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I N A S S E M B L Y

June 22, 2010

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Cook, Towns, Destito, Silver, Farrell, Peoples-Stokes, Aubry, Brodsky, Christensen, Crespo, DelMonte, Espaillat, Hyer-Spencer, Jaffee, Lifton, Millman, Pretlow, Ramos, Reilly, P. Rivera, Russell, Weinstein, D. Weprin, Wright) -- (at request of the Governor) -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law and the state finance law, in relation to expanding opportunities for women and minority-owned business enterprises and increasing competition and diversity in procurements by the state and its public authorities; and to amend chapter 261 of the laws of 1988 amending the state finance law and other laws relating to the New York state infrastructure trust fund, in relation to the effectiveness of article 15-A of the executive law

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

1 Section 1. Legislative findings. New York state ("the state") declares
2 that it is the public policy of the state to promote and encourage the
3 continuing economic development of minority and women-owned businesses,
4 that minority and women-owned businesses participate in the state
5 procurement process as both prime contractors and subcontractors and
6 that the state procurement process operate and award contracts in a
7 manner that is free from discrimination and bias against minority and
8 women-owned businesses that are ready, willing and able to engage in
9 business with the state.
10 The state first adopted its Minority and Women-Owned Business Enter-
11 prise Program in 1988 to address the significant underrepresentation of
12 minority and women-owned businesses in state contracts, despite rela-
13 tively large populations of minorities and women throughout the state.
14 The program, chaptered within article 15-A of the executive law,
15 supported the state's commitment to promote equal opportunity in employ-
16 ment for all persons, without discrimination on account of race, creed,
17 color, national origin, sex, age, disability or marital status, to
18 promote equality of economic opportunity for minority group members and
19 women, business enterprises owned by them, and to eradicate through

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

LBD17551-10-0

1 effective programs the barriers that have unreasonably impaired access
2 by minority and women-owned business enterprises to state contracting
3 opportunities.

4 In 2006, a disparity study was commissioned by the empire state devel-
5 opment corporation, pursuant to executive law section 312-a, to evaluate
6 whether minority and women-owned businesses in the state contracting
7 marketplace had full and fair opportunities to compete for prime
8 contracts and associated subcontracts. Published on April 29, 2010, "the
9 State of Minority and Women-Owned Business Enterprise: Evidence From New
10 York" ("the 2010 disparity study"), found strong evidence of large,
11 adverse, and statistically significant disparities between minority and
12 women participation in business enterprise activity in the state's rele-
13 vant market area and the actual current availability of those busi-
14 nesses. The study further concluded that said disparities could not be
15 explained solely, or even mostly, by differences between minority and
16 women-owned businesses and non-minority and women-owned business popu-
17 lations in factors untainted by discrimination, and that the differences
18 therefore gave rise to a strong inference of the presence of discrimi-
19 nation. The findings of the study are hereby adopted by the legislature.

20 The legislature further finds that the Assembly conducted hearings on
21 the efficiency and effectiveness of services to minority and women-owned
22 businesses and on the effectiveness of article 15-A of the executive law
23 in Utica, New York on February 23, 2005, in New York City on March 3,
24 2005, and in Syracuse, New York on October 25, 2005; it conducted a
25 hearing on the efforts by public authorities to attract and retain women
26 and minority-owned businesses in securing contracts for construction,
27 goods, and services on June 11, 2002 in Albany, New York, and a hearing
28 on access to surety bonding on state contracts for small, minority and
29 women-owned businesses on April 14, 2005 in New York City. The Senate
30 conducted hearings on the efficiency and effectiveness of services to
31 minority and women-owned business and on the effectiveness of article
32 15-A of the executive law at the Legislative Office Building hearing
33 rooms in Albany, New York on February 12, 2009, on Minority and Women-
34 Owned Business Enterprise participation opportunities in public
35 finance/asset management, and on March 3, 2010 on the reform of article
36 15-A of the executive law.

37 At these hearings, testimony was received that supplemented and was
38 consistent with the anecdotal evidence set forth in the 2010 disparity
39 study that women and minority-owned businesses participate in state
40 procurements at significantly lower percentages than their numbers and
41 expertise would indicate would be expected if no discrimination had
42 existed and provided anecdotal evidence of continuing patterns of
43 discrimination.

44 The legislature further finds that in order to redress the discrimi-
45 nation documented by the study it is necessary to implement a program
46 that identifies businesses owned by minorities and by women and that
47 actively promotes the participation of such businesses in the state
48 procurement process. The legislature further finds that it is in the
49 best interests of the economic development of the state to enact the
50 2010 Business Diversification Act to redress discrimination against
51 minority and women-owned business enterprises in the state marketplace.

52 S 1-a. Short title. This act shall be known and may be cited as the
53 "2010 Business Diversification Act".

54 S 2. Subdivisions 7 and 15 of section 310 of the executive law, as
55 added by chapter 261 of the laws of 1988, are amended and five new
56 subdivisions 18, 19, 20, 21 and 22 are added to read as follows:

1 7. "Minority-owned business enterprise" shall mean a business enter-
2 prise, including a sole proprietorship, partnership or corporation that
3 is:

4 (a) at least fifty-one percent owned by one or more minority group
5 members;

6 (b) an enterprise in which such minority ownership is real, substan-
7 tial and continuing;

8 (c) an enterprise in which such minority ownership has and exercises
9 the authority to control independently the day-to-day business decisions
10 of the enterprise; [and]

11 (d) an enterprise authorized to do business in this state and inde-
12 pendently owned and operated[.];

13 (E) AN ENTERPRISE OWNED BY AN INDIVIDUAL OR INDIVIDUALS, WHOSE OWNER-
14 SHIP, CONTROL AND OPERATION ARE RELIED UPON FOR CERTIFICATION, WITH A
15 PERSONAL NET WORTH THAT DOES NOT EXCEED THREE MILLION FIVE HUNDRED THOU-
16 SAND DOLLARS, AS ADJUSTED ANNUALLY ON THE FIRST OF JANUARY FOR INFLATION
17 ACCORDING TO THE CONSUMER PRICE INDEX OF THE PREVIOUS YEAR; AND

18 (F) AN ENTERPRISE THAT IS A SMALL BUSINESS PURSUANT TO SUBDIVISION
19 TWENTY OF THIS SECTION.

20 15. "Women-owned business enterprise" shall mean a business enter-
21 prise, including a sole proprietorship, partnership or corporation that
22 is:

23 (a) at least fifty-one percent owned by one or more United States
24 citizens or permanent resident aliens who are women;

25 (b) an enterprise in which the ownership interest of such women is
26 real, substantial and continuing;

27 (c) an enterprise in which such women ownership has and exercises the
28 authority to control independently the day-to-day business decisions of
29 the enterprise; [and]

30 (d) an enterprise authorized to do business in this state and inde-
31 pendently owned and operated[.];

32 (E) AN ENTERPRISE OWNED BY AN INDIVIDUAL OR INDIVIDUALS, WHOSE OWNER-
33 SHIP, CONTROL AND OPERATION ARE RELIED UPON FOR CERTIFICATION, WITH A
34 PERSONAL NET WORTH THAT DOES NOT EXCEED THREE MILLION FIVE HUNDRED THOU-
35 SAND DOLLARS, AS ADJUSTED ANNUALLY ON THE FIRST OF JANUARY FOR INFLATION
36 ACCORDING TO THE CONSUMER PRICE INDEX OF THE PREVIOUS YEAR; AND

37 (F) AN ENTERPRISE THAT IS A SMALL BUSINESS PURSUANT TO SUBDIVISION
38 TWENTY OF THIS SECTION.

39 A FIRM OWNED BY A MINORITY GROUP MEMBER WHO IS ALSO A WOMAN MAY BE
40 CERTIFIED AS A MINORITY-OWNED BUSINESS ENTERPRISE, A WOMEN-OWNED BUSI-
41 NESS ENTERPRISE, OR BOTH, AND MAY BE COUNTED TOWARDS EITHER A MINORITY-
42 OWNED BUSINESS ENTERPRISE GOAL OR A WOMEN-OWNED BUSINESS ENTERPRISE
43 GOAL, IN REGARD TO ANY CONTRACT OR ANY GOAL, SET BY AN AGENCY OR AUTHOR-
44 ITY, BUT SUCH PARTICIPATION MAY NOT BE COUNTED TOWARDS BOTH SUCH GOALS.
45 SUCH AN ENTERPRISE'S PARTICIPATION IN A CONTRACT MAY NOT BE DIVIDED
46 BETWEEN THE MINORITY-OWNED BUSINESS ENTERPRISE GOAL AND THE WOMEN-OWNED
47 BUSINESS ENTERPRISE GOAL.

48 18. "LESSEE" SHALL MEAN AN INDIVIDUAL, A BUSINESS ENTERPRISE, INCLUD-
49 ING A SOLE PROPRIETORSHIP, A PARTNERSHIP, A CORPORATION, A NOT-FOR-PRO-
50 FIT CORPORATION, OR ANY OTHER PARTY TO A LEASE WITH A STATE AGENCY AS
51 DEFINED IN SUBDIVISION ELEVEN OF THIS SECTION, OR A RESPONDENT IN
52 CONJUNCTION WITH THE AWARD OF SUCH A LEASE OR A PROPOSED LESSEE WITH A
53 STATE AGENCY AS DEFINED IN SUBDIVISION ELEVEN OF THIS SECTION.

54 19. "PERSONAL NET WORTH" SHALL MEAN THE AGGREGATE ADJUSTED NET VALUE
55 OF THE ASSETS OF AN INDIVIDUAL REMAINING AFTER TOTAL LIABILITIES ARE
56 DEDUCTED. PERSONAL NET WORTH INCLUDES THE INDIVIDUAL'S SHARE OF ASSETS

1 HELD JOINTLY WITH SAID INDIVIDUAL'S SPOUSE AND DOES NOT INCLUDE THE
2 INDIVIDUAL'S OWNERSHIP INTEREST IN THE CERTIFIED MINORITY AND
3 WOMEN-OWNED BUSINESS ENTERPRISE, THE INDIVIDUAL'S EQUITY IN HIS OR HER
4 PRIMARY RESIDENCE, OR UP TO FIVE HUNDRED THOUSAND DOLLARS OF THE PRESENT
5 CASH VALUE OF ANY QUALIFIED RETIREMENT SAVINGS PLAN OR INDIVIDUAL
6 RETIREMENT ACCOUNT HELD BY THE INDIVIDUAL LESS ANY PENALTIES FOR EARLY
7 WITHDRAWAL.

8 20. "SMALL BUSINESS" AS USED IN THIS SECTION, UNLESS OTHERWISE INDI-
9 CATED, SHALL MEAN A BUSINESS WHICH HAS A SIGNIFICANT BUSINESS PRESENCE
10 IN THE STATE, IS INDEPENDENTLY OWNED AND OPERATED, NOT DOMINANT IN ITS
11 FIELD AND EMPLOYS, BASED ON ITS INDUSTRY, A CERTAIN NUMBER OF PERSONS AS
12 DETERMINED BY THE DIRECTOR, BUT NOT TO EXCEED THREE HUNDRED, TAKING INTO
13 CONSIDERATION FACTORS WHICH INCLUDE, BUT ARE NOT LIMITED TO, FEDERAL
14 SMALL BUSINESS ADMINISTRATION STANDARDS PURSUANT TO 13 CFR PART 121 AND
15 ANY AMENDMENTS THERETO. THE DIRECTOR MAY ISSUE REGULATIONS ON THE
16 CONSTRUCTION OF THE TERMS IN THIS DEFINITION.

17 21. "THE 2010 DISPARITY STUDY" SHALL REFER TO THE DISPARITY STUDY
18 COMMISSIONED BY THE EMPIRE STATE DEVELOPMENT CORPORATION, PURSUANT TO
19 SECTION THREE HUNDRED TWELVE-A OF THIS ARTICLE, AND PUBLISHED ON APRIL
20 TWENTY-NINE, TWO THOUSAND TEN.

21 22. "DIVERSITY PRACTICES" SHALL MEAN THE CONTRACTOR'S PRACTICES AND
22 POLICIES WITH RESPECT TO:

23 (A) UTILIZING CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES
24 IN CONTRACTS AWARDED BY A STATE AGENCY OR OTHER PUBLIC CORPORATION, AS
25 SUBCONTRACTORS AND SUPPLIERS; AND

26 (B) ENTERING INTO PARTNERSHIPS, JOINT VENTURES OR OTHER SIMILAR
27 ARRANGEMENTS WITH CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTER-
28 PRISES AS DEFINED IN THIS ARTICLE OR OTHER APPLICABLE STATUTE OR REGU-
29 LATION GOVERNING AN ENTITY'S UTILIZATION OF MINORITY OR WOMEN-OWNED
30 BUSINESS ENTERPRISES.

31 S 3. The executive law is amended by adding a new section 4-a to read
32 as follows:

33 S 4-A. CHIEF DIVERSITY OFFICER. A CHIEF DIVERSITY OFFICER FOR THE
34 STATE SHALL BE APPOINTED BY THE GOVERNOR AND SHALL RECEIVE A SALARY TO
35 BE FIXED BY THE GOVERNOR WITHIN THE AMOUNT APPROPRIATED THEREFOR. THE
36 CHIEF DIVERSITY OFFICER'S RESPONSIBILITIES SHALL INCLUDE THE FOLLOWING:

37 1. ADVISE AND ASSIST THE GOVERNOR IN FORMULATING POLICIES RELATING TO
38 WORKFORCE DIVERSITY AND MINORITY AND WOMEN'S BUSINESS ENTERPRISES;

39 2. WORK WITH THE DIRECTOR OF THE DIVISION OF MINORITY AND WOMEN'S
40 BUSINESS DEVELOPMENT TO PREPARE AN ANNUAL PLAN FOR ENSURING FULL COMPLI-
41 ANCE WITH ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW BY STATE AGENCIES AND
42 THE USE OF DIVERSITY PRACTICES BY SUCH AGENCIES;

43 3. ADVISE THE GOVERNOR AND THE AGENCIES REGARDING ANY MEASURES NECES-
44 SARY TO ENSURE FULL COMPLIANCE WITH ARTICLE FIFTEEN-A OF THIS CHAPTER
45 AND USE OF DIVERSITY PRACTICES BY STATE PUBLIC AUTHORITIES;

46 4. SERVE AS A MEMBER OF THE STATE PROCUREMENT COUNCIL ESTABLISHED
47 UNDER SECTION ONE HUNDRED SIXTY-ONE OF THE STATE FINANCE LAW;

48 5. SERVE AS THE GOVERNOR'S LIAISON WITH ORGANIZATIONS REPRESENTING
49 MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND OTHER ORGANIZATIONS
50 RELATED TO DIVERSITY IN THE STATE WORKFORCE AND IN STATE CONTRACTING;

51 6. SERVE AS THE GOVERNOR'S LIAISON TO THE SMALL BUSINESS ADVISORY
52 COUNCIL FOR ISSUES RELATED TO THE CREATION OF A DIVERSE WORKFORCE AND
53 STATE PROCUREMENT PRACTICES RELATING TO MINORITY AND WOMEN-OWNED BUSI-
54 NESS ENTERPRISES;

1 7. REVIEW AND CONSULT WITH THE DIRECTOR OF MINORITY AND WOMEN'S BUSI-
2 NESS DEVELOPMENT REGARDING POLICIES RELATING TO MINORITY AND WOMEN-OWNED
3 BUSINESS ENTERPRISE CONTRACT SPECIALISTS AT STATE AGENCIES; AND

4 8. ENGAGE IN OTHER ACTIONS ASSIGNED TO HIM OR HER BY THE GOVERNOR
5 RELATING TO DIVERSITY IN HIRING OR PROMOTION OF THE STATE WORKFORCE AND
6 IN ENCOURAGING DIVERSITY PRACTICES AND COMPLIANCE WITH ARTICLE FIFTEEN-A
7 OF THIS CHAPTER IN PROCUREMENT.

8 S 3-a. Paragraph a of subdivision 1 of section 161 of the state
9 finance law, as added by chapter 83 of the laws of 1995, is amended to
10 read as follows:

11 a. The state procurement council shall continuously strive to improve
12 the state's procurement process. Such council shall consist of [nine-
13 teen] TWENTY members, including the commissioner, the state comptroller,
14 the director of the budget, THE CHIEF DIVERSITY OFFICER and the commis-
15 sioner of economic development, or their respective designees; seven
16 members who shall be the heads of other large and small state agencies
17 chosen by the governor, or their respective designees; and eight at
18 large members appointed as follows: three appointed by the temporary
19 president of the senate, one of whom shall be a representative of local
20 government and one of whom shall be a representative of private busi-
21 ness; three appointed by the speaker of the assembly, one of whom shall
22 be a representative of local government and one of whom shall be a
23 representative of private business; one appointed by the minority leader
24 of the senate; and, one appointed by the minority leader of the assem-
25 bly; and two non-voting observers appointed as follows: one appointed by
26 the temporary president of the senate and one appointed by the speaker
27 of the assembly. The non-voting observers shall be provided, contempora-
28 neously, all documentation and materials distributed to members. The
29 council shall be chaired by the commissioner and shall meet at least
30 quarterly.

31 S 4. Section 312-a of the executive law, as added by section 6 of part
32 BB of chapter 59 of the laws of 2006, is amended to read as follows:

33 S 312-a. Study of minority and women-owned business enterprise
34 programs. 1. The director of the division of minority and women-owned
35 business development in the department of economic development is
36 authorized and directed to [commission] RECOMMISSION a statewide dispar-
37 ity study regarding the participation of minority and women-owned busi-
38 ness enterprises in state contracts since the [enactment] AMENDMENT of
39 this article TO BE DELIVERED TO THE GOVERNOR AND LEGISLATURE NO LATER
40 THAN FEBRUARY FIFTEENTH, TWO THOUSAND SIXTEEN. The study shall be
41 prepared by an entity independent of the department and selected through
42 a request for proposal process. The purpose of such study is:

43 (A) to determine whether there is a disparity between the number of
44 qualified minority and women-owned businesses ready, willing and able to
45 perform state contracts for commodities, services and construction, and
46 the number of such contractors actually engaged to perform such
47 contracts, and to determine what changes, if any, should be made to
48 state policies affecting minority and women-owned business enterprises;
49 AND (B) TO DETERMINE WHETHER THERE IS A DISPARITY BETWEEN THE NUMBER OF
50 QUALIFIED MINORITIES AND WOMEN READY, WILLING AND ABLE, WITH RESPECT TO
51 LABOR MARKETS, QUALIFICATIONS AND OTHER RELEVANT FACTORS, TO PARTICIPATE
52 IN CONTRACTOR EMPLOYMENT, MANAGEMENT LEVEL BODIES, INCLUDING BOARDS OF
53 DIRECTORS, AND AS SENIOR EXECUTIVE OFFICERS WITHIN CONTRACTING ENTITIES
54 AND THE NUMBER OF SUCH GROUP MEMBERS ACTUALLY EMPLOYED OR AFFILIATED
55 WITH STATE CONTRACTORS IN THE AFOREMENTIONED CAPACITIES, AND TO DETER-
56 MINE WHAT CHANGES, IF ANY, SHOULD BE MADE TO STATE POLICIES AFFECTING

1 MINORITY AND WOMEN GROUP POPULATIONS WITH REGARD TO STATE CONTRACTORS'
2 EMPLOYMENT AND APPOINTMENT PRACTICES RELATIVE TO DIVERSE GROUP MEMBERS.
3 Such study shall include, but not be limited to, an analysis of the
4 [impact of court decisions regarding the use of quotas and set-asides]
5 HISTORY OF MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PROGRAMS AND
6 THEIR EFFECTIVENESS as a means of securing and ensuring participation by
7 minorities and women, and a disparity analysis by market area and region
8 of the state. SUCH STUDY SHALL DISTINGUISH BETWEEN MINORITY MALES,
9 MINORITY FEMALES AND NON-MINORITY FEMALES IN THE STATISTICAL ANALYSIS.

10 2. The director of the division of minority and women-owned business
11 development is directed to transmit the disparity study to the governor
12 and the legislature not later than [eighteen months after the effective
13 date of this subdivision] FEBRUARY FIFTEENTH, TWO THOUSAND SIXTEEN, and
14 to post the study on the website of the department of economic develop-
15 ment.

16 S 5. Section 313 of the executive law, as added by chapter 261 of the
17 laws of 1988, paragraph (a) of subdivision 4 as amended by chapter 429
18 of the laws of 2009, is amended to read as follows:

19 S 313. Opportunities for minority and women-owned business enter-
20 prises. 1. [The director shall promulgate rules and regulations that
21 provide measures and procedures to ensure that certified businesses
22 shall be given the opportunity for meaningful participation in the
23 performance of state contracts and to identify those state contracts for
24 which certified businesses may best bid to actively and affirmatively
25 promote and assist their participation in the performance of state
26 contracts so as to facilitate the award of a fair share of state
27 contracts to such businesses. Such rules and regulations as they pertain
28 to any particular agency shall be developed after consultation with the
29 contracting agency. Nothing in the provisions of this article shall be
30 construed to limit the ability of any certified business to bid on any
31 contract.

32 2.] GOALS AND REQUIREMENTS FOR AGENCIES AND CONTRACTORS. EACH AGENCY
33 SHALL STRUCTURE PROCUREMENT PROCEDURES FOR CONTRACTS MADE DIRECTLY OR
34 INDIRECTLY TO MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES, IN ACCORD-
35 ANCE WITH THE FINDINGS OF THE TWO THOUSAND TEN DISPARITY STUDY, CONSIST-
36 ENT WITH THE PURPOSES OF THIS ARTICLE, TO ATTEMPT TO ACHIEVE THE FOLLOW-
37 ING RESULTS WITH REGARD TO TOTAL ANNUAL STATEWIDE PROCUREMENT:

38 (A) CONSTRUCTION INDUSTRY FOR CERTIFIED MINORITY-OWNED BUSINESS ENTER-
39 PRISES: FOURTEEN AND THIRTY-FOUR HUNDREDTHS PERCENT;

40 (B) CONSTRUCTION INDUSTRY FOR CERTIFIED WOMEN-OWNED BUSINESS ENTER-
41 PRISES: EIGHT AND FORTY-ONE HUNDREDTHS PERCENT;

42 (C) CONSTRUCTION RELATED PROFESSIONAL SERVICES INDUSTRY FOR CERTIFIED
43 MINORITY-OWNED BUSINESS ENTERPRISES: THIRTEEN AND TWENTY-ONE HUNDREDTHS
44 PERCENT;

45 (D) CONSTRUCTION RELATED PROFESSIONAL SERVICES INDUSTRY FOR CERTIFIED
46 WOMEN-OWNED BUSINESS ENTERPRISES: ELEVEN AND THIRTY-TWO HUNDREDTHS
47 PERCENT;

48 (E) NON-CONSTRUCTION RELATED SERVICES INDUSTRY FOR CERTIFIED MINORI-
49 TY-OWNED BUSINESS ENTERPRISES: NINETEEN AND SIXTY HUNDREDTHS PERCENT;

50 (F) NON-CONSTRUCTION RELATED SERVICES INDUSTRY FOR CERTIFIED
51 WOMEN-OWNED BUSINESS ENTERPRISES: SEVENTEEN AND FORTY-FOUR HUNDREDTHS
52 PERCENT;

53 (G) COMMODITIES INDUSTRY FOR CERTIFIED MINORITY-OWNED BUSINESS ENTER-
54 PRISES: SIXTEEN AND ELEVEN HUNDREDTHS PERCENT;

55 (H) COMMODITIES INDUSTRY FOR CERTIFIED WOMEN-OWNED BUSINESS ENTER-
56 PRISES: TEN AND NINETY-THREE HUNDREDTHS PERCENT;

(I) OVERALL AGENCY TOTAL DOLLAR VALUE OF PROCUREMENT FOR CERTIFIED MINORITY-OWNED BUSINESS ENTERPRISES: SIXTEEN AND FIFTY-THREE HUNDREDTHS PERCENT;

(J) OVERALL AGENCY TOTAL DOLLAR VALUE OF PROCUREMENT FOR CERTIFIED WOMEN-OWNED BUSINESS ENTERPRISES: TWELVE AND THIRTY-NINE HUNDREDTHS PERCENT; AND

(K) OVERALL AGENCY TOTAL DOLLAR VALUE OF PROCUREMENT FOR CERTIFIED MINORITY, WOMEN-OWNED BUSINESS ENTERPRISES: TWENTY-EIGHT AND NINETY-TWO HUNDREDTHS PERCENT.

1-A. THE DIRECTOR SHALL ENSURE THAT EACH STATE AGENCY HAS BEEN PROVIDED WITH A COPY OF THE TWO THOUSAND TEN DISPARITY STUDY.

1-B. EACH AGENCY SHALL DEVELOP AND ADOPT AGENCY-SPECIFIC GOALS BASED ON THE FINDINGS OF THE TWO THOUSAND TEN DISPARITY STUDY.

2. THE DIRECTOR SHALL PROMULGATE RULES AND REGULATIONS PURSUANT TO THE GOALS ESTABLISHED IN SUBDIVISION ONE OF THIS SECTION THAT PROVIDE MEASURES AND PROCEDURES TO ENSURE THAT CERTIFIED MINORITY AND WOMEN-OWNED BUSINESSES SHALL BE GIVEN THE OPPORTUNITY FOR MAXIMUM FEASIBLE PARTICIPATION IN THE PERFORMANCE OF STATE CONTRACTS AND TO ASSIST IN THE AGENCY'S IDENTIFICATION OF THOSE STATE CONTRACTS FOR WHICH MINORITY AND WOMEN-OWNED CERTIFIED BUSINESSES MAY BEST BID TO ACTIVELY AND AFFIRMATIVELY PROMOTE AND ASSIST THEIR PARTICIPATION IN THE PERFORMANCE OF STATE CONTRACTS SO AS TO FACILITATE THE AGENCY'S ACHIEVEMENT OF THE MAXIMUM FEASIBLE PORTION OF THE GOALS FOR STATE CONTRACTS TO SUCH BUSINESSES.

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; AND

(II) THE AVAILABILITY, AS CONTAINED WITHIN THE STUDY, OF CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES TO RESPOND COMPETITIVELY TO THE POTENTIAL SUBCONTRACT OPPORTUNITIES;

(C) REQUIRE THAT EACH AGENCY PROVIDE A CURRENT LIST OF CERTIFIED MINORITY BUSINESS ENTERPRISES TO EACH PROSPECTIVE CONTRACTOR;

(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) PROVIDE FOR JOINT VENTURES, WHICH A BIDDER MAY COUNT TOWARD MEETING ITS MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PARTICIPATION;

(F) CONSISTENT WITH SUBDIVISION SIX OF THIS SECTION, PROVIDE FOR CIRCUMSTANCES UNDER WHICH AN AGENCY MAY WAIVE OBLIGATIONS OF THE CONTRACTOR RELATING TO MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PARTICIPATION;

(G) REQUIRE THAT AN AGENCY VERIFY THAT MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES LISTED IN A SUCCESSFUL BID ARE ACTUALLY PARTICIPATING TO THE EXTENT LISTED IN THE PROJECT FOR WHICH THE BID WAS SUBMITTED;

(H) PROVIDE FOR THE COLLECTION OF STATISTICAL DATA BY EACH AGENCY CONCERNING ACTUAL MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PARTICIPATION; 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.

4 3. SOLELY FOR THE PURPOSE OF PROVIDING THE OPPORTUNITY FOR MEANINGFUL
5 PARTICIPATION BY CERTIFIED BUSINESSES IN THE PERFORMANCE OF STATE
6 CONTRACTS AS PROVIDED IN THIS SECTION, STATE CONTRACTS SHALL INCLUDE
7 LEASES OF REAL PROPERTY BY A STATE AGENCY TO A LESSEE WHERE: THE TERMS
8 OF SUCH LEASES PROVIDE FOR THE CONSTRUCTION, DEMOLITION, REPLACEMENT,
9 MAJOR REPAIR OR RENOVATION OF REAL PROPERTY AND IMPROVEMENTS THEREON BY
10 SUCH LESSEE; AND THE COST OF SUCH CONSTRUCTION, DEMOLITION, REPLACEMENT,
11 MAJOR REPAIR OR RENOVATION OF REAL PROPERTY AND IMPROVEMENTS THEREON
12 SHALL EXCEED THE SUM OF ONE HUNDRED THOUSAND DOLLARS. REPORTS TO THE
13 DIRECTOR PURSUANT TO SECTION THREE HUNDRED FIFTEEN OF THIS ARTICLE SHALL
14 INCLUDE ACTIVITIES WITH RESPECT TO ALL SUCH STATE CONTRACTS. Contracting
15 agencies shall include or require to be included with respect to state
16 contracts for the acquisition, construction, demolition, replacement,
17 major repair or renovation of real property and improvements thereon,
18 such provisions as may be necessary to effectuate the provisions of this
19 section in every bid specification and state contract, including, but
20 not limited to: (a) provisions requiring contractors to make a good
21 faith effort to solicit active participation by enterprises identified
22 in the directory of certified businesses provided to the contracting
23 agency by the office; (b) requiring the parties to agree as a condition
24 of entering into such contract, to be bound by the provisions of section
25 three hundred sixteen of this article; and (c) requiring the contractor
26 to include the provisions set forth in paragraphs (a) and (b) [above] OF
27 THIS SUBDIVISION in every subcontract in a manner that the provisions
28 will be binding upon each subcontractor as to work in connection with
29 such contract. Provided, however, that no such provisions shall be bind-
30 ing upon contractors or subcontractors in the performance of work or the
31 provision of services that are unrelated, separate or distinct from the
32 state contract as expressed by its terms, and nothing in this section
33 shall authorize the director or any contracting agency to impose any
34 requirement on a contractor or subcontractor except with respect to a
35 state contract.

36 [3.] 4. In the implementation of this section, the contracting agency
37 shall (A) CONSULT THE FINDINGS CONTAINED WITHIN THE DISPARITY STUDY
38 EVIDENCING RELEVANT INDUSTRY SPECIFIC AVAILABILITY OF CERTIFIED BUSI-
39 NESSES;

40 (B) IMPLEMENT A PROGRAM THAT WILL ENABLE THE AGENCY TO EVALUATE EACH
41 CONTRACT TO DETERMINE THE APPROPRIATENESS OF THE GOAL PURSUANT TO SUBDI-
42 VISION ONE OF THIS SECTION;

43 (C) consider WHERE PRACTICABLE, THE SEVERABILITY OF CONSTRUCTION
44 PROJECTS AND OTHER BUNDLED CONTRACTS; AND

45 (D) CONSIDER compliance with the requirements of any federal law
46 concerning opportunities for minority and women-owned business enter-
47 prises which effectuates the purpose of this section. The contracting
48 agency shall determine whether the imposition of the requirements of any
49 such law duplicate or conflict with the provisions hereof and if such
50 duplication or conflict exists, the contracting agency shall waive the
51 applicability of this section to the extent of such duplication or
52 conflict.

53 [4.] 5. (a) Contracting agencies shall administer the rules and regu-
54 lations promulgated by the director IN A GOOD FAITH EFFORT to [ensure
55 compliance with the provisions of this section] MEET THE MAXIMUM FEASI-
56 BLE PORTION OF THE AGENCY'S GOALS ADOPTED PURSUANT TO THIS ARTICLE AND

1 THE REGULATIONS OF THE DIRECTOR. Such rules and regulations: shall
2 require a contractor to submit a utilization plan after bids are opened,
3 when bids are required, but prior to the award of a state contract;
4 shall require the contracting agency to review the utilization plan
5 submitted by the contractor and to post the utilization plan and any
6 waivers of compliance issued pursuant to subdivision [five] SIX of this
7 section on the website of the contracting agency within a reasonable
8 period of time as established by the director; shall require the
9 contracting agency to notify the contractor in writing within a period
10 of time specified by the director as to any deficiencies contained in
11 the contractor's utilization plan; shall require remedy thereof within a
12 period of time specified by the director; shall require the contractor
13 to submit periodic compliance reports relating to the operation and
14 implementation of any utilization plan; shall NOT ALLOW ANY AUTOMATIC
15 WAIVERS BUT SHALL allow a contractor to apply for a partial or total
16 waiver of the minority and women-owned business enterprise participation
17 requirements pursuant to subdivisions [five and] six AND SEVEN of this
18 section; shall allow a contractor to file a complaint with the director
19 pursuant to subdivision [seven] EIGHT of this section in the event a
20 contracting agency has failed or refused to issue a waiver of the minor-
21 ity and women-owned business enterprise participation requirements or
22 has denied such request for a waiver; and shall allow a contracting
23 agency to file a complaint with the director pursuant to subdivision
24 [eight] NINE of this section in the event a contractor is failing or has
25 failed to comply with the minority and women-owned business enterprise
26 participation requirements set forth in the state contract where no
27 waiver has been granted.

28 (b) The rules and regulations promulgated pursuant to this subdivision
29 regarding a utilization plan shall provide that where enterprises have
30 been identified within a utilization plan, a contractor shall attempt,
31 in good faith, to utilize such enterprise at least to the extent indi-
32 cated. A contracting agency may require a contractor to indicate, within
33 a utilization plan, what measures and procedures he or she intends to
34 take to comply with the provisions of this article, but may not require,
35 as a condition of award of, or compliance with, a contract that a
36 contractor utilize a particular enterprise in performance of the
37 contract.

38 (c) Without limiting other grounds for the disqualification of bids or
39 proposals on the basis of non-responsibility, a contracting agency may
40 disqualify the bid or proposal of a contractor as being non-responsible
41 for failure to remedy notified deficiencies contained in the contrac-
42 tor's utilization plan within a period of time specified in regulations
43 promulgated by the director after receiving notification of such defi-
44 ciencies from the contracting agency. Where failure to remedy any noti-
45 fied deficiency in the utilization plan is a ground for disqualifica-
46 tion, that issue and all other grounds for disqualification shall be
47 stated in writing by the contracting agency. Where the contracting agen-
48 cy states that a failure to remedy any notified deficiency in the utili-
49 zation plan is a ground for disqualification the contractor shall be
50 entitled to an administrative hearing, on a record, involving all
51 grounds stated by the contracting agency. Such hearing shall be
52 conducted by the appropriate authority of the contracting agency to
53 review the determination of disqualification. A final administrative
54 determination made following such hearing shall be reviewable in a
55 proceeding commenced under article seventy-eight of the civil practice
56 law and rules, provided that such proceeding is commenced within thirty

1 days of the notice given by certified mail return receipt requested
2 rendering such final administrative determination. Such proceeding shall
3 be commenced in the supreme court, appellate division, third department
4 and such proceeding shall be preferred over all other civil causes
5 except election causes, and shall be heard and determined in preference
6 to all other civil business pending therein, except election matters,
7 irrespective of position on the calendar. Appeals taken to the court of
8 appeals of the state of New York shall be subject to the same prefer-
9 ence.

10 [5.] 6. 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 located in the
21 region in which the state contract is to be performed, the total dollar
22 value of the state contract, the scope of work to be performed and the
23 project size and term. If, based on such considerations, the contracting
24 agency determines there is not a reasonable availability of contractors
25 on the list of certified business to furnish services for the project,
26 it shall issue a waiver of compliance to the contractor. In making such
27 determination, the contracting agency shall first consider the avail-
28 ability of other business enterprises located in the region and shall
29 thereafter consider the financial ability of minority and women-owned
30 businesses located outside the region in which the contract is to be
31 performed to perform the state contract.

32 [6.] 7. For purposes of determining a contractor's good faith effort
33 to comply with the requirements of this section or to be entitled to a
34 waiver therefrom the contracting agency shall consider:

35 (a) whether the contractor has advertised in general circulation
36 media, trade association publications, and minority-focus and women-fo-
37 cus media and, in such event, (i) whether or not certified minority or
38 women-owned businesses which have been solicited by the contractor
39 exhibited interest in submitting proposals for a particular project by
40 attending a pre-bid conference; and

41 (ii) whether certified businesses which have been solicited by the
42 contractor have responded in a timely fashion to the contractor's solici-
43 tations for timely competitive bid quotations prior to the contracting
44 agency's bid date; and

45 (b) whether there has been written notification to appropriate certi-
46 fied businesses that appear in the directory of certified businesses
47 prepared pursuant to paragraph (f) of subdivision three of section three
48 hundred eleven of this article; and

49 (c) whether the contractor can reasonably structure the amount of work
50 to be performed under subcontracts in order to increase the likelihood
51 of participation by certified businesses.

52 [7.] 8. In the event that a contracting agency fails or refuses to
53 issue a waiver to a contractor as requested within twenty days after
54 having made application therefor pursuant to subdivision [five] SIX of
55 this section or if the contracting agency denies such application, in
56 whole or in part, the contractor may file a complaint with the director

pursuant to section three hundred sixteen of this article setting forth the facts and circumstances giving rise to the contractor's complaint together with a demand for relief. The contractor shall serve a copy of such complaint upon the contracting agency by personal service or by certified mail, return receipt requested. The contracting agency shall be afforded an opportunity to respond to such complaint in writing.

[8.] 9. If, after the review of a contractor's minority and women owned business utilization plan or review of a periodic compliance report and after such contractor has been afforded an opportunity to respond to a notice of deficiency issued by the contracting agency in connection therewith, it appears that a contractor is failing or refusing to comply with the minority and women-owned business participation requirements as set forth in the state contract and where no waiver from such requirements has been granted, the contracting agency may file a written complaint with the director pursuant to section three hundred sixteen of this article setting forth the facts and circumstances giving rise to the contracting agency's complaint together with a demand for relief. The contracting agency shall serve a copy of such complaint upon the contractor by personal service or by certified mail, return receipt requested. The contractor shall be afforded an opportunity to respond to such complaint in writing.

S 6. The executive law is amended by adding a new section 313-a to read as follows:

S 313-A. DIVERSITY PRACTICES OF STATE CONTRACTORS. THE DIRECTOR SHALL PROMULGATE RULES AND REGULATIONS SETTING FORTH MEASURES AND PROCEDURES TO REQUIRE ALL CONTRACTING AGENCIES, WHERE PRACTICABLE, FEASIBLE AND APPROPRIATE, TO ASSESS THE DIVERSITY PRACTICES OF CONTRACTORS SUBMITTING BIDS OR PROPOSALS IN CONNECTION WITH THE AWARD OF A STATE CONTRACT. SUCH RULES AND REGULATIONS SHALL TAKE INTO ACCOUNT: THE NATURE OF THE LABOR, SERVICES, SUPPLIES, EQUIPMENT OR MATERIALS BEING PROCURED BY THE STATE AGENCY; THE METHOD OF PROCUREMENT REQUIRED TO BE USED BY A STATE AGENCY TO AWARD THE CONTRACT AND MINORITY AND WOMEN-OWNED BUSINESS UTILIZATION PLANS REQUIRED TO BE SUBMITTED PURSUANT TO SECTIONS THREE HUNDRED TWELVE AND THREE HUNDRED THIRTEEN OF THIS ARTICLE; AND SUCH OTHER FACTORS AS THE DIRECTOR DEEMS APPROPRIATE OR NECESSARY TO PROMOTE THE AWARD OF STATE CONTRACTS TO CONTRACTORS HAVING SOUND DIVERSITY PRACTICES. SUCH ASSESSMENT SHALL NOT IN ANY WAY PERMIT THE AUTOMATIC REJECTION OF A BID OR PROCUREMENT CONTRACT PROPOSAL BASED ON LACK OF ADHERENCE TO DIVERSITY PRACTICES. EACH BID OR PROPOSAL SHALL BE ANALYZED ON AN INDIVIDUAL PER BID OR PER PROPOSAL BASIS WITH THE CONTRACTOR'S DIVERSITY PRACTICES CONSIDERED AS ONLY A PART OF A WIDER CONSIDERATION OF SEVERAL FACTORS WHEN DECIDING TO AWARD OR DECLINE TO AWARD A BID OR PROPOSAL. THE DIRECTOR SHALL DEVELOP THE RULES AND REGULATIONS REQUIRED HEREUNDER ONLY AFTER CONSULTATION WITH THE STATE PROCUREMENT COUNCIL ESTABLISHED BY SECTION ONE HUNDRED SIXTY-ONE OF THE STATE FINANCE LAW.

S 7. Subdivision 3 of section 315 of the executive law, as added by chapter 261 of the laws of 1988, is amended and four new subdivisions 4, 5, 6 and 7 are added to read as follows:

3. Each contracting agency shall report to the director with respect to activities undertaken to promote employment of minority group members and women and promote and increase participation by certified businesses with respect to state contracts and subcontracts. Such reports shall be submitted periodically, BUT NOT LESS FREQUENTLY THAN ANNUALLY, as required by the director, AND SHALL INCLUDE SUCH INFORMATION AS IS NECESSARY FOR THE DIRECTOR TO DETERMINE WHETHER THE CONTRACTING AGENCY AND CONTRACTOR HAVE COMPLIED WITH THE PURPOSES OF THIS ARTICLE, INCLUD-

1 ING, WITHOUT LIMITATION, A SUMMARY OF ALL WAIVERS OF THE REQUIREMENTS OF
2 SUBDIVISIONS SIX AND SEVEN OF SECTION THREE HUNDRED THIRTEEN OF THIS
3 ARTICLE ALLOWED BY THE CONTRACTING AGENCY DURING THE PERIOD COVERED BY
4 THE REPORT, INCLUDING A DESCRIPTION OF THE BASIS OF THE WAIVER REQUEST
5 AND THE RATIONALE FOR GRANTING ANY SUCH WAIVER. EACH AGENCY SHALL ALSO
6 INCLUDE IN SUCH ANNUAL REPORT WHETHER OR NOT IT HAS BEEN REQUIRED TO
7 PREPARE A REMEDIAL PLAN, AND, IF SO, THE PLAN AND THE EXTENT TO WHICH
8 THE AGENCY HAS COMPLIED WITH EACH ELEMENT OF THE PLAN.

9 4. THE DIVISION OF MINORITY AND WOMEN'S BUSINESS DEVELOPMENT SHALL
10 ISSUE AN ANNUAL REPORT WHICH: (A) SUMMARIZES THE REPORT SUBMITTED BY
11 EACH CONTRACTING AGENCY PURSUANT TO SUBDIVISION THREE OF THIS SECTION;
12 (B) CONTAINS SUCH COMPARATIVE OR OTHER INFORMATION AS THE DIRECTOR DEEMS
13 APPROPRIATE, INCLUDING BUT NOT LIMITED TO GOALS COMPARED TO ACTUAL
14 PARTICIPATION OF MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES IN STATE
15 CONTRACTING, TO EVALUATE THE EFFECTIVENESS OF THE ACTIVITIES UNDERTAKEN
16 BY EACH SUCH CONTRACTING AGENCY TO PROMOTE INCREASED PARTICIPATION BY
17 CERTIFIED MINORITY OR WOMEN-OWNED BUSINESSES WITH RESPECT TO STATE
18 CONTRACTS AND SUBCONTRACTS; (C) CONTAINS A SUMMARY OF ALL WAIVERS OF THE
19 REQUIREMENTS OF SUBDIVISIONS SIX AND SEVEN OF SECTION THREE HUNDRED
20 THIRTEEN OF THIS ARTICLE ALLOWED BY EACH CONTRACTING AGENCY DURING THE
21 PERIOD COVERED BY THE REPORT, INCLUDING A DESCRIPTION OF THE BASIS OF
22 THE WAIVER REQUEST AND THE CONTRACTING AGENCY'S RATIONALE FOR GRANTING
23 ANY SUCH WAIVER; (D) DESCRIBES ANY EFFORTS TO CREATE A DATABASE OR OTHER
24 INFORMATION STORAGE AND RETRIEVAL SYSTEM CONTAINING INFORMATION RELEVANT
25 TO CONTRACTING WITH MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES; AND
26 (E) CONTAINS A SUMMARY OF (I) ALL DETERMINATIONS OF VIOLATIONS OF THIS
27 ARTICLE BY A CONTRACTOR OR A CONTRACTING AGENCY MADE DURING THE PERIOD
28 COVERED BY THE ANNUAL REPORT PURSUANT TO SECTION THREE HUNDRED SIXTEEN-A
29 OF THIS ARTICLE AND (II) THE PENALTIES OR SANCTIONS, IF ANY, ASSESSED IN
30 CONNECTION WITH SUCH DETERMINATIONS AND THE RATIONALE FOR SUCH PENALTIES
31 OR SANCTIONS. COPIES OF THE ANNUAL REPORT SHALL BE PROVIDED TO THE
32 COMMISSIONER, THE GOVERNOR, THE COMPTROLLER, THE TEMPORARY PRESIDENT OF
33 THE SENATE, THE SPEAKER OF THE ASSEMBLY, THE MINORITY LEADER OF THE
34 SENATE, THE MINORITY LEADER OF THE ASSEMBLY AND SHALL ALSO BE MADE WIDE-
35 LY AVAILABLE TO THE PUBLIC VIA, AMONG OTHER THINGS, PUBLICATION ON A
36 WEBSITE MAINTAINED BY THE DIVISION OF MINORITY AND WOMEN'S BUSINESS
37 DEVELOPMENT.

38 5. EACH AGENCY SHALL INCLUDE IN ITS ANNUAL REPORT TO THE GOVERNOR AND
39 LEGISLATURE PURSUANT TO SECTION ONE HUNDRED SIXTY-FOUR OF THE EXECUTIVE
40 LAW ITS ANNUAL GOALS FOR CONTRACTS WITH MINORITY-OWNED AND WOMEN-OWNED
41 BUSINESS ENTERPRISES, THE NUMBER OF ACTUAL CONTRACTS ISSUED TO MINORI-
42 TY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES; AND A SUMMARY OF ALL
43 WAIVERS OF THE REQUIREMENTS OF SUBDIVISIONS SIX AND SEVEN OF SECTION
44 THREE HUNDRED THIRTEEN OF THIS ARTICLE ALLOWED BY THE REPORTING AGENCY
45 DURING THE PRECEDING YEAR, INCLUDING A DESCRIPTION OF THE BASIS OF THE
46 WAIVER REQUEST AND THE RATIONALE FOR GRANTING SUCH WAIVER. EACH AGENCY
47 SHALL ALSO INCLUDE IN SUCH ANNUAL REPORT WHETHER OR NOT IT HAS BEEN
48 REQUIRED TO PREPARE A REMEDIAL PLAN, AND, IF SO, THE PLAN AND THE EXTENT
49 TO WHICH THE AGENCY HAS COMPLIED WITH EACH ELEMENT OF THE PLAN.

50 6. EACH CONTRACTING AGENCY THAT SUBSTANTIALLY FAILS TO MEET THE GOALS
51 SUPPORTED BY THE DISPARITY STUDY, AS DEFINED BY REGULATION OF THE DIREC-
52 TOR, SHALL BE REQUIRED TO SUBMIT TO THE DIRECTOR A REMEDIAL ACTION PLAN
53 TO REMEDY SUCH FAILURE.

54 7. IF IT IS DETERMINED BY THE DIRECTOR THAT ANY AGENCY HAS FAILED TO
55 ACT IN GOOD FAITH TO IMPLEMENT THE REMEDIAL ACTION PLAN, PURSUANT TO
56 SUBDIVISION SIX OF THIS SECTION WITHIN ONE YEAR, THE DIRECTOR SHALL

1 PROVIDE WRITTEN NOTICE OF SUCH A FINDING, WHICH SHALL BE PUBLICLY AVAIL-
2 ABLE, AND DIRECT IMPLEMENTATION OF REMEDIAL ACTIONS TO:

3 (A) ASSURE THAT SUFFICIENT AND EFFECTIVE SOLICITATION EFFORTS TO WOMEN
4 AND MINORITY-OWNED BUSINESS ENTERPRISES ARE BEING MADE BY SAID AGENCY;

5 (B) DIVIDE CONTRACT REQUIREMENTS, WHEN ECONOMICALLY FEASIBLE, INTO
6 QUANTITIES THAT WILL EXPAND THE PARTICIPATION OF WOMEN AND
7 MINORITY-OWNED BUSINESS ENTERPRISES;

8 (C) ELIMINATE EXTENDED EXPERIENCE OR CAPITALIZATION REQUIREMENTS, WHEN
9 PROGRAMMATICALLY AND ECONOMICALLY FEASIBLE, THAT WILL EXPAND PARTIC-
10 IPATION BY WOMEN AND MINORITY-OWNED BUSINESS ENTERPRISES;

11 (D) IDENTIFY SPECIFIC PROPOSED CONTRACTS AS PARTICULARLY ATTRACTIVE OR
12 APPROPRIATE FOR PARTICIPATION BY WOMEN AND MINORITY-OWNED BUSINESS
13 ENTERPRISES WITH SUCH IDENTIFICATION TO RESULT FROM AND BE COUPLED WITH
14 THE EFFORTS OF PARAGRAPHS (A), (B), AND (C) OF THIS SUBDIVISION; AND

15 (E) UPON A FINDING BY THE DIRECTOR THAT AN AGENCY HAS FAILED TO TAKE
16 AFFIRMATIVE MEASURES TO IMPLEMENT THE REMEDIAL PLAN AND TO FOLLOW ANY OF
17 THE REMEDIAL ACTIONS SET FORTH BY THE DIRECTOR, AND IN THE ABSENCE OF
18 ANY OBJECTIVE PROGRESS TOWARDS THE AGENCY'S GOALS, REQUIRE SOME OR ALL
19 OF THE AGENCY'S PROCUREMENT, FOR A SPECIFIED PERIOD OF TIME, BE PLACED
20 UNDER THE DIRECTION AND CONTROL OF ANOTHER AGENCY OR AGENCIES.

21 S 8. Subdivision 2-a of section 314 of the executive law, as added by
22 section 2 of part BB of chapter 59 of the laws of 2006, is amended to
23 read as follows:

24 2-a. (a) The director shall establish a procedure enabling the office
25 to accept New York municipal corporation certification verification for
26 minority and women-owned business enterprise applicants in lieu of
27 requiring the applicant to complete the state certification process. The
28 director shall promulgate rules and regulations to set forth criteria
29 for the acceptance of municipal corporation certification. All eligible
30 municipal corporation certifications shall require business enterprises
31 seeking certification to meet the following standards:

32 (i) have at least fifty-one percent ownership by a minority or a
33 women-owned enterprise and be owned by United States citizens or perma-
34 nent resident aliens;

35 (ii) be an enterprise in which the minority and/or women-ownership
36 interest is real, substantial and continuing;

37 (iii) be an enterprise in which the minority and/or women-ownership
38 has and exercises the authority to control independently the day-to-day
39 business decisions of the enterprise;

40 (iv) be an enterprise authorized to do business in this state; [and]

41 (v) be subject to a physical site inspection to verify the fifty-one
42 percent ownership requirement[.];

43 (VI) BE OWNED BY AN INDIVIDUAL OR INDIVIDUALS, WHOSE OWNERSHIP,
44 CONTROL AND OPERATION ARE RELIED UPON FOR CERTIFICATION, WITH A PERSONAL
45 NET WORTH THAT DOES NOT EXCEED THREE MILLION FIVE HUNDRED THOUSAND
46 DOLLARS, AS ADJUSTED ANNUALLY FOR INFLATION ACCORDING TO THE CONSUMER
47 PRICE INDEX; AND

48 (VII) BE AN ENTERPRISE THAT IS A SMALL BUSINESS PURSUANT TO SUBDIVI-
49 SION TWENTY OF SECTION THREE HUNDRED TEN OF THIS ARTICLE.

50 (b) The director shall work with all municipal corporations that have
51 a municipal minority and women-owned business enterprise program to
52 develop standards to accept state certification to meet the municipal
53 corporation minority and women-owned business enterprise certification
54 standards.

55 (c) The director shall establish a procedure enabling the division to
56 accept federal certification verification for minority and women-owned

1 business enterprise applicants, PROVIDED SAID STANDARDS COMPORT WITH
2 THOSE REQUIRED BY THE STATE MINORITY AND WOMEN-OWNED BUSINESS PROGRAM,
3 in lieu of requiring the applicant to complete the state certification
4 process. The director shall promulgate rules and regulations to set
5 forth criteria for the acceptance of federal certification.

6 S 9. Section 316 of the executive law, as added by chapter 261 of the
7 laws of 1988, is amended to read as follows:

8 S 316. Enforcement. Upon receipt by the director of a complaint by a
9 contracting agency that a contractor has violated the provisions of a
10 state contract which have been included to comply with the provisions of
11 this article or of a contractor that a contracting agency has violated
12 such provisions or has failed or refused to issue a waiver where one has
13 been applied for pursuant to subdivision [five] SIX of section three
14 hundred thirteen of this article or has denied such application, the
15 director shall attempt to resolve the matter giving rise to such
16 complaint. If efforts to resolve such matter to the satisfaction of all
17 parties are unsuccessful, the director shall refer the matter, within
18 thirty days of the receipt of the complaint, to the [American Arbitration Association for proceeding thereon] DIVISION'S HEARING OFFICERS.
19 Upon conclusion of the [arbitration proceedings] ADMINISTRATIVE HEARING,
20 the [arbitrator] HEARING OFFICER shall submit to the director his or her
21 [award] DECISION regarding the alleged violation of the contract and
22 recommendations regarding the imposition of sanctions, fines or penalties.
23 [The director shall either: (a) adopt the recommendation of the
24 arbitrator; or (b) determine that no sanctions, fines or penalties
25 should be imposed; or (c) modify the recommendation of the arbitrator,
26 provided that such modification shall not expand upon any sanction
27 recommended or impose any new sanction, or increase the amount of any
28 recommended fine or penalty.] The director, within ten days of receipt
29 of the [arbitrator's award and recommendations] DECISION, shall file a
30 determination of such matter and shall cause a copy of such determination
31 along with a copy of this article to be served upon the [respondent]
32 CONTRACTOR by personal service or by certified mail return receipt
33 requested. The [award] DECISION of the [arbitrator] HEARING OFFICER
34 shall be final and may only be vacated or modified as provided in article
35 [seventy-five] SEVENTY-EIGHT of the civil practice law and rules
36 upon an application made within the time provided by [section seventy-five
37 hundred eleven of the civil practice law and rules] SUCH ARTICLE.
38 The determination of the director as to the imposition of any fines,
39 sanctions or penalties shall be reviewable pursuant to article seventy-eight
40 of the civil practice law and rules. THE PENALTIES IMPOSED FOR ANY
41 VIOLATION WHICH IS PREMISED UPON EITHER A FRAUDULENT OR INTENTIONAL
42 MISREPRESENTATION BY THE CONTRACTOR OR THE CONTRACTOR'S WILLFUL AND
43 INTENTIONAL DISREGARD OF THE MINORITY AND WOMEN-OWNED PARTICIPATION
44 REQUIREMENT INCLUDED IN THE CONTRACT MAY INCLUDE A DETERMINATION THAT
45 THE CONTRACTOR SHALL BE INELIGIBLE TO SUBMIT A BID TO ANY CONTRACTING
46 AGENCY OR BE AWARDED ANY SUCH CONTRACT FOR A PERIOD NOT TO EXCEED ONE
47 YEAR FOLLOWING THE FINAL DETERMINATION; PROVIDED HOWEVER, IF A CONTRACTOR
48 HAS PREVIOUSLY BEEN DETERMINED TO BE INELIGIBLE TO SUBMIT A BID
49 PURSUANT TO THIS SECTION, THE PENALTIES IMPOSED FOR ANY SUBSEQUENT
50 VIOLATION, IF SUCH VIOLATION OCCURS WITHIN FIVE YEARS OF THE FIRST
51 VIOLATION, MAY INCLUDE A DETERMINATION THAT THE CONTRACTOR SHALL BE
52 INELIGIBLE TO SUBMIT A BID TO ANY CONTRACTING AGENCY OR BE AWARDED ANY
53 SUCH CONTRACT FOR A PERIOD NOT TO EXCEED FIVE YEARS FOLLOWING THE FINAL
54 DETERMINATION. THE DIVISION OF MINORITY AND WOMEN'S BUSINESS DEVELOPMENT
55 SHALL MAINTAIN A WEBSITE LISTING ALL CONTRACTORS THAT HAVE BEEN DEEMED
56

1 INELIGIBLE TO SUBMIT A BID PURSUANT TO THIS SECTION AND THE DATE AFTER
2 WHICH EACH CONTRACTOR SHALL ONCE AGAIN BECOME ELIGIBLE TO SUBMIT BIDS.

3 S 10. The executive law is amended by adding a new section 316-a to
4 read as follows:

5 S 316-A. PROHIBITIONS IN CONTRACTS; VIOLATIONS. EVERY CONTRACTING
6 AGENCY SHALL INCLUDE A PROVISION IN ITS STATE CONTRACTS EXPRESSLY
7 PROVIDING THAT ANY CONTRACTOR WHO WILLFULLY AND INTENTIONALLY FAILS TO
8 COMPLY WITH THE MINORITY AND WOMEN-OWNED PARTICIPATION REQUIREMENTS OF
9 THIS ARTICLE AS SET FORTH IN SUCH STATE CONTRACT SHALL BE LIABLE TO THE
10 CONTRACTING AGENCY FOR LIQUIDATED OR OTHER APPROPRIATE DAMAGES AND SHALL
11 PROVIDE FOR OTHER APPROPRIATE REMEDIES ON ACCOUNT OF SUCH BREACH. A
12 CONTRACTING AGENCY THAT ELECTS TO PROCEED AGAINST A CONTRACTOR FOR
13 BREACH OF CONTRACT AS PROVIDED IN THIS SECTION SHALL BE PRECLUDED FROM
14 SEEKING ENFORCEMENT PURSUANT TO SECTION THREE HUNDRED SIXTEEN OF THIS
15 ARTICLE; PROVIDED HOWEVER, THAT THE CONTRACTING AGENCY SHALL INCLUDE A
16 SUMMARY OF ALL ENFORCEMENT ACTIONS UNDERTAKEN PURSUANT TO THIS SECTION
17 IN ITS ANNUAL REPORT SUBMITTED PURSUANT TO SUBDIVISION THREE OF SECTION
18 THREE HUNDRED FIFTEEN OF THIS ARTICLE.

19 S 11. Severability. If any clause, sentence, paragraph, section or
20 part of this act shall be adjudged by any court of competent jurisdic-
21 tion to be invalid, the judgment shall not affect, impair, or invalidate
22 the remainder thereof, but shall be confined in its operation to the
23 clause, sentence, paragraph, section or part of this act directly
24 involved in the controversy in which the judgment shall have been
25 rendered.

26 S 12. The state financial system is authorized and directed to assist
27 the director of the office of minority and women's business development
28 in the implementation of this act.

29 S 13. The opening paragraph of subdivision (h) of section 121 of
30 chapter 261 of the laws of 1988, amending the state finance law and
31 other laws relating to the New York state infrastructure trust fund, as
32 amended by chapter 628 of the laws of 2003, is amended to read as
33 follows:

34 The provisions of section sixty-two through sixty-six of this act
35 shall expire on December thirty-first, two thousand [eighteen] SIXTEEN,
36 except that:

37 S 14. This act shall take effect on the ninetieth day after it shall
38 have become a law; provided however, that the amendments to article 15-A
39 of the executive law made by sections two, four, five, six, seven,
40 eight, nine, and ten of this act shall not affect the expiration of such
41 article and shall be deemed to expire therewith; provided, further that
42 the director of the division of minority and women's business develop-
43 ment shall be authorized to commence the rulemaking process required
44 pursuant to sections five and six of this act prior to the effective
45 date of this act; and provided further that any minority business enter-
46 prise and women's business enterprise certified prior to the effective
47 date of this section shall not be subject to any certification
48 restriction provided for in this act until such time as the certif-
49 ication is renewed.