

STATE OF NEW YORK

7519--A

2021-2022 Regular Sessions

IN ASSEMBLY

May 13, 2021

Introduced by M. of A. BICHOTTE HERMELYN, SIMON, FERNANDEZ, ZINERMAN, SEAWRIGHT, JACKSON -- read once and referred to the Committee on Governmental Operations -- recommitted to the Committee on Governmental Operations in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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, paragraph (f) of subdivision 3 and the opening paragraph of subdivi-
5 sion 4 as amended and paragraph (d-1) of subdivision 3 and paragraphs
6 (d) and (e) of subdivision 4 as added by chapter 96 of the laws of 2019,
7 paragraph (g) of subdivision 3 as amended by section 1 of part BB of
8 chapter 59 of the laws of 2006, paragraphs (h), (i) and (j) of subdivi-
9 sion 3 as amended and paragraph (k) of subdivision 3 as added by chapter
10 825 of the laws of 2021, and subdivision 4 as amended by chapter 361 of
11 the laws of 2009, are amended to read as follows:

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

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

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

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1 (b) to develop standardized forms and reporting documents necessary to
2 implement this article;

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

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

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

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

54 (f) the director shall list in the division's annual report the names
55 of non-compliant agencies and the extent of their noncompliance in
56 submitting its quarterly minority and women-owned business enterprise

utilization reports; and, shall implement a master list of all the state agencies required to file quarterly compliance reports and shall attach such list to the division's annual report.

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

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

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

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

~~[(j)]~~ (k) to make publicly available records of all waivers of compliance reported pursuant to paragraph (b) of subdivision six of section three hundred thirteen of this article on the division's website; and

~~[(k)]~~ (l) to work in conjunction with the industrial commissioner pursuant to paragraph (j) of subdivision one of section eight hundred eleven of the labor law to assist contractors in identifying minority group members and women who are participating in apprenticeship agreements under article twenty-three of the labor law.

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

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

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

(c) seek to maximize utilization by minority and women-owned business enterprises of available federal resources including but not limited to federal grants, loans, loan guarantees, surety bonding guarantees, technical assistance, and programs and services of the federal small business administration.

(d) conduct outreach events, training workshops, seminars, and other such educational programs throughout the state, including all regional

1 offices, to state agencies, external stakeholders, and the public, to
2 promote awareness and utilization of minority and women-owned business
3 enterprises; and

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

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

12 5. The director shall promulgate rules and regulations to ensure that
13 contractors and subcontractors undertake programs of affirmative action
14 and equal employment opportunity as required by this section. Such rules
15 and regulations as they pertain to any particular agency shall be devel-
16 oped after consultation with contracting agencies. Such rules and regu-
17 lations ~~[may]~~ shall require a contractor, after notice in a bid solic-
18 itation, to submit an equal employment opportunity program ~~[after bid~~
19 ~~opening and prior to the award of any contract]~~ at the time bids are
20 submitted, and ~~[may]~~ shall require the contractor or subcontractor to
21 submit compliance reports relating to the contractor's or subcontrac-
22 tor's operation and implementation of any equal employment opportunity
23 program in effect as of the date the contract is executed. The contract-
24 ing agency ~~[may recommend to the director that]~~ shall have the right to
25 recommend that the director take appropriate action according to the
26 procedures set forth in section three hundred sixteen of this article
27 against the contractor for noncompliance with the requirements of this
28 section. The contracting agency shall be responsible for monitoring
29 compliance with this section.

30 § 3. Paragraph (j) of subdivision 2-a of section 313 of the executive
31 law, as amended by chapter 96 of the laws of 2019, is amended and a new
32 paragraph (k) is added to read as follows:

33 (j) require each agency to consult the most current disparity study
34 when calculating agency-wide and contract specific participation goals
35 pursuant to this article; ~~[and]~~

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

40 § 4. Subdivision 3 and paragraph (a) of subdivision 5 of section 313
41 of the executive law, as amended by chapter 96 of the laws of 2019, are
42 amended to read as follows:

43 3. Solely for the purpose of providing the opportunity for ~~[meaning-~~
44 ~~ful]~~ increased participation by certified businesses in the performance
45 of state contracts as provided in this section, state contracts shall
46 include leases of real property by a state agency to a lessee where: the
47 terms of such leases provide for the construction, demolition, replace-
48 ment, major repair or renovation of real property and improvements ther-
49 eon by such lessee; and the cost of such construction, demolition,
50 replacement, major repair or renovation of real property and improve-
51 ments thereon shall exceed the sum of one hundred thousand dollars.
52 Reports to the director pursuant to section three hundred fifteen of
53 this article shall include activities with respect to all such state
54 contracts. Contracting agencies shall include or require to be included
55 with respect to state contracts for the acquisition, construction, demo-
56 lition, replacement, major repair or renovation of real property and

1 improvements thereon, such provisions as ~~[may]~~ shall be necessary to
2 effectuate the provisions of this section in every bid specification and
3 state contract, including, but not limited to: (a) provisions requiring
4 contractors to make a good faith effort to solicit active participation
5 by enterprises identified in the directory of certified businesses; (b)
6 requiring the parties to agree as a condition of entering into such
7 contract, to be bound by the provisions of section three hundred sixteen
8 of this article; and (c) requiring the contractor to include the
9 provisions set forth in paragraphs (a) and (b) of this subdivision in
10 every subcontract in a manner that the provisions will be binding upon
11 each subcontractor as to work in connection with such contract.
12 Provided, however, that no such provisions shall be binding upon
13 contractors or subcontractors in the performance of work or the
14 provision of services that are unrelated, separate or distinct from the
15 state contract as expressed by its terms, and nothing in this section
16 shall authorize the director or any contracting agency to impose any
17 requirement on a contractor or subcontractor except with respect to a
18 state contract.

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

49 § 5. Subdivisions 1, 2-a and 3 of section 315 of the executive law,
50 subdivisions 1 and 3 as amended and subdivision 2-a as added by chapter
51 96 of the laws of 2019, are amended and two new subdivisions 3-a and 8
52 are added to read as follows:

53 1. Each contracting agency shall be responsible for monitoring state
54 contracts under its jurisdiction, and recommending matters to the office
55 respecting non-compliance with the provisions of this article so that
56 the office ~~[may]~~ shall take such action as ~~[is appropriate]~~ stated in

1 subdivision three of section three hundred sixteen of this article. Each
2 contracting agency shall have the right to recommend that the director
3 impose a sanction, penalty, or fine for three or more violations of
4 subdivision one of section three hundred sixteen of this article, to
5 ensure compliance with the provisions of this article, the rules and
6 regulations of the director issued hereunder and the contractual
7 provisions required pursuant to this article. All contracting agencies
8 shall comply with the rules and regulations of the office and are
9 directed to cooperate with the office and to furnish to the office such
10 information and assistance as may be required in the performance of its
11 functions under this article.

12 2-a. [~~To the extent practicable, upon completion of the restrictive~~
13 ~~period of a procurement, each~~] Each contracting agency when notifying a
14 contractor of a winning bid award shall also notify any minority or
15 women-owned business enterprise identified in the contractor's submitted
16 utilization plan of such contractor's receipt of the winning bid award.

17 3. Each contracting agency shall report to the commissioner of econom-
18 ic development, the commissioner of general services and the director
19 with respect to activities undertaken to promote employment of minority
20 group members and women and promote and increase participation by certi-
21 fied businesses with respect to state contracts and subcontracts. Such
22 reports shall be submitted [~~no later than May fifteenth of every year~~]
23 quarterly and shall include such information as is necessary for the
24 director to determine whether the contracting agency and any contractor
25 to the contracting agency have complied with the purposes of this arti-
26 cle, including, without limitation, the number of state contracts
27 awarded to certified minority or women-owned business enterprises; the
28 maximum dollar amount obligated pursuant to all those contracts; and the
29 total expenditures made pursuant to all such contracts; the number of
30 state contracts awarded which include a utilization plan for business
31 participation by certified minority or women-owned business enterprises,
32 the maximum amount obligated pursuant to those contracts, and the total
33 expenditures made pursuant to all such contracts; a summary of all waiv-
34 ers of the requirements of subdivisions six and seven of section three
35 hundred thirteen of this article allowed by the contracting agency
36 during the period covered by the report, including a description of the
37 basis of the waiver request [~~and~~], the rationale for granting any such
38 waiver, the maximum amount obligated pursuant to those contracts; the
39 number of state contracts awarded which required goals for employment of
40 minority group members and women; the number of state contracts awarded
41 for which waivers of employment goals required by the contracts have
42 been granted, and any instances in which the contract agency has deemed
43 a contractor to have committed a violation pursuant to section three
44 hundred sixteen of this article and such other information as the direc-
45 tor shall require. Each agency shall also include in such annual report
46 whether or not it has been required to prepare a remedial plan, and, if
47 so, the plan and the extent to which the agency has complied with each
48 element of the plan.

49 3-a. Within thirty days after completion, a copy of the quarterly
50 minority and women-owned business enterprise report shall be transmitted
51 to the commissioner of economic development, the commissioner of general
52 services, and the director. A contracting agency, which has not let more
53 than two million dollars in service and/or construction contracts within
54 the applicable period may apply to the commissioner of economic develop-
55 ment, and the director for a waiver of the required annual report. The

1 waiver application shall be made on such form as the commissioner of
2 economic development and the director may prescribe.

3 8. If a contracting agency shall fail to file or substantially
4 complete, as determined by the commissioner of economic development and
5 the director, the report required by this section, the director shall
6 provide notice to the contracting agency. The notice shall state the
7 following:

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

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

16 (c) that the contracting agency's continued failure to provide either
17 the required report or an adequate explanation will result in an inde-
18 pendent audit of the contracting agency, the cost of which shall be
19 borne by the contracting agency.

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

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

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

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

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

35 2. Upon receipt by the director of a complaint by a contracting agency
36 that a contractor has violated the provisions of a state contract which
37 have been included to comply with the provisions of this article or of a
38 contractor that a contracting agency has violated such provisions or has
39 failed or refused to issue a waiver where one has been applied for
40 pursuant to subdivision six of section three hundred thirteen of this
41 article or has denied such application, the director shall attempt to
42 resolve the matter giving rise to such complaint. If efforts to resolve
43 such matter to the satisfaction of all parties are unsuccessful, the
44 director shall refer the matter, within thirty days of the receipt of
45 the complaint, to the division's hearing officers. Upon conclusion of
46 the administrative hearing, the hearing officer shall submit to the
47 director his or her decision regarding the alleged violation of the
48 contract and recommendations regarding the imposition of sanctions,
49 fines or penalties. The director, within ten days of receipt of the
50 decision, shall file a determination of such matter and shall cause a
51 copy of such determination along with a copy of this article to be
52 served upon the contractor by personal service or by certified mail
53 return receipt requested. The decision of the hearing officer shall be
54 final and may only be vacated or modified as provided in article seven-
55 ty-eight of the civil practice law and rules upon an application made
56 within the time provided by such article. The determination of the

1 director as to the imposition of any fines, sanctions or penalties shall
2 be reviewable pursuant to article seventy-eight of the civil practice
3 law and rules. The penalties imposed for any violation which is premised
4 upon either a fraudulent or intentional misrepresentation by the
5 contractor or the contractor's willful and intentional disregard of the
6 minority and women-owned participation requirement included in the
7 contract may include a determination that the contractor shall be ineli-
8 gible to submit a bid to any contracting agency or be awarded any such
9 contract for a period not to exceed one year following the final deter-
10 mination; provided however, if a contractor has previously been deter-
11 mined to be ineligible to submit a bid pursuant to this section, the
12 penalties imposed for any subsequent violation, if such violation occurs
13 within five years of the first violation, may include a determination
14 that the contractor shall be ineligible to submit a bid to any contract-
15 ing agency or be awarded any such contract for a period not to exceed
16 five years following the final determination. The division of minority
17 and women's business development shall maintain a website listing all
18 contractors that have been deemed ineligible to submit a bid pursuant to
19 this section and the date after which each contractor shall once again
20 become eligible to submit bids.

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

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

32 1. In addition to other bond or bonds, if any, required by law for the
33 completion of a work specified in a contract for the prosecution of a
34 public improvement for the state of New York a municipal corporation, a
35 public benefit corporation or a commission appointed pursuant to law, or
36 in the absence of any such requirement, the comptroller may or the other
37 appropriate official, respectively, shall nevertheless require prior to
38 the approval of any such contract a bond guaranteeing prompt payment of
39 moneys due to all persons furnishing labor or materials to the contrac-
40 tor or any subcontractors in the prosecution of the work provided for in
41 such contract. Whenever a municipal corporation issues a permit subject
42 to compliance with section two hundred twenty of the labor law, such
43 permittee or its contractor or subcontractors furnishing workers shall
44 post a payment bond subject to this section. Provided, however, that all
45 performance bonds and payment bonds may, at the discretion of the head
46 of the state agency, public benefit corporation or commission, or his or
47 her designee, be dispensed with for the completion of a work specified
48 in a contract for the prosecution of a public improvement for the state
49 of New York for which bids are solicited where the aggregate amount of
50 the contract is under one hundred thousand dollars and provided further,
51 that in a case where the contract is not subject to the multiple
52 contract award requirements of section one hundred thirty-five of this
53 article, such requirements may be dispensed with where the head of the
54 state agency, public benefit corporation or commission finds it to be in
55 the public interest and where the aggregate amount of the contract
56 awarded or to be awarded is less than two hundred thousand dollars. In a

1 case where a contract is awarded to a small business concern or to a
2 minority or women-owned business concern, all performance bonds and
3 payment bonds may be dispensed with when the aggregate amount of the
4 contract is under five hundred thousand dollars. Advertisements for bids
5 shall provide information as to the requirements for, or dispensation
6 of, performance and payment bonds. Provided further, that in a case
7 where a performance or payment bond is dispensed with, twenty per centum
8 may be retained from each progress payment or estimate until the entire
9 contract work has been completed and accepted, at which time the head of
10 the state agency, public benefit corporation or commission shall, pend-
11 ing the payment of the final estimate, pay not to exceed seventy-five
12 per centum of the amount of the retained percentage.

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

16 4. Notwithstanding any other provision of this section or other law,
17 requirements for the furnishing of a performance bond or a payment bond
18 may be dispensed with at the discretion of the head of the state agency
19 or corporation, or his or her designee, where the public owner is a
20 state agency or corporation described in subdivision one-a of this
21 section and the aggregate amount of the contract awarded or to be
22 awarded is under fifty thousand dollars and, in a case where the
23 contract is not subject to the multiple contract award requirements of
24 section one hundred thirty-five of this article, such requirements may
25 be dispensed with where the head of the state agency or corporation
26 finds it to be in the public interest and where the aggregate amount of
27 the contract awarded or to be awarded is under two hundred thousand
28 dollars. In a case where a contract is awarded to a small business
29 concern or to a minority or women-owned business concern, all perform-
30 ance bonds and payment bonds may be dispensed with when the aggregate
31 amount of the contract is under five hundred thousand dollars. Adver-
32 tisements for proposals shall provide information as to the requirements
33 for, or dispensation of, performance and payment bonds. Provided
34 further, that in a case where a performance or payment bond is dispensed
35 with, twenty per centum may be retained from each progress payment or
36 estimate until the entire contract work has been completed and accepted,
37 at which time the head of the state agency or corporation shall, pending
38 the payment of the final estimate, pay not to exceed seventy-five per
39 centum of the amount of the retained percentage.

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

43 In every state agency, department and authority which has let more
44 than two million dollars in service and construction contracts and state
45 assisted project contracts in the prior fiscal year, the chief executive
46 officer of that agency, department or authority shall, with respect to
47 those contracts and state assisted project contracts let by his or her
48 agency, department or authority:

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

52 identify all small-business and certified women and minority-owned
53 business concerns which, in the judgment of the chief executive officer
54 of that agency, department or authority, can bid on those contracts and
55 state assisted project contracts which are usually and customarily let
56 by that agency, department or authority, or in which that authority

1 provides a grant or loan or tax exempt financing, with a reasonable
2 expectation of success. Such chief executive officers shall carry out
3 the provisions of this subdivision:

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

6 (e) for the purposes of this section, the following words shall have
7 the following meanings:

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

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

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

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

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

32 § 12. This act shall take effect immediately, provided however, the
33 amendments to article 15-A of the executive law made by sections one
34 through six of this act shall not affect the expiration of such article
35 and shall expire therewith.