

5927

2009-2010 Regular Sessions

I N S E N A T E

June 18, 2009

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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

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

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

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

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

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

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

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

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

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

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

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

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

1 seventy-eight of the civil practice law and rules. RECERTIFICATION  
2 SHALL BE REQUIRED EVERY THREE YEARS.

3 S 5. This act shall take effect immediately, provided, however that  
4 the amendments to article 15-A of the executive law made by sections one  
5 through four of this act shall not affect the expiration of such article  
6 and shall expire therewith.