S T A T E   O F   N E W   Y O R K

5927--A

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 -- recommitted to the Committee on Finance in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

Section 1. Subdivision 3 of section 311 of the executive law, as added by chapter 261 of the laws of 1988, paragraphs (d) and (e) as amended by chapter 55 of the laws of 1992, paragraphs (g) and (h) as amended and paragraph (i) as added by section 1 of part BB of chapter 59 of the laws of 2006, is amended to read as follows:

3. The director shall have the following powers and duties:

(a) to encourage and assist contracting agencies in their efforts to increase participation by minority and women-owned business enterprises on state contracts and subcontracts so as to facilitate the award of a fair share of such contracts to them;

(b) to develop standardized forms and reporting documents necessary to implement this article;

(c) to conduct educational programs consistent with the purposes of this article;

(d) to review periodically the practices and procedures of each contracting agency with respect to compliance with the provisions of this article, and to require them to file [periodic] ANNUAL reports with the division of minority and women's business development as to the level of minority and women-owned business enterprises participation in the awarding of agency contracts for goods and services INCLUDING BUT NOT LIMITED TO THE NUMBER OF STATE CONTRACTS AWARDED TO CERTIFIED MINORITY-OWNED OR WOMEN-OWNED BUSINESS ENTERPRISES, THE MAXIMUM DOLLAR AMOUNT

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

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OBLIGATED PURSUANT TO ALL THOSE CONTRACTS, AND THE TOTAL EXPENDITURES MADE PURSUANT TO ALL SUCH CONTRACTS;

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

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

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

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

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

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

1. The director shall promulgate rules and regulations that provide measures and procedures to ensure that certified businesses shall be given the opportunity for meaningful participation in the performance of state contracts and to identify those state contracts for which 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 award of a fair share of state contracts to such businesses AND ENCOURAGE JOINT VENTURES, PARTNERSHIPS AND MENTOR-PROTEGE RELATIONSHIPS BETWEEN PRIME CONTRACTORS AND MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES. Such rules and regulations as they pertain to any particular agency shall be developed after consultation with the contracting agency. Nothing in the provisions of this article shall be construed to limit the ability of any certified business to bid on any contract.

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

(a) Contracting agencies shall administer the rules and regulations promulgated by the director to ensure compliance with the provisions of this section. Such rules and regulations: shall require a contractor to submit a utilization plan after bids are opened, when bids are required, but prior to the award of a state contract; shall require the contracting agency to review the utilization plan submitted by the contractor and to post the utilization plan and any waivers of compliance issued pursuant to subdivision five of this section on the website of the contracting agency within a reasonable period of time as established by the director; shall require the contracting agency to notify the contractor in writing within a period of time specified by the director as to any deficiencies contained in the contractor's utilization plan; shall require remedy thereof within a period of time specified by the director; shall require the contractor to submit periodic compliance reports relating to the operation and implementation of any utilization plan; shall NOT ALLOW ANY AUTOMATIC WAIVERS, BUT SHALL allow a contractor to apply for a partial or total waiver of the minority and women-owned business enterprise participation requirements pursuant to subdivisions five and six of this section; shall allow a contractor to file a complaint with the director pursuant to subdivision seven of this section in the event a contracting agency has failed or refused to issue a waiver of the minority and women-owned business enterprise participation requirements or has denied such request for a waiver; and shall allow a contracting agency to file a complaint with the director pursuant to subdivision eight of this section in the event a contractor is failing or has failed to comply with the minority and women-owned business enterprise participation requirements set forth in the state contract where no waiver has been granted.

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

3. Following application for certification pursuant to this section, the director shall provide the applicant with written notice of the status of the application, including notice of any outstanding deficiencies, within thirty days. Within sixty days of submission of a final completed application, the director shall provide the applicant with written notice of a determination by the office approving or denying such certification and, in the event of a denial a statement setting forth the reasons for such denial. Upon a determination denying or revoking certification, the business enterprise for which certification has been so denied or revoked shall, upon written request made within thirty days from receipt of notice of such determination, be entitled to a hearing before an independent hearing officer designated for such purpose by the director. In the event that a request for a hearing is not made within such thirty day period, such determination shall be deemed to be final. The independent hearing officer shall conduct a hearing and upon the conclusion of such hearing, issue a written recommendation to the director to affirm, reverse or modify such determination of the director. Such written recommendation shall be issued to the parties. The director, within thirty days, by order, must accept, reject or modify such recommendation of the hearing officer and set forth in writing the reasons therefor. The director shall serve a copy of such order and reasons therefor upon the business enterprise by personal service or by certified mail return receipt requested. The

order of the director shall be subject to review pursuant to article seventy-eight of the civil practice law and rules. RECERTIFICATION SHALL BE REQUIRED EVERY THREE YEARS.

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