

STATE OF NEW YORK

5076

2023-2024 Regular Sessions

IN ASSEMBLY

March 2, 2023

Introduced by M. of A. BARCLAY, WALSH, J. M. GIGLIO -- Multi-Sponsored
by -- M. of A. K. BROWN, HAWLEY -- read once and referred to the
Committee on Governmental Operations

AN ACT to amend the executive law, in relation to a statewide disparity
study regarding the participation of minority and women-owned business
enterprises in state contracts

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. Section 312-a of the executive law is amended by adding a
2 new subdivision 3 to read as follows:

3 3. The director shall develop a procedure to obtain direct feedback
4 from applicants on any problems and burdens they encountered during the
5 application process or throughout the program and examine how the issues
6 can be addressed to eliminate future program limitations.

7 § 2. Subdivision 6 of section 313 of the executive law, as amended by
8 chapter 96 of the laws of 2019 and paragraph (b) as amended by chapter
9 348 of the laws of 2021, is amended to read as follows:

10 6. (a) Where it appears that a contractor cannot, after a good faith
11 effort, comply with the minority and women-owned business enterprise
12 participation requirements set forth in a particular state contract, a
13 contractor may file a written application with the contracting agency
14 requesting a partial or total waiver of such requirements setting forth
15 the reasons for such contractor's inability to meet any or all of the
16 participation requirements together with an explanation of the efforts
17 undertaken by the contractor to obtain the required minority and women-
18 owned business enterprise participation. In implementing the provisions
19 of this section, the contracting agency shall consider the number and
20 types of minority and women-owned business enterprises available to
21 provide goods or services required under the contract in the region in
22 which the state contract is to be performed, the total dollar value of
23 the state contract, the scope of work to be performed and the project

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

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1 size and term. If, based on such considerations, the contracting agency
2 determines there is not a reasonable availability of contractors on the
3 list of certified [~~business~~] businesses to furnish services for the
4 project, it shall issue a waiver of compliance to the contractor. In
5 making such determination, the contracting agency shall first consider
6 the availability of other business enterprises located in the region and
7 shall thereafter consider the financial ability of minority and women-
8 owned businesses located outside the region in which the contract is to
9 be performed to perform the state contract.

10 (b) Upon the issuance of all waivers of compliance as provided in
11 paragraph (a) of this subdivision, the contracting agency shall: (i)
12 report the issuance of the waiver to the director; and (ii) publish on
13 the contracting agency's website on a monthly basis, if practicable, but
14 no less than on a quarterly basis, in a location easily accessible to
15 the general public: (1) information identifying the contract, including
16 the value of the contract; (2) the name of the contractor receiving the
17 waiver; (3) the date of the waiver; (4) whether the waiver was a partial
18 or total waiver; and (5) the specific contract provisions to which the
19 waiver applies.

20 (c) The commissioner is authorized to grant a partial or total waiver
21 of such good faith efforts to contracts within such a county, upon
22 request of the presiding officer of such county and upon a finding that
23 there is such a scarcity of minority and women-owned business enter-
24 prises within that county as to effectively preclude participation of
25 such enterprises in such contracts, and where no reasonable means of
26 accomplishing the provisions of this section exist. The commissioner
27 shall promulgate rules and regulations necessary to implement these
28 provisions.

29 § 3. Subdivisions 1 and 3 of section 314 of the executive law, subdivi-
30 sion 1 as amended by chapter 567 of the laws of 2022, and subdivision
31 3 as amended by chapter 96 of the laws of 2019, are amended and a new
32 subdivision 1-a is added to read as follows:

33 1. The director shall promulgate rules and regulations providing for
34 the establishment of a statewide certification program including rules
35 and regulations governing the approval, denial or revocation of any such
36 certification including revocations for convictions for fraudulently
37 misrepresenting the status of minority or women-owned business enter-
38 prises. Such rules shall set forth the maximum personal net worth of a
39 minority group member or woman who may be relied upon to certify a busi-
40 ness as a minority-owned business enterprise or women-owned business
41 enterprise with a minimum personal net worth threshold of fifteen
42 million dollars, and may thereafter establish different maximum levels
43 of personal net worth for minority group members and women on an indus-
44 try-by-industry basis for such industries as the director shall deter-
45 mine. Such regulations relating to the classification of the industry-
46 by-industry personal net worth thresholds above the fifteen million
47 dollar threshold shall consider the personal net worth of the owners of
48 both certified and non-certified businesses, including but not limited
49 to, prime contractors and subcontractors, as well as any such other
50 factors needed to establish such thresholds. Such rules and regulations
51 shall include, but not be limited to, such matters as may be required to
52 ensure that the established procedures thereunder shall at least be in
53 compliance with the code of fair procedure set forth in section seven-
54 ty-three of the civil rights law, and consistent with the provisions of
55 article twenty-three-A of the correction law. Applications shall be
56 made available online and in print and specifically list out all infor-

1 mation and documents required by an applicant to apply for the program
2 in clear language.

3 1-a. The director shall promulgate rules and regulations to establish
4 an online help source. This source shall provide real time business
5 support for new and existing certified businesses.

6 3. Following application for certification pursuant to this section,
7 the director shall provide the applicant with verbal notice of the
8 status of the application, including notice of any outstanding deficien-
9 cies, within twenty-four hours and written notice of the status of the
10 application, including notice of any outstanding deficiencies, within
11 [~~twenty-one~~] seven days. Within [~~forty-five~~] thirty days of submission
12 of a final completed application, [~~the director shall provide the appli-~~
13 ~~cant with written notice of a determination by the office approving or~~
14 ~~denying such certification~~] the application shall be deemed approved
15 unless the director shall deny such certification and, in the event of a
16 denial a statement setting forth the reasons for such denial. Upon a
17 determination denying or revoking certification, the business enterprise
18 for which certification has been so denied or revoked shall, upon writ-
19 ten request made within thirty days from receipt of notice of such
20 determination, be entitled to a hearing before an independent hearing
21 officer designated for such purpose by the director. In the event that a
22 request for a hearing is not made within such thirty day period, such
23 determination shall be deemed to be final. The independent hearing offi-
24 cer shall conduct a hearing and upon the conclusion of such hearing,
25 issue a written recommendation to the director to affirm, reverse or
26 modify such determination of the director. Such written recommendation
27 shall be issued to the parties. The director, within thirty days, by
28 order, must accept, reject or modify such recommendation of the hearing
29 officer and set forth in writing the reasons therefor. The director
30 shall serve a copy of such order and reasons therefor upon the business
31 enterprise by personal service or by certified mail return receipt
32 requested. The order of the director shall be subject to review pursuant
33 to article seventy-eight of the civil practice law and rules.

34 § 4. This act shall take effect immediately; provided however, that
35 the amendments to article 15-A of the executive law made by this act
36 shall not affect the repeal of such article and shall be deemed repealed
37 therewith.