

4168

2009-2010 Regular Sessions

I N A S S E M B L Y

January 30, 2009

Introduced by M. of A. COOK, TOWNS, DESTITO, MILLMAN, JACOBS, BOYLAND, CLARK, MAGNARELLI, BRODSKY, SCHROEDER -- Multi-Sponsored by -- M. of A. CAHILL, ESPAILLAT, FARRELL, GALEF, GLICK, GOTTFRIED, GUNTHER, HEASTIE, HEVESI, HOOPER, JOHN, MORELLE, NOLAN, PEOPLES-STOKES, PHEFFER, RAMOS, STIRPE, WRIGHT -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to minority and women-owned business enterprises

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

1 Section 1. Subdivision 3 of section 311 of the executive law, as added
2 by chapter 261 of the laws of 1988, paragraphs (d) and (e) as amended by
3 chapter 55 of the laws of 1992, paragraphs (g) and (h) as amended and
4 paragraph (i) as added by section 1 of part BB of chapter 59 of the laws
5 of 2006, is amended to read as follows:
6 3. The director shall have the following powers and duties:
7 (a) to encourage and assist contracting agencies in their efforts to
8 increase participation by minority and women-owned business enterprises
9 on state contracts and subcontracts so as to facilitate the award of a
10 fair share of such contracts to them;
11 (b) to develop standardized forms and reporting documents necessary to
12 implement this article;
13 (c) to conduct educational programs consistent with the purposes of
14 this article;
15 (d) to review periodically the practices and procedures of each
16 contracting agency with respect to compliance with the provisions of
17 this article, and to require them to file [periodic] ANNUAL reports with
18 the division of minority and women's business development as to the
19 level of minority and women-owned business enterprises participation in
20 the awarding of agency contracts for goods and services INCLUDING BUT
21 NOT LIMITED TO THE NUMBER OF STATE CONTRACTS AWARDED TO CERTIFIED MINOR-

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

1 ITY-OWNED OR WOMEN-OWNED BUSINESS ENTERPRISES, THE MAXIMUM DOLLAR AMOUNT
2 OBLIGATED PURSUANT TO ALL THOSE CONTRACTS, AND THE TOTAL EXPENDITURES
3 MADE PURSUANT TO ALL SUCH CONTRACTS;

4 (e) on January first of each year report to the governor and the
5 chairpersons of the senate finance and assembly ways and means commit-
6 tees on the [level] ACTUAL VERSUS PROJECTED LEVELS of minority and
7 women-owned business enterprises participating in each agency's
8 contracts for goods [and], services AND CONSTRUCTION, INCLUDING BUT NOT
9 LIMITED TO THE NUMBER OF STATE CONTRACTS AWARDED TO CERTIFIED MINORITY-
10 OWNED OR WOMEN-OWNED BUSINESS ENTERPRISES, THE MAXIMUM DOLLAR AMOUNT
11 OBLIGATED PURSUANT TO ALL THOSE CONTRACTS, AND THE TOTAL EXPENDITURES
12 MADE PURSUANT TO ALL SUCH CONTRACTS, and on activities of the office and
13 effort by each contracting agency to promote employment of minority
14 group members and women, and to promote and increase participation by
15 certified businesses with respect to state contracts and subcontracts so
16 as to facilitate the award of a fair share of state contracts to such
17 businesses. The comptroller shall assist the division in collecting
18 information on the participation of certified business for each
19 contracting agency. Such report may recommend new activities and
20 programs to effectuate the purposes of this article;

21 (f) to prepare and update periodically a directory of certified minor-
22 ity and women-owned business enterprises which shall, wherever practica-
23 ble, be divided into categories of labor, services, supplies, equipment,
24 materials and recognized construction trades and which shall indicate
25 areas or locations of the state where such enterprises are available to
26 perform services, AND TO USE THIS INFORMATION TO CREATE A STATE REGISTRY
27 TO ENABLE APPROPRIATE STATE CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS
28 ENTERPRISES TO BE NOTIFIED OF CONTRACT AND SUBCONTRACT OPPORTUNITIES;

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

33 (h) notwithstanding the provisions of section two hundred ninety-six
34 of this chapter, to file a complaint pursuant to the provisions of
35 section two hundred ninety-seven of this chapter where the director has
36 knowledge that a contractor may have violated the provisions of para-
37 graph (a), (b) or (c) of subdivision one of section two hundred ninety-
38 six of this chapter where such violation is unrelated, separate or
39 distinct from the state contract as expressed by its terms; and

40 (i) to streamline the state certification process to accept federal
41 and municipal corporation certifications.

42 S 2. Subdivision 1 of section 313 of the executive law, as added by
43 chapter 261 of the laws of 1988, is amended to read as follows:

44 1. The director shall promulgate rules and regulations that provide
45 measures and procedures to ensure that certified businesses shall be
46 given the opportunity for meaningful participation in the performance of
47 state contracts and to identify those state contracts for which certi-
48 fied businesses may best bid to actively and affirmatively promote and
49 assist their participation in the performance of state contracts so as
50 to facilitate the award of a fair share of state contracts to such busi-
51 nesses AND ENCOURAGE JOINT VENTURES, PARTNERSHIPS AND MENTOR-PROTEGE
52 RELATIONSHIPS BETWEEN PRIME CONTRACTORS AND MINORITY AND WOMEN-OWNED
53 BUSINESS ENTERPRISES. Such rules and regulations as they pertain to any
54 particular agency shall be developed after consultation with the
55 contracting agency. Nothing in the provisions of this article shall be

1 construed to limit the ability of any certified business to bid on any
2 contract.

3 S 3. Paragraph (a) of subdivision 4 of section 313 of the executive
4 law, as added by chapter 261 of the laws of 1988, is amended to read as
5 follows:

6 (a) Contracting agencies shall administer the rules and regulations
7 promulgated by the director to ensure compliance with the provisions of
8 this section. Such rules and regulations: shall require a contractor to
9 submit a utilization plan after bids are opened, when bids are required,
10 but prior to the award of a state contract; shall require the contract-
11 ing agency to review the utilization plan submitted by the contractor
12 within a reasonable period of time as established by the director; shall
13 require the contracting agency to notify the contractor in writing with-
14 in a period of time specified by the director as to any deficiencies
15 contained in the contractor's utilization plan; shall require remedy
16 thereof within a period of time specified by the director; may require
17 the contractor to submit periodic compliance reports relating to the
18 operation and implementation of any utilization plan; shall NOT ALLOW
19 ANY AUTOMATIC WAIVERS, BUT SHALL allow a contractor to apply for a
20 partial or total waiver of the minority and women-owned business enter-
21 prise participation requirements pursuant to subdivisions five and six
22 of this section; shall allow a contractor to file a complaint with the
23 director pursuant to subdivision seven of this section in the event a
24 contracting agency has failed or refused to issue a waiver of the minor-
25 ity and women-owned business enterprise participation requirements or
26 has denied such request for a waiver; and shall allow a contracting
27 agency to file a complaint with the director pursuant to subdivision
28 eight of this section in the event a contractor is failing or has failed
29 to comply with the minority and women-owned business enterprise partic-
30 ipation requirements set forth in the state contract where no waiver has
31 been granted.

32 S 4. Subdivision 3 of section 314 of the executive law, as added by
33 chapter 261 of the laws of 1988, is amended to read as follows:

34 3. Following application for certification pursuant to this section,
35 the director shall provide the applicant with written notice of the
36 status of the application, including notice of any outstanding deficien-
37 cies, within thirty days. Within sixty days of submission of a final
38 completed application, the director shall provide the applicant with
39 written notice of a determination by the office approving or denying
40 such certification and, in the event of a denial a statement setting
41 forth the reasons for such denial. Upon a determination denying or
42 revoking certification, the business enterprise for which certification
43 has been so denied or revoked shall, upon written request made within
44 thirty days from receipt of notice of such determination, be entitled to
45 a hearing before an independent hearing officer designated for such
46 purpose by the director. In the event that a request for a hearing is
47 not made within such thirty day period, such determination shall be
48 deemed to be final. The independent hearing officer shall conduct a
49 hearing and upon the conclusion of such hearing, issue a written recom-
50 mendation to the director to affirm, reverse or modify such determi-
51 nation of the director. Such written recommendation shall be issued to
52 the parties. The director, within thirty days, by order, must accept,
53 reject or modify such recommendation of the hearing officer and set
54 forth in writing the reasons therefor. The director shall serve a copy
55 of such order and reasons therefor upon the business enterprise by
56 personal service or by certified mail return receipt requested. The

1 order of the director shall be subject to review pursuant to article
2 seventy-eight of the civil practice law and rules. RECERTIFICATION
3 SHALL BE REQUIRED EVERY THREE YEARS.
4 S 5. This act shall take effect immediately, provided, however that
5 the amendments to article 15-A of the executive law made by sections one
6 through four of this act shall not affect the expiration of such article
7 and shall expire therewith.