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

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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:

Section 1. Subdivision 13 of section 310 of the executive law, as amended by chapter 506 of the laws of 2009, is amended and a new subdivision 23 is added to read as follows:

13. "State contract" shall mean: (a) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars, whereby a contracting agency is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; (b) A WRITTEN AGREEMENT, PROVIDING FOR A TOTAL EXPENDITURE IN EXCESS OF FIVE THOUSAND DOLLARS, WHEREBY A CONTRACTING AGENCY IS COMMITTED TO EXPEND OR DOES EXPEND FUNDS IN RETURN FOR PROFESSIONAL SERVICES TO BE PERFORMED FOR, OR RENDERED OR FURNISHED TO THE CONTRACTING AGENCY; (C) a written agreement in excess of one hundred thousand dollars whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; and [(c)] (D) a written agreement in excess of one hundred thousand dollars whereby the owner of a state assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project.

23. "PROFESSIONAL SERVICES" SHALL MEAN THE PROVISION OF SERVICE FOR WHICH THE PROVIDER OF SUCH SERVICE IS REQUIRED TO HOLD A LICENSE ISSUED PURSUANT TO TITLE EIGHT OF THE EDUCATION LAW OR ARTICLE FIFTEEN OF THE JUDICIARY LAW.

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

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

(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 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 AND PROFESSIONAL SERVICES;

(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 of minority and women-owned business enterprises participating in each agency's contracts for goods [and], services AND PROFESSIONAL SERVICES 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, PROFESSIONAL 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;

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

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

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

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

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

(L) PROFESSIONAL SERVICES FOR CERTIFIED MINORITY-OWNED BUSINESS ENTERPRISES: FIFTEEN PERCENT; AND

(M) PROFESSIONAL SERVICES FOR CERTIFIED WOMEN-OWNED BUSINESS ENTERPRISES: FIFTEEN PERCENT.

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

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

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