and minority-owned
46 business concerns which, in the judgment of the chief executive officer
47 of that agency, department or authority, can bid on those contracts and
48 state assisted project contracts which are usually and customarily let
49 by that agency, department or authority, or in which that authority
50 provides a grant or loan or tax exempt financing, with a reasonable
51 expectation of success. Such chief executive officers shall carry out
52 the provisions of this subdivision:

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

55 (e) For the purposes of this section, the following words shall have
56 the following meanings:

1 (i) "State assisted project contract" shall mean any written agreement
2 arising out of a state assisted housing project or state assisted
3 economic development project or state assisted higher education project
4 or state assisted hospital or health care facility project, for which
5 the total project cost exceeds two million dollars and for which the
6 project owner is committed to spend or does expend funds for the acqui-
7 sition, construction, demolition, replacement, major repair, or reno-
8 vation of real property and improvements thereon for such project.

9 (ii) "State assisted housing project" shall mean those projects which
10 receive from the New York state housing finance agency tax-exempt
11 financing for all or part of the total project cost.

12 (iii) "State assisted economic development project" shall mean those
13 projects which receive from the New York foundation of science technolo-
14 gy and innovation, or the urban development corporation and its subsid-
15 aries a grant or loan or tax-exempt financing for all or part of the
16 total project cost.

17 (iv) "State assisted higher education project" shall mean those
18 projects which receive from the dormitory authority of the state of New
19 York a grant or loan or tax-exempt financing for all or part of the
20 total project cost.

21 (v) "State assisted hospital or health care facility project" shall
22 mean those projects which receive from the dormitory authority of the
23 state of New York a grant or loan or tax-exempt financing for all or
24 part of the total project cost.

25 § 11. This act shall take effect immediately, provided however, the
26 amendments to article 15-A of the executive law made by sections one,
27 two, three, four and five of this act shall not affect the expiration of
28 such article and shall be deemed repealed therewith.