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I N S E N A T E

March 16, 2012

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

AN ACT to amend the executive law, in relation to including the provision of professional services in the minority and women-owned business enterprise program

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

1 Section 1. Subdivision 13 of section 310 of the executive law, as
2 amended by chapter 506 of the laws of 2009, is amended and a new subdi-
3 vision 23 is added to read as follows:
4 13. "State contract" shall mean: (a) a written agreement or purchase
5 order instrument, providing for a total expenditure in excess of twen-
6 ty-five thousand dollars, whereby a contracting agency is committed to
7 expend or does expend funds in return for labor, services including but
8 not limited to legal, financial and other professional services,
9 supplies, equipment, materials or any combination of the foregoing, to
10 be performed for, or rendered or furnished to the contracting agency;
11 (b) A WRITTEN AGREEMENT, PROVIDING FOR A TOTAL EXPENDITURE IN EXCESS OF
12 FIVE THOUSAND DOLLARS, WHEREBY A CONTRACTING AGENCY IS COMMITTED TO
13 EXPEND OR DOES EXPEND FUNDS IN RETURN FOR PROFESSIONAL SERVICES TO BE
14 PERFORMED FOR, OR RENDERED OR FURNISHED TO THE CONTRACTING AGENCY; (C) a
15 written agreement in excess of one hundred thousand dollars whereby a
16 contracting agency is committed to expend or does expend funds for the
17 acquisition, construction, demolition, replacement, major repair or
18 renovation of real property and improvements thereon; and [(c)] (D) a
19 written agreement in excess of one hundred thousand dollars whereby the
20 owner of a state assisted housing project is committed to expend or does
21 expend funds for the acquisition, construction, demolition, replacement,
22 major repair or renovation of real property and improvements thereon for
23 such project.
24 23. "PROFESSIONAL SERVICES" SHALL MEAN THE PROVISION OF SERVICE FOR
25 WHICH THE PROVIDER OF SUCH SERVICE IS REQUIRED TO HOLD A LICENSE ISSUED
26 PURSUANT TO TITLE EIGHT OF THE EDUCATION LAW OR ARTICLE FIFTEEN OF THE
27 JUDICIARY LAW.

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

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1 S 2. Paragraphs (d), (e) and (f) of subdivision 3 of section 311 of
2 the executive law, paragraphs (d) and (e) as amended by chapter 55 of
3 the laws of 1992 and paragraph (f) as added by chapter 261 of the laws
4 of 1988, are amended to read as follows:

5 (d) to review periodically the practices and procedures of each
6 contracting agency with respect to compliance with the provisions of
7 this article, and to require them to file periodic reports with the
8 division of minority and women's business development as to the level of
9 minority and women-owned business enterprises participation in the
10 awarding of agency contracts for goods [and], services AND PROFESSIONAL
11 SERVICES;

12 (e) on January first of each year report to the governor and the
13 chairpersons of the senate finance and assembly ways and means commit-
14 tees on the level of minority and women-owned business enterprises
15 participating in each agency's contracts for goods [and], services AND
16 PROFESSIONAL SERVICES and on activities of the office and effort by each
17 contracting agency to promote employment of minority group members and
18 women, and to promote and increase participation by certified businesses
19 with respect to state contracts and subcontracts so as to facilitate the
20 award of a fair share of state contracts to such businesses. The comp-
21 troller shall assist the division in collecting information on the
22 participation of certified business for each contracting agency. Such
23 report may recommend new activities and programs to effectuate the
24 purposes of this article;

25 (f) to prepare and update periodically a directory of certified minor-
26 ity and women-owned business enterprises which shall, wherever practica-
27 ble, be divided into categories of labor, services, PROFESSIONAL
28 SERVICES, supplies, equipment, materials and recognized construction
29 trades and which shall indicate areas or locations of the state where
30 such enterprises are available to perform services;

31 S 3. Paragraph (a) of subdivision 1 of section 312-a of the executive
32 law, as amended by chapter 175 of the laws of 2010, is amended to read
33 as follows:

34 (a) to determine whether there is a disparity between the number of
35 qualified minority and women-owned businesses ready, willing and able to
36 perform state contracts for commodities, services, PROFESSIONAL SERVICES
37 and construction, and the number of such contractors actually engaged to
38 perform such contracts, and to determine what changes, if any, should be
39 made to state policies affecting minority and women-owned business
40 enterprises; and

41 S 4. Paragraphs (j) and (k) of subdivision 1 of section 313 of the
42 executive law, as added by chapter 175 of the laws of 2010, are amended
43 and two new paragraphs (l) and (m) are added to read as follows:

44 (j) overall agency total dollar value of procurement for certified
45 women-owned business enterprises: twelve and thirty-nine hundredths
46 percent; [and]

47 (k) overall agency total dollar value of procurement for certified
48 minority, women-owned business enterprises: twenty-eight and ninety-two
49 hundredths percent[.];

50 (L) PROFESSIONAL SERVICES FOR CERTIFIED MINORITY-OWNED BUSINESS ENTER-
51 PRISES: FIFTEEN PERCENT; AND

52 (M) PROFESSIONAL SERVICES FOR CERTIFIED WOMEN-OWNED BUSINESS ENTER-
53 PRISES: FIFTEEN PERCENT.

54 S 5. Section 313-a of the executive law, as added by chapter 175 of
55 the laws of 2010, is amended to read as follows:

1 S 313-a. Diversity practices of state contractors. The director shall
2 promulgate rules and regulations setting forth measures and procedures
3 to require all contracting agencies, where practicable, feasible and
4 appropriate, to assess the diversity practices of contractors submitting
5 bids or proposals in connection with the award of a state contract. Such
6 rules and regulations shall take into account: the nature of the labor,
7 services, PROFESSIONAL SERVICES, supplies, equipment or materials being
8 procured by the state agency; the method of procurement required to be
9 used by a state agency to award the contract and minority and women-
10 owned business utilization plans required to be submitted pursuant to
11 sections three hundred twelve and three hundred thirteen of this arti-
12 cle; and such other factors as the director deems appropriate or neces-
13 sary to promote the award of state contracts to contractors having sound
14 diversity practices. Such assessment shall not in any way permit the
15 automatic rejection of a bid or procurement contract proposal based on
16 lack of adherence to diversity practices. Each bid or proposal shall be
17 analyzed on an individual per bid or per proposal basis with the
18 contractor's diversity practices considered as only a part of a wider
19 consideration of several factors when deciding to award or decline to
20 award a bid or proposal. The director shall develop the rules and regu-
21 lations required hereunder only after consultation with the state
22 procurement council established by section one hundred sixty-one of the
23 state finance law.

24 S 6. This act shall take effect on the first of January next succeed-
25 ing the date on which it shall have become a law; provided that the
26 amendments to article 15-A of the executive law made by sections one,
27 two, three, four and five of this act, shall not affect the expiration
28 of such article and shall expire therewith. Provided, further, that,
29 effective immediately, any rules and regulations necessary to implement
30 the provisions of this act on its effective date are authorized and
31 directed to be completed on or before such date.