

4168--A

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I N A S S E M B L Y

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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 -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

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

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

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1 the awarding of agency contracts for goods and services INCLUDING BUT
2 NOT LIMITED TO THE NUMBER OF STATE CONTRACTS AWARDED TO CERTIFIED MINOR-
3 ITY-OWNED OR WOMEN-OWNED BUSINESS ENTERPRISES, THE MAXIMUM DOLLAR AMOUNT
4 OBLIGATED PURSUANT TO ALL THOSE CONTRACTS, AND THE TOTAL EXPENDITURES
5 MADE PURSUANT TO ALL SUCH CONTRACTS;

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

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

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

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

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

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

46 1. The director shall promulgate rules and regulations that provide
47 measures and procedures to ensure that certified businesses shall be
48 given the opportunity for meaningful participation in the performance of
49 state contracts and to identify those state contracts for which certi-
50 fied businesses may best bid to actively and affirmatively promote and
51 assist their participation in the performance of state contracts so as
52 to facilitate the award of a fair share of state contracts to such busi-
53 nesses AND ENCOURAGE JOINT VENTURES, PARTNERSHIPS AND MENTOR-PROTEGE
54 RELATIONSHIPS BETWEEN PRIME CONTRACTORS AND MINORITY AND WOMEN-OWNED
55 BUSINESS ENTERPRISES. Such rules and regulations as they pertain to any
56 particular agency shall be developed after consultation with the

1 contracting agency. Nothing in the provisions of this article shall be
2 construed to limit the ability of any certified business to bid on any
3 contract.

4 S 3. Paragraph (a) of subdivision 4 of section 313 of the executive
5 law, as amended by chapter 429 of the laws of 2009, is amended to read
6 as follows:

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

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

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

1 forth in writing the reasons therefor. The director shall serve a copy
2 of such order and reasons therefor upon the business enterprise by
3 personal service or by certified mail return receipt requested. The
4 order of the director shall be subject to review pursuant to article
5 seventy-eight of the civil practice law and rules. RECERTIFICATION
6 SHALL BE REQUIRED EVERY THREE YEARS.
7 S 5. This act shall take effect immediately, provided, however that
8 the amendments to article 15-A of the executive law made by sections one
9 through four of this act shall not affect the expiration of such article
10 and shall expire therewith.