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

5968

2013-2014 Regular Sessions

I N S E N A T E

October 25, 2013

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

AN ACT to amend the executive law, the economic development law, the New York state urban development corporation act, the facilities development corporation act and the New York state medical care facilities finance agency act, in relation to providing veterans with access to certain economic programs and incentives, and to expanding the population served by the division of minority and women's business development; to amend the state finance law, the retirement and social security law, the public authorities law, the arts and cultural affairs law, the banking law, the environmental conservation law and the general municipal law, in relation to making conforming changes; and to amend the administrative code of the city of New York, in relation to providing veterans with access to certain economic programs and incentives

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

Section 1. This act shall be known and may be cited as "OORAH! An ACT Opening Opportunities, Resources and Access for Heroes".

S 1-a. The article heading of article 15-A of the executive law, as added by chapter 261 of the laws of 1988, is amended to read as follows:

PARTICIPATION BY MINORITY GROUP MEMBERS [AND],
WOMEN AND VETERANS WITH RESPECT TO STATE CONTRACTS

S 2. Subdivisions 1, 4, 9, 10, 19 and 22 of section 310 of the executive law, subdivisions 1 and 9 as added by chapter 261 of the laws of 1988, subdivisions 4 and 10 as amended by chapter 55 of the laws of 1992 and subdivisions 19 and 22 as added by chapter 175 of the laws of 2010, are amended and a new subdivision 15-a is added to read as follows:

1. "Certified business" shall mean a business verified as a minority [or women-owned], WOMEN OR VETERAN-OWNED business enterprise pursuant to section three hundred fourteen of this article.

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

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4. "Director" shall mean the director of the division of minority [and women's], WOMEN AND VETERANS' business development in the department of economic development.

9. "Utilization plan" shall mean a plan prepared by a contractor and submitted in connection with a proposed state contract. The utilization plan shall identify certified minority [or women-owned], WOMEN OR VETERAN-OWNED business enterprises, if known, that have committed to perform work in connection with the proposed state contract as well as any such enterprises, if known, which the contractor intends to use in connection with the contractor's performance of the proposed state contract. The plan shall specifically contain a list, including the name, address and telephone number, of each certified enterprise with which the contractor intends to subcontract.

10. "Office" shall mean the division of minority [and], women's AND VETERANS' business development in the department of economic development.

15-A. "VETERAN-OWNED BUSINESS ENTERPRISE" SHALL MEAN A BUSINESS ENTERPRISE, INCLUDING A SOLE PROPRIETORSHIP, PARTNERSHIP OR CORPORATION THAT IS:

(A) AT LEAST FIFTY-ONE PERCENT OWNED BY ONE OR MORE UNITED STATES CITIZENS OR PERMANENT RESIDENT ALIENS WHO ARE HONORABLY DISCHARGED UNITED STATES VETERANS;

(B) AN ENTERPRISE IN WHICH THE OWNERSHIP INTEREST OF SUCH VETERANS IS REAL, SUBSTANTIAL AND CONTINUING;

(C) AN ENTERPRISE IN WHICH SUCH VETERAN OWNERSHIP HAS AND EXERCISES THE AUTHORITY TO CONTROL INDEPENDENTLY THE DAY-TO-DAY BUSINESS DECISIONS OF THE ENTERPRISE;

(D) AN ENTERPRISE AUTHORIZED TO DO BUSINESS IN THIS STATE AND INDEPENDENTLY OWNED AND OPERATED;

(E) AN ENTERPRISE OWNED BY AN INDIVIDUAL OR INDIVIDUALS, WHOSE OWNERSHIP, CONTROL AND OPERATION ARE RELIED UPON FOR CERTIFICATION, WITH A PERSONAL NET WORTH THAT DOES NOT EXCEED THREE MILLION FIVE HUNDRED THOUSAND DOLLARS, AS ADJUSTED ANNUALLY ON THE FIRST OF JANUARY FOR INFLATION ACCORDING TO THE CONSUMER PRICE INDEX OF THE PREVIOUS YEAR; AND

(F) AN ENTERPRISE THAT IS A SMALL BUSINESS PURSUANT TO SUBDIVISION TWENTY OF THIS SECTION.

A FIRM OWNED BY A MINORITY GROUP MEMBER WHO IS ALSO A VETERAN MAY BE CERTIFIED AS A MINORITY-OWNED BUSINESS ENTERPRISE, A VETERAN-OWNED BUSINESS ENTERPRISE, OR BOTH, AND MAY BE COUNTED TOWARDS EITHER A MINORITY-OWNED BUSINESS ENTERPRISE GOAL OR A VETERAN-OWNED BUSINESS ENTERPRISE GOAL, IN REGARD TO ANY CONTRACT OR ANY GOAL, SET BY AN AGENCY OR AUTHORITY, BUT SUCH PARTICIPATION MAY NOT BE COUNTED TOWARDS BOTH SUCH GOALS. SUCH AN ENTERPRISE'S PARTICIPATION IN A CONTRACT MAY NOT BE DIVIDED BETWEEN THE MINORITY-OWNED BUSINESS ENTERPRISE GOAL AND THE VETERAN-OWNED BUSINESS ENTERPRISE GOAL. A FIRM OWNED BY A WOMAN WHO IS ALSO A VETERAN MAY BE CERTIFIED AS A WOMEN-OWNED BUSINESS ENTERPRISE, A VETERAN-OWNED BUSINESS ENTERPRISE, OR BOTH, AND MAY BE COUNTED TOWARDS EITHER A WOMEN-OWNED BUSINESS ENTERPRISE GOAL OR A VETERAN-OWNED BUSINESS ENTERPRISE GOAL, IN REGARD TO ANY CONTRACT OR ANY GOAL, SET BY AN AGENCY OR AUTHORITY, BUT SUCH PARTICIPATION MAY NOT BE COUNTED TOWARDS BOTH SUCH GOALS. SUCH AN ENTERPRISE'S PARTICIPATION IN A CONTRACT MAY NOT BE DIVIDED BETWEEN THE WOMEN-OWNED BUSINESS ENTERPRISE GOAL AND THE VETERAN-OWNED BUSINESS ENTERPRISE GOAL.

19. "Personal net worth" shall mean the aggregate adjusted net value of the assets of an individual remaining after total liabilities are deducted. Personal net worth includes the individual's share of assets

held jointly with said individual's spouse and does not include the individual's ownership interest in the certified minority [and women-owned], WOMEN OR VETERAN-OWNED business enterprise, the individual's equity in his or her primary residence, or up to five hundred thousand dollars of the present cash value of any qualified retirement savings plan or individual retirement account held by the individual less any penalties for early withdrawal.

22. "Diversity practices" shall mean the contractor's practices and policies with respect to:

(a) utilizing certified minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises in contracts awarded by a state agency or other public corporation, as subcontractors and suppliers; and

(b) entering into partnerships, joint ventures or other similar arrangements with certified minority [and women-owned], WOMEN OR VETERAN-OWNED business enterprises as defined in this article or other applicable statute or regulation governing an entity's utilization of minority [or women-owned], WOMEN OR VETERAN-OWNED business enterprises.

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

Division of minority [and], women's AND VETERANS' business development. 1. The head of the division of minority [and], women's AND VETERANS' business development shall be the director who shall be appointed by the governor and hold office at the pleasure of the commissioner. It shall be the duty of the director of the division of minority [and], women's AND VETERANS' business development to assist the governor in the formulation and implementation of laws and policies relating to minority [and women-owned] WOMEN AND VETERAN-OWNED business enterprises.

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

(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 AND VETERANS' business development as to the level of minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises participation in the awarding of agency contracts for goods and 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], WOMEN AND VETERAN-OWNED business enterprises participating in each agency's contracts for goods and services and on activities of the office and effort by each contracting agency to promote employment of minority group members [and], women AND VETERANS, 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], WOMEN AND VETERAN-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;

S 3-a. Paragraph (c) of subdivision 4 of section 311 of the executive law, as added by chapter 361 of the laws of 2009, is amended to read as follows:

(c) seek to maximize utilization by minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises of available federal resources including but not limited to federal grants, loans, loan guarantees, surety bonding guarantees, technical assistance, and programs and services of the federal small business administration.

S 4. The section heading and subdivisions 1, 2 and 3 of section 311-a of the executive law, as added by section 4 of part BB of chapter 59 of the laws of 2006, are amended to read as follows:

Minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprise statewide advocate. 1. There is hereby established within the department of economic development an office of the minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprise statewide advocate. The statewide advocate shall be appointed by the commissioner with the advice of the small business advisory board as established in section one hundred thirty-three of the economic development law and shall serve in the unclassified service of the director. The statewide advocate shall be located in the Albany empire state development office.

2. The advocate shall act as a liaison for minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises [(MWBEs)] (MWVBES) to assist them in obtaining technical, managerial, financial and other business assistance for certified businesses and applicants. The advocate shall investigate complaints brought by or on behalf of [MWBEs] (MWVBES) concerning certification delays and instances of violations of law by state agencies. The statewide advocate shall assist certified businesses and applicants in the certification process. Other functions of the statewide advocate shall be directed by the commissioner. The advocate may request and the director may appoint staff and employees of the division of minority [and women], WOMEN'S AND VETERANS' business development to support the administration of the office of the statewide advocate.

3. The statewide advocate shall establish a toll-free number at the department of economic development to be used to answer questions concerning the [MWBE] MWVBE certification process.

S 5. The section heading and paragraph (a) of subdivision 1 of section 312 of the executive law, as added by chapter 261 of the laws of 1988, are amended to read as follows:

Equal employment opportunities for minority group members [and], women AND VETERANS.

(a) The contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members [and], women AND VETERANS are afforded equal employment opportunities without discrimination. For purposes of this article affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

S 6. Section 312-a of the executive law, as amended by chapter 175 of the laws of 2010, is amended to read as follows:

S 312-a. Study of minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprise programs. 1. The director of the division of minority [and women-owned], WOMEN AND VETERAN-OWNED business development in the department of economic development is authorized and directed to recommission a statewide disparity study regarding the participation of minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises in state contracts since the amendment of this article to be delivered to the governor and legislature no later than February fifteenth, two thousand [sixteen] FIFTEEN. The study shall be prepared by an entity independent of the department and selected through a request for proposal process. The purpose of such study is:

(a) to determine whether there is a disparity between the number of qualified minority [and women-owned], WOMEN AND VETERAN-OWNED businesses ready, willing and able to perform state contracts for commodities, 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], WOMEN AND VETERAN-OWNED business enterprises; and (b) to determine whether there is a disparity between the number of qualified minorities [and], women AND VETERANS ready, willing and able, with respect to labor markets, qualifications and other relevant factors, to participate in contractor employment, management level bodies, including boards of directors, and as senior executive officers within contracting entities and the number of such group members actually employed or affiliated with state contractors in the aforementioned capacities, and to determine what changes, if any, should be made to state policies affecting minority [and], women AND VETERAN group populations with regard to state contractors' employment and appointment practices relative to diverse group members. Such study shall include, but not be limited to, an analysis of the history of minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprise programs and their effectiveness as a means of securing and ensuring participation by minorities [and], women AND VETERANS, and a disparity analysis by market area and region of the state. Such study shall distinguish between minority males, minority females and non-minority females, AND BETWEEN MINORITY VETERANS AND NON-MINORITY VETERANS, AND FEMALE VETERANS AND MALE VETERANS, in the statistical analysis.

2. The director of the division of minority [and women-owned], WOMEN AND VETERAN-OWNED business development is directed to transmit the disparity study to the governor and the legislature not later than February fifteenth, two thousand [sixteen] FIFTEEN, and to post the study on the website of the department of economic development.

S 7. Section 313 of the executive law, as amended by chapter 175 of the laws of 2010, is amended to read as follows:

S 313. Opportunities for minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises. 1. Goals and requirements for agencies and contractors. Each agency shall structure procurement procedures for contracts made directly or indirectly to minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises, [in accordance with the findings of the two thousand ten disparity study,] consistent with the purposes of this article, to attempt to achieve the following results with regard to total annual statewide procurement:

(a) construction industry for certified minority-owned business enterprises: fourteen and thirty-four hundredths percent;

(b) construction industry for certified women-owned business enterprises: eight and forty-one hundredths percent;
(B-1) CONSTRUCTION INDUSTRY FOR CERTIFIED VETERAN-OWNED BUSINESS ENTERPRISES: A PERCENTAGE TO BE DETERMINED BY THE DISPARITY STUDY DESCRIBED IN SUBDIVISION ONE OF SECTION THREE HUNDRED TWELVE-A OF THIS ARTICLE;
(c) construction related professional services industry for certified minority-owned business enterprises: thirteen and twenty-one hundredths percent;
(d) construction related professional services industry for certified women-owned business enterprises: eleven and thirty-two hundredths percent;
(D-1) CONSTRUCTION RELATED PROFESSIONAL SERVICES INDUSTRY FOR CERTIFIED VETERAN-OWNED BUSINESS ENTERPRISES: A PERCENTAGE TO BE DETERMINED BY THE DISPARITY STUDY DESCRIBED IN SUBDIVISION ONE OF SECTION THREE HUNDRED TWELVE-A OF THIS ARTICLE;
(e) non-construction related services industry for certified minority-owned business enterprises: nineteen and sixty hundredths percent;
(f) non-construction related services industry for certified women-owned business enterprises: seventeen and forty-four hundredths percent;
(F-1) NON-CONSTRUCTION RELATED SERVICES INDUSTRY FOR CERTIFIED VETERAN-OWNED BUSINESS ENTERPRISES: A PERCENTAGE TO BE DETERMINED BY THE DISPARITY STUDY DESCRIBED IN SUBDIVISION ONE OF SECTION THREE HUNDRED TWELVE-A OF THIS ARTICLE;
(g) commodities industry for certified minority-owned business enterprises: sixteen and eleven hundredths percent;
(h) commodities industry for certified women-owned business enterprises: ten and ninety-three hundredths percent;
(H-1) COMMODITIES INDUSTRY FOR CERTIFIED VETERAN-OWNED BUSINESS ENTERPRISES: A PERCENTAGE TO BE DETERMINED BY THE DISPARITY STUDY DESCRIBED IN SUBDIVISION ONE OF SECTION THREE HUNDRED TWELVE-A OF THIS ARTICLE;
(i) overall agency total dollar value of procurement for certified minority-owned business enterprises: sixteen and fifty-three hundredths percent;
(j) overall agency total dollar value of procurement for certified women-owned business enterprises: twelve and thirty-nine hundredths percent; [and]
(J-1) OVERALL AGENCY TOTAL DOLLAR VALUE OF PROCUREMENT FOR CERTIFIED VETERAN-OWNED BUSINESS ENTERPRISES: A PERCENTAGE TO BE DETERMINED BY THE DISPARITY STUDY DESCRIBED IN SUBDIVISION ONE OF SECTION THREE HUNDRED TWELVE-A OF THIS ARTICLE;
(k) overall agency total dollar value of procurement for certified minority, women-owned business enterprises: twenty-eight and ninety-two hundredths percent; AND
(L) OVERALL AGENCY TOTAL DOLLAR VALUE OF PROCUREMENT FOR CERTIFIED MINORITY, WOMEN, VETERAN-OWNED BUSINESS ENTERPRISES: A PERCENTAGE TO BE DETERMINED BY THE DISPARITY STUDY DESCRIBED IN SUBDIVISION ONE OF SECTION THREE HUNDRED TWELVE-A OF THIS ARTICLE.
1-a. The director shall ensure that each state agency has been provided with a copy of the two thousand ten disparity study AND THEREAFTER THE TWO THOUSAND FIFTEEN DISPARITY STUDY.
1-b. Each agency shall develop and adopt agency-specific goals based on the findings of the two thousand ten disparity study AND THEREAFTER THE TWO THOUSAND FIFTEEN DISPARITY STUDY.
2. The director shall promulgate rules and regulations pursuant to the goals established in subdivision one of this section that provide meas-

ures and procedures to ensure that certified minority [and women-owned], WOMEN AND VETERAN-OWNED businesses shall be given the opportunity for maximum feasible participation in the performance of state contracts and to assist in the agency's identification of those state contracts for which minority [and women-owned], WOMEN AND VETERAN-OWNED 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 agency's achievement of the maximum feasible portion of the goals for state contracts to such businesses.

2-a. The director shall promulgate rules and regulations that will accomplish the following:

(a) provide for the certification and decertification of minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises for all agencies through a single process that meets applicable requirements;

(b) require that each contract solicitation document accompanying each solicitation set forth the expected degree of minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprise participation based, in part, on:

(i) the potential subcontract opportunities available in the prime procurement contract; and

(ii) the availability, as contained within the study, of certified minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises to respond competitively to the potential subcontract opportunities;

(c) require that each agency provide a current list of certified minority, WOMEN AND VETERAN-OWNED business enterprises to each prospective contractor;

(d) allow a contractor that is a certified [minority-owned or women-owned] MINORITY, WOMEN OR VETERAN-OWNED business enterprise to use the work it performs to meet requirements for use of certified [minority-owned or women-owned] MINORITY, WOMEN OR VETERAN-OWNED business enterprises as subcontractors;

(e) provide for joint ventures, which a bidder may count toward meeting its minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprise participation;

(f) consistent with subdivision six of this section, provide for circumstances under which an agency may waive obligations of the contractor relating to minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprise participation;

(g) require that an agency verify that minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises listed in a successful bid are actually participating to the extent listed in the project for which the bid was submitted;

(h) provide for the collection of statistical data by each agency concerning actual minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprise participation; and

(i) require each agency to consult the most current disparity study when calculating agency-wide and contract specific participation goals pursuant to this article.

3. Solely for the purpose of providing the opportunity for meaningful participation by certified businesses in the performance of state contracts as provided in this section, state contracts shall include leases of real property by a state agency to a lessee where: the terms of such leases provide for the construction, demolition, replacement, major repair or renovation of real property and improvements thereon by such lessee; and the cost of such construction, demolition, replacement, major repair or renovation of real property and improvements thereon

shall exceed the sum of one hundred thousand dollars. Reports to the director pursuant to section three hundred fifteen of this article shall include activities with respect to all such state contracts. Contracting agencies shall include or require to be included with respect to state contracts for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon, such provisions as may be necessary to effectuate the provisions of this section in every bid specification and state contract, including, but not limited to: (a) provisions requiring contractors to make a good faith effort to solicit active participation by enterprises identified in the directory of certified businesses provided to the contracting agency by the office; (b) requiring the parties to agree as a condition of entering into such contract, to be bound by the provisions of section three hundred sixteen of this article; and (c) requiring the contractor to include the provisions set forth in paragraphs (a) and (b) of this subdivision in every subcontract in a manner that the provisions will be binding upon each subcontractor as to work in connection with such contract. Provided, however, that no such provisions shall be binding upon contractors or subcontractors in the performance of work or the provision of services that are unrelated, separate or distinct from the state contract as expressed by its terms, and nothing in this section shall authorize the director or any contracting agency to impose any requirement on a contractor or subcontractor except with respect to a state contract.

4. In the implementation of this section, the contracting agency shall (a) consult the findings contained within the disparity study evidencing relevant industry specific availability of certified businesses;

(b) implement a program that will enable the agency to evaluate each contract to determine the appropriateness of the goal pursuant to subdivision one of this section;

(c) consider where practicable, the severability of construction projects and other bundled contracts; and

(d) consider compliance with the requirements of any federal law concerning opportunities for minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of any such law duplicate or conflict with the provisions hereof and if such duplication or conflict exists, the contracting agency shall waive the applicability of this section to the extent of such duplication or conflict.

5. (a) Contracting agencies shall administer the rules and regulations promulgated by the director in a good faith effort to meet the maximum feasible portion of the agency's goals adopted pursuant to this article and the regulations of the director. 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 six 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], WOMEN AND VETERAN-OWNED business enterprise participation requirements pursuant to subdivisions six and seven of this section; shall allow a contractor to file a complaint with the director pursuant to subdivision eight of this section in the event a contracting agency has failed or refused to issue a waiver of the minority [and women-owned], WOMEN AND VETERAN-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 nine of this section in the event a contractor is failing or has failed to comply with the minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprise participation requirements set forth in the state contract where no waiver has been granted.

(b) The rules and regulations promulgated pursuant to this subdivision regarding a utilization plan shall provide that where enterprises have been identified within a utilization plan, a contractor shall attempt, in good faith, to utilize such enterprise at least to the extent indicated. A contracting agency may require a contractor to indicate, within a utilization plan, what measures and procedures he or she intends to take to comply with the provisions of this article, but may not require, as a condition of award of, or compliance with, a contract that a contractor utilize a particular enterprise in performance of the contract.

(c) Without limiting other grounds for the disqualification of bids or proposals on the basis of non-responsibility, a contracting agency may disqualify the bid or proposal of a contractor as being non-responsible for failure to remedy notified deficiencies contained in the contractor's utilization plan within a period of time specified in regulations promulgated by the director after receiving notification of such deficiencies from the contracting agency. Where failure to remedy any notified deficiency in the utilization plan is a ground for disqualification, that issue and all other grounds for disqualification shall be stated in writing by the contracting agency. Where the contracting agency states that a failure to remedy any notified deficiency in the utilization plan is a ground for disqualification the contractor shall be entitled to an administrative hearing, on a record, involving all grounds stated by the contracting agency. Such hearing shall be conducted by the appropriate authority of the contracting agency to review the determination of disqualification. A final administrative determination made following such hearing shall be reviewable in a proceeding commenced under article seventy-eight of the civil practice law and rules, provided that such proceeding is commenced within thirty days of the notice given by certified mail return receipt requested rendering such final administrative determination. Such proceeding shall be commenced in the supreme court, appellate division, third department and such proceeding shall be preferred over all other civil causes except election causes, and shall be heard and determined in preference to all other civil business pending therein, except election matters, irrespective of position on the calendar. Appeals taken to the court of appeals of the state of New York shall be subject to the same preference.

6. Where it appears that a contractor cannot, after a good faith effort, comply with the minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprise participation requirements set forth in a particular state contract, a contractor may file a written applica-

tion with the contracting agency requesting a partial or total waiver of such requirements setting forth the reasons for such contractor's inability to meet any or all of the participation requirements together with an explanation of the efforts undertaken by the contractor to obtain the required minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprise participation. In implementing the provisions of this section, the contracting agency shall consider the number and types of minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises located in the region in which the state contract is to be performed, the total dollar value of the state contract, the scope of work to be performed and the project size and term. If, based on such considerations, the contracting agency determines there is not a reasonable availability of contractors on the list of certified [business] BUSINESSES to furnish services for the project, it shall issue a waiver of compliance to the contractor. In making such determination, the contracting agency shall first consider the availability of other business enterprises located in the region and shall thereafter consider the financial ability of minority [and women-owned], WOMEN AND VETERAN-OWNED businesses located outside the region in which the contract is to be performed to perform the state contract.

7. For purposes of determining a contractor's good faith effort to comply with the requirements of this section or to be entitled to a waiver therefrom the contracting agency shall consider:

(a) whether the contractor has advertised in general circulation media, trade association publications, and [minority-focus and women-focus] MINORITY-FOCUSED, WOMEN-FOCUSED AND VETERAN-FOCUSED media and, in such event, (i) whether or not certified minority [or women-owned], WOMEN OR VETERAN-OWNED businesses which have been solicited by the contractor exhibited interest in submitting proposals for a particular project by attending a pre-bid conference; and

(ii) whether certified businesses which have been solicited by the contractor have responded in a timely fashion to the contractor's solicitations for timely competitive bid quotations prior to the contracting agency's bid date; and

(b) whether there has been written notification to appropriate certified businesses that appear in the directory of certified businesses prepared pursuant to paragraph (f) of subdivision three of section three hundred eleven of this article; and

(c) whether the contractor can reasonably structure the amount of work to be performed under subcontracts in order to increase the likelihood of participation by certified businesses.

8. In the event that a contracting agency fails or refuses to issue a waiver to a contractor as requested within twenty days after having made application therefor pursuant to subdivision six of this section or if the contracting agency denies such application, in whole or in part, the contractor may file a complaint with the director pursuant to section three hundred sixteen of this article setting forth the facts and circumstances giving rise to the contractor's complaint together with a demand for relief. The contractor shall serve a copy of such complaint upon the contracting agency by personal service or by certified mail, return receipt requested. The contracting agency shall be afforded an opportunity to respond to such complaint in writing.

9. If, after the review of a contractor's minority [and women owned], WOMEN AND VETERAN-OWNED business utilization plan or review of a periodic compliance report and after such contractor has been afforded an opportunity to respond to a notice of deficiency issued by the contract-

ing agency in connection therewith, it appears that a contractor is failing or refusing to comply with the minority [and women-owned], WOMEN AND VETERAN-OWNED business participation requirements as set forth in the state contract and where no waiver from such requirements has been granted, the contracting agency may file a written complaint with the director pursuant to section three hundred sixteen of this article setting forth the facts and circumstances giving rise to the contracting agency's complaint together with a demand for relief. The contracting agency shall serve a copy of such complaint upon the contractor by personal service or by certified mail, return receipt requested. The contractor shall be afforded an opportunity to respond to such complaint in writing.

S 8. 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, 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], WOMEN AND VETERAN-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 9. Subdivisions 2 and 2-a of section 314 of the executive law, subdivision 2 as added by chapter 261 of the laws of 1988 and subdivision 2-a as amended by chapter 175 of the laws of 2010, are amended to read as follows:

2. For the purposes of this article, the office shall be responsible for verifying businesses as being owned, operated, and controlled by minority group members [or], women OR VETERANS and for certifying such verified businesses. The director shall prepare a directory of certified businesses for use by contracting agencies and contractors in carrying out the provisions of this article. The director shall periodically update the directory.

2-a. (a) The director shall establish a procedure enabling the office to accept New York municipal corporation certification verification for minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprise applicants in lieu of requiring the applicant to complete the state certification process. The director shall promulgate rules and regulations to set forth criteria for the acceptance of municipal corporation certification. All eligible municipal corporation certifications

shall require business enterprises seeking certification to meet the following standards:

(i) have at least fifty-one percent ownership by a minority [or a women-owned], WOMEN OR VETERAN-OWNED enterprise and be owned by United States citizens or permanent resident aliens;

(ii) be an enterprise in which the minority [and/or women-ownership], WOMEN AND/OR VETERAN-OWNERSHIP interest is real, substantial and continuing;

(iii) be an enterprise in which the minority [and/or women-ownership], WOMEN AND/OR VETERAN-OWNERSHIP has and exercises the authority to control independently the day-to-day business decisions of the enterprise;

(iv) be an enterprise authorized to do business in this state;

(v) be subject to a physical site inspection to verify the fifty-one percent ownership requirement;

(vi) be owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars, as adjusted annually for inflation according to the consumer price index; and

(vii) be an enterprise that is a small business pursuant to subdivision twenty of section three hundred ten of this article.

(b) The director shall work with all municipal corporations that have a municipal minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprise program to develop standards to accept state certification to meet the municipal corporation minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprise certification standards.

(c) The director shall establish a procedure enabling the division to accept federal certification verification for minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprise applicants, provided said standards comport with those required by the state minority [and women-owned], WOMEN AND VETERAN-OWNED business program, in lieu of requiring the applicant to complete the state certification process. The director shall promulgate rules and regulations to set forth criteria for the acceptance of federal certification.

S 10. Subdivisions 3, 4, 5 and 7 of section 315 of the executive law, subdivision 3 as amended and subdivisions 4, 5 and 7 as added by chapter 175 of the laws of 2010, are amended to read as follows:

3. Each contracting agency shall report to the director with respect to activities undertaken to promote employment of minority group members [and], women AND VETERANS and promote and increase participation by certified businesses with respect to state contracts and subcontracts. Such reports shall be submitted periodically, but not less frequently than annually, as required by the director, and shall include such information as is necessary for the director to determine whether the contracting agency and contractor have complied with the purposes of this article, including, without limitation, a summary of all waivers of the requirements of subdivisions six and seven of section three hundred thirteen of this article allowed by the contracting agency during the period covered by the report, including a description of the basis of the waiver request and the rationale for granting any such waiver. Each agency shall also include in such annual report whether or not it has been required to prepare a remedial plan, and, if so, the plan and the extent to which the agency has complied with each element of the plan.

4. The division of minority [and], women's AND VETERANS' business development shall issue an annual report which: (a) summarizes the

report submitted by each contracting agency pursuant to subdivision three of this section; (b) contains such comparative or other information as the director deems appropriate, including but not limited to goals compared to actual participation of minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises in state contracting, to evaluate the effectiveness of the activities undertaken by each such contracting agency to promote increased participation by certified minority [or women-owned], WOMEN OR VETERAN-OWNED businesses with respect to state contracts and subcontracts; (c) contains a summary of all waivers of the requirements of subdivisions six and seven of section three hundred thirteen of this article allowed by each contracting agency during the period covered by the report, including a description of the basis of the waiver request and the contracting agency's rationale for granting any such waiver; (d) describes any efforts to create a database or other information storage and retrieval system containing information relevant to contracting with minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises; and (e) contains a summary of (i) all determinations of violations of this article by a contractor or a contracting agency made during the period covered by the annual report pursuant to section three hundred sixteen-a of this article and (ii) the penalties or sanctions, if any, assessed in connection with such determinations and the rationale for such penalties or sanctions. Copies of the annual report shall be provided to the commissioner, the governor, the comptroller, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate, the minority leader of the assembly and shall also be made widely available to the public via, among other things, publication on a website maintained by the division of minority [and], women's AND VETERANS' business development.

5. Each agency shall include in its annual report to the governor and legislature pursuant to section one hundred sixty-four of [the executive law] THIS CHAPTER its annual goals for contracts with minority-owned [and], women-owned AND VETERAN-OWNED business enterprises, the number of actual contracts issued to minority-owned [and], women-owned AND VETERAN-OWNED business enterprises; and a summary of all waivers of the requirements of subdivisions six and seven of section three hundred thirteen of this article allowed by the reporting agency during the preceding year, including a description of the basis of the waiver request and the rationale for granting such waiver. Each agency shall also include in such annual report whether or not it has been required to prepare a remedial plan, and, if so, the plan and the extent to which the agency has complied with each element of the plan.

7. If it is determined by the director that any agency has failed to act in good faith to implement the remedial action plan, pursuant to subdivision six of this section within one year, the director shall provide written notice of such a finding, which shall be publicly available, and direct implementation of remedial actions to:

(a) assure that sufficient and effective solicitation efforts to women, VETERAN and minority-owned business enterprises are being made by said agency;

(b) divide contract requirements, when economically feasible, into quantities that will expand the participation of women, VETERAN and minority-owned business enterprises;

(c) eliminate extended experience or capitalization requirements, when programmatically and economically feasible, that will expand participation by women, VETERAN and minority-owned business enterprises;

(d) identify specific proposed contracts as particularly attractive or appropriate for participation by women, VETERAN and minority-owned business enterprises with such identification to result from and be coupled with the efforts of paragraphs (a), (b), and (c) of this subdivision; and

(e) upon a finding by the director that an agency has failed to take affirmative measures to implement the remedial plan and to follow any of the remedial actions set forth by the director, and in the absence of any objective progress towards the agency's goals, require some or all of the agency's procurement, for a specified period of time, be placed under the direction and control of another agency or agencies.

S 11. Section 316 of the executive law, as amended by chapter 175 of the laws of 2010, is amended to read as follows:

S 316. Enforcement. Upon receipt by the director of a complaint by a contracting agency that a contractor has violated the provisions of a state contract which have been included to comply with the provisions of this article or of a contractor that a contracting agency has violated such provisions or has failed or refused to issue a waiver where one has been applied for pursuant to subdivision six of section three hundred thirteen of this article or has denied such application, the director shall attempt to resolve the matter giving rise to such complaint. If efforts to resolve such matter to the satisfaction of all parties are unsuccessful, the director shall refer the matter, within thirty days of the receipt of the complaint, to the division's hearing officers. Upon conclusion of the administrative hearing, the hearing officer shall submit to the director his or her decision regarding the alleged violation of the contract and recommendations regarding the imposition of sanctions, fines or penalties. The director, within ten days of receipt of the decision, shall file a determination of such matter and shall cause a copy of such determination along with a copy of this article to be served upon the contractor by personal service or by certified mail return receipt requested. The decision of the hearing officer shall be final and may only be vacated or modified as provided in article seventy-eight of the civil practice law and rules upon an application made within the time provided by such article. The determination of the director as to the imposition of any fines, sanctions or penalties shall be reviewable pursuant to article seventy-eight of the civil practice law and rules. The penalties imposed for any violation which is premised upon either a fraudulent or intentional misrepresentation by the contractor or the contractor's willful and intentional disregard of the minority [and women-owned], WOMEN AND VETERAN-OWNED participation requirement included in the contract may include a determination that the contractor shall be ineligible to submit a bid to any contracting agency or be awarded any such contract for a period not to exceed one year following the final determination; provided however, if a contractor has previously been determined to be ineligible to submit a bid pursuant to this section, the penalties imposed for any subsequent violation, if such violation occurs within five years of the first violation, may include a determination that the contractor shall be ineligible to submit a bid to any contracting agency or be awarded any such contract for a period not to exceed five years following the final determination. The division of minority [and women's], WOMEN'S AND VETERANS' business development shall maintain a website listing all contractors that have been deemed ineligible to submit a bid pursuant to this section and the date after which each contractor shall once again become eligible to submit bids.

S 12. Section 316-a of the executive law, as added by chapter 175 of the laws of 2010, is amended to read as follows:

S 316-a. Prohibitions in contracts; violations. Every contracting agency shall include a provision in its state contracts expressly providing that any contractor who willfully and intentionally fails to comply with the minority [and women-owned], WOMEN AND VETERAN-OWNED participation requirements of this article as set forth in such state contract shall be liable to the contracting agency for liquidated or other appropriate damages and shall provide for other appropriate remedies on account of such breach. A contracting agency that elects to proceed against a contractor for breach of contract as provided in this section shall be precluded from seeking enforcement pursuant to section three hundred sixteen of this article; provided however, that the contracting agency shall include a summary of all enforcement actions undertaken pursuant to this section in its annual report submitted pursuant to subdivision three of section three hundred fifteen of this article.

S 13. Section 317 of the executive law, as added by chapter 261 of the laws of 1988, is amended to read as follows:

S 317. Superseding effect of article with respect to state law. The provisions of this article shall supersede any other provision of state law, which expressly implements or mandates an equal employment opportunity program or a program for securing participation by minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises, concerning action to be taken by any party to a state contract, to which the provisions of this article apply; provided, however, that the provisions of any state law, not as hereinabove superseded, which expressly implement or mandate such programs shall remain unimpaired by the provisions of this article, except that the provisions of any such law shall be construed as if the provisions of subdivisions five, six, seven and eight of section three hundred thirteen and section three hundred sixteen of this article were fully set forth therein and made applicable only to complaints of violations under such provisions of law occurring on or after September first, nineteen hundred eighty-eight; provided, further, that nothing contained in this article shall be construed to limit, impair, or otherwise restrict any state agency's authority or discretionary power in effect prior to the enactment of this article to establish or continue, by rule, regulation or resolution, an equal opportunity program or a program for securing participation of minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises with regard to banking relationships, the issuance of insurance policies or contracts for the sale of bonds, notes or other securities; and, provided further, that nothing contained in the immediately preceding proviso shall be construed to create, impair, alter, limit, modify, enlarge, abrogate or restrict any agency's authority or discretionary power with respect to an equal opportunity program or a program for securing participation of minority [and women-owned], WOMEN AND VETERAN-OWNED enterprises.

S 14. Section 4-a of the executive law, as added by chapter 175 of the laws of 2010, is amended to read as follows:

S 4-a. Chief diversity officer. A chief diversity officer for the state shall be appointed by the governor and shall receive a salary to be fixed by the governor within the amount appropriated therefor. The chief diversity officer's responsibilities shall include the following:

1. Advise and assist the governor in formulating policies relating to workforce diversity and minority [and], women's AND VETERANS' business enterprises;

2. Work with the director of the division of minority [and], women's AND VETERANS' business development to prepare an annual plan for ensuring full compliance with article [fifteen-a of the executive law] FIFTEEN-A OF THIS CHAPTER by state agencies and the use of diversity practices by such agencies;

3. Advise the governor and the agencies regarding any measures necessary to ensure full compliance with article [fifteen-a] FIFTEEN-A of this chapter and use of diversity practices by state public authorities;

4. Serve as a member of the state procurement council established under section one hundred sixty-one of the state finance law;

5. Serve as the governor's liaison with organizations representing minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises and other organizations related to diversity in the state workforce and in state contracting;

6. Serve as the governor's liaison to the small business advisory council for issues related to the creation of a diverse workforce and state procurement practices relating to minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises;

7. Review and consult with the director of minority [and], women's AND VETERANS' business development regarding policies relating to minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprise contract specialists at state agencies; and

8. Engage in other actions assigned to him or her by the governor relating to diversity in hiring or promotion of the state workforce and in encouraging diversity practices and compliance with article [fifteen-a] FIFTEEN-A of this chapter in procurement.

S 15. The article heading of article 4-A of the economic development law, as added by chapter 55 of the laws of 1992, is amended to read as follows:

DIVISION OF MINORITY [AND], WOMEN'S AND VETERANS' BUSINESS DEVELOPMENT

S 16. Section 115 of the economic development law, as added by chapter 55 of the laws of 1992, is amended to read as follows:

S 115. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Division" shall mean the division of minority [and], women's AND VETERANS' business development created by this article.

2. "Technical assistance" shall mean assistance and services designed to improve the efficiency, effectiveness and viability of a minority [or women-owned], WOMEN OR VETERAN-OWNED business enterprise, including, but not limited to, management assistance, problem solving, the development of business and marketing plans, market analysis, financial planning, regulatory compliance, safety and security measures, export assistance, procurement assistance, application assistance, state program assistance, referral to private and public financing sources, contracting assistance, and other forms of assistance which the commissioner deems necessary and appropriate.

S 17. Section 116 of the economic development law, as added by chapter 55 of the laws of 1992, is amended to read as follows:

S 116. Office of minority [and], women's AND VETERANS' business development; transfer. All the functions and powers possessed by and all the obligations and duties of the governor's office of minority [and], women's AND VETERANS' business development office, created and established in the executive law [pursuant to and by chapter two hundred

sixty-one of the laws of nineteen hundred eighty-eight], are hereby transferred and assigned to, assumed by and devolved upon the department of economic development.

S 18. Section 117 of the economic development law, as added by chapter 55 of the laws of 1992, is amended to read as follows:

S 117. Division of minority [and], women's AND VETERANS' business development. There is hereby created within the department of economic development a division of minority and [women-owned], WOMEN AND VETERAN-OWNED business development. The director of such division shall be appointed by the governor, shall report directly to the commissioner on the activities of the division, and shall hold office at the pleasure of the commissioner. The commissioner may appoint such officers, employees, agents, consultants and special committees as he or she may deem necessary to carry out the provisions of this article and prescribe their duties.

S 19. Section 118 of the economic development law, as added by chapter 55 of the laws of 1992 and subdivision 7 as further amended by section 15 of part GG of chapter 63 of the laws of 2000, is amended to read as follows:

S 118. Power and duties. In addition to the power and duties conferred by section one hundred sixteen of this article, the division shall have the additional power and duty to:

1. Coordinate with all state agencies performing functions affecting the operations of minority [business enterprises, and women-owned], WOMEN AND VETERAN-OWNED business enterprises, AND VETERAN-OWNED BUSINESS ENTERPRISES as such terms are defined in section two hundred ten of this chapter;

2. Receive complaints and inquiries of operators of minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises and refer them to the appropriate federal, state or local agency for appropriate action on such complaints;

3. Solicit recommendations from the operators of minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises for improving existing state programs and refer such recommendations to the governor, the legislature and appropriate state agencies or authorities;

4. Advise and make recommendations to the commissioner and the legislature on matters affecting the minority [and women-owned], WOMEN OR VETERAN-OWNED business enterprises of the state and promote and encourage the protection of the legitimate interests of minority [and women-owned], WOMEN OR VETERAN-OWNED business enterprises within the state;

5. Conduct investigations, research, studies and analyses of matters affecting the interests of minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises;

6. Study the implementation of the laws affecting minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises and recommend to the commissioner new laws and amendments of laws for the benefit of minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises; and review pending legislation affecting minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises and report its findings to the commissioner;

7. Provide technical assistance and information to minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises in the state on economic development programs administered by the department, including, but not limited to: (a) the empire zones program, established pursuant to article eighteen-B of the general municipal law, (b) the industrial effectiveness program, established pursuant to article seven

of this chapter, (c) the economic development skills training program, established pursuant to article eight of this chapter, and (d) the entrepreneurial assistance program, established pursuant to article nine of this chapter;

8. Provide technical assistance and information to minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises in the state on economic development programs administered by agencies other than the department, including, but not limited to programs administered by the urban development corporation, the job development authority and the science and technology foundation;

9. Be responsible for conducting minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprise assistance programs and for coordinating the activities of all other state agencies acting within the scope of this section; and

10. Carry out the activities to implement the minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprise assistance programs, to the extent practicable, within amounts appropriated therefor by;

(a) collecting and maintaining information identifying certified minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises within New York state;

(b) collecting, maintaining, and providing information to potential users identifying existing contracting and procurement opportunities within and outside New York state;

(c) maintaining, providing and marketing a compilation of existing programs providing assistance for minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises;

(d) identifying special needs and problems facing minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises within New York state;

(e) contacting institutions, organizations and commercial enterprises that are potential consumers of minority [and women-owned], WOMEN AND VETERAN-OWNED business products and services; urging their expanded consumption of such goods and services;

(f) facilitating the establishment of minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises; and

(g) providing information concerning local and regional opportunities for minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises.

S 20. Subdivisions 1, 3 and 6 of section 120 of the economic development law, subdivision 1 as amended by chapter 361 of the laws of 2009 and subdivisions 3 and 6 as added by chapter 55 of the laws of 1992, are amended to read as follows:

1. There is hereby created in the division of minority [and], women's AND VETERANS' business development a minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprise advisory board. The board shall consist of twelve members to be appointed by the governor. The governor shall designate a chairperson from the members of the advisory board, to serve as such at the pleasure of the governor. In appointing the members of the advisory board the governor shall ensure that six of the members are individuals who are currently involved in the ownership and/or operation of a minority [or women-owned], WOMEN OR VETERAN-OWNED business enterprise or who have extensive experience in minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprise ownership and/or operation, and that at least two of the members are individuals representing banking, community development financial, insurance or surety bonding institutions.

3. The advisory board shall meet regularly at least one time in each year. Special meetings may be called by its chairperson and shall be called by the chairperson at the request of the director of the division of minority [and], women's AND VETERANS' business development.

6. The board shall have the power and duty to:

(a) advise the commissioner in carrying out the functions, powers and duties of the division, as set forth in this article;

(b) advise the commissioner, the governor, and the legislature concerning recommended legislation necessary to foster and promote the prosperity, expansion and development of minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises within the state;

(c) advise the commissioner, the governor, and the legislature concerning existing laws, rules, regulations and practices of state agencies which are counter-productive or inimical to the prosperity, expansion and development of minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises within the state;

(d) advise the commissioner, the governor, and the legislature concerning the development of inter-governmental cooperation among agencies of the federal, state and local governments and cooperation between private industry and government so as to assure the optimum development of minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises; and

(e) serve as a catalyst for creating and maintaining a minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprise consciousness in New York state.

(f) establish procedures for making annual awards to be known as "New York State Minority [and Women-Owned], WOMEN AND VETERAN-OWNED Business Excelsior Awards". These non-monetary awards shall be given in recognition of unusual performance by persons, firms and organizations which are engaged in the operation of a New York state minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprise or which are engaged in activities to assist minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises in the state. The board may nominate up to five award winners annually and forward such names to the governor for consideration. The governor may designate award winners from these nominees. Current members of the advisory board are not eligible as nominees.

S 21. Section 210 of the economic development law is amended by adding a new subdivision 6 to read as follows:

6. "VETERAN-OWNED BUSINESS ENTERPRISE" SHALL MEAN ANY BUSINESS ENTERPRISE WHICH IS AT LEAST FIFTY-ONE PER CENTUM OWNED BY, OR IN THE CASE OF A PUBLICLY OWNED BUSINESS AT LEAST FIFTY-ONE PER CENTUM OF THE STOCK OF WHICH IS OWNED BY, CITIZENS OR PERMANENT RESIDENT ALIENS WHO ARE VETERANS WHERE SUCH OWNERSHIP INTEREST IS REAL, SUBSTANTIAL AND CONTINUING AND WHERE SUCH PERSONS HAVE THE AUTHORITY TO INDEPENDENTLY CONTROL THE DAY-TO-DAY BUSINESS DECISIONS OF THE ENTITY.

S 22. Paragraph (h) of subdivision 6 of section 133 of the economic development law as added by section 5 of part BB of chapter 59 of the laws of 2006, is amended to read as follows:

(h) advise the commissioner on recommendations for the selection of a minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprise statewide advocate as set forth by section three hundred eleven-a of the executive law.

S 23. Subdivision 1 of section 231 of the economic development law, as amended by chapter 352 of the laws of 2009, is amended to read as follows:

1. The department, through its regional offices, is authorized: (a) to serve as a center for information regarding economic development resources available from state, federal and local agencies; (b) to provide outreach to businesses, with attention to small and medium-sized businesses, including minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises, for financial and technical assistance offered by state economic development agencies, authorities, or other economic entities; (c) to serve as a regional center to accept applications for state economic development programs; (d) to coordinate the economic development programs and activities of state agencies and authorities within each region including, but not limited to, outreach to businesses, technical assistance services, skills training assistance, sharing of information, strategic economic development plans and programs, to provide or arrange for assistance in compliance with federal, state, and local rules, regulations, permits, and licenses, and other measures to enhance regional economic development and eliminate duplication of services; (e) to provide or arrange for assistance to persons, firms, agencies, partnerships or corporations, either public or private, in applying for assistance from state economic development programs or for necessary licenses and permits or seeking to comply with federal, state and local rules and regulations; (f) to review and comment, within their knowledge and expertise, with respect to applications for state assistance in a timely manner and form prescribed by the commissioner; (g) to distribute literature and marketing material describing the facilities, advantages and attractions of the region for business; (h) to provide economic development information, planning services and technical assistance to counties and municipalities within the region; (i) to provide information and assistance in the certification of minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises; (j) to provide or arrange for assistance to private sector employers, whether operating for profit or not for profit, and to organizations and associations of such employers in developing and implementing innovative and flexible employee compensation, assistance and benefit programs to enhance competitiveness and meet emerging demographic and market conditions; and (k) to provide information and assistance to small businesses on environmental compliance requirements of federal and state law and pollution prevention opportunities in furtherance of policies and programs established in article twenty-eight of the environmental conservation law and in coordination with the pollution prevention and environmental compliance coordinating council established in article twenty-eight of the environmental conservation law, including programs operated by the department, the department of environmental conservation or other state or local agencies from which technical assistance, or loans, grants or other financial assistance for compliance and pollution prevention may be obtained; and in providing such information and assistance, to promote pollution prevention approaches.

S 24. Paragraph (i) of subdivision 3 of section 22-c of the state finance law, as amended by section 1 of part O of chapter 59 of the laws of 2009, is amended to read as follows:

(i) An explanation of any actions proposed to be taken to achieve increased opportunity for meaningful participation in the performance of state contracts by minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises in accordance with article fifteen-A of the executive law, including a compliance report to be submitted by July first of each year commencing with the two thousand five--two thousand six fiscal year and for each subsequent year thereafter that includes: all the

items of information required in accordance with regulations promulgated by the director of the division of minority [and], women's AND VETERANS' business development in the department of economic development under article fifteen-A of the executive law; goals for participation by certified minority [or women-owned], WOMEN OR VETERAN-OWNED business enterprises for such fiscal year; and a description of the types of expenditures, projects or contracts.

S 25. Paragraphs c and d of subdivision 2 of section 5 of the state finance law, as added by chapter 171 of the laws of 2010, are amended to read as follows:

c. Within the discretion of the deferred compensation board and in accordance with and subject to its fiduciary duty and obligations to the deferred compensation plan for state employees and to the members and beneficiaries of such plan and such other investment limitations as may be prescribed by this chapter, the deferred compensation board is authorized to establish an [MWBE] MWVBE asset management and financial institution strategy including reasonable goals for utilization of [MWBE] MWVBE asset managers, [MWBE] MWVBE financial institutions and [MWBE] MWVBE professional service firms, which shall include, but shall not be limited to, the following objectives:

(i) conducting procurement procedures in a manner that will assure the inclusion of [MWBE] MWVBE asset managers in any request for proposal or search process for asset management services undertaken in accordance with the rules and regulations and of the board;

(ii) subject to best execution policies, developing a strategy to (1) conduct trades of public equity securities with [MWBE] MWVBE financial institutions and (2) conduct trades of fixed-income securities through [MWBE] MWVBE financial institutions;

(iii) conducting procurement procedures in a manner that will assure the inclusion of [MWBE] MWVBE financial institutions and other [MWBE] MWVBE professional service firms in procurements for services that include accounting, banking, financial advisory, insurance, legal, research, valuation and other financial and professional services that are undertaken in accordance with the rules and regulations of the board;

(iv) cooperating with other fiduciary controlled entities and state agencies and offices to identify [MWBE] MWVBE asset managers, [MWBE] MWVBE financial institutions and [MWBE] MWVBE professional service firms.

As used in this section, the terms "[MWBE] MWVBE asset manager", "[MWBE] MWVBE financial institutions", "[MWBE] MWVBE", "fiduciary-controlled entities" and "best execution" shall have the meanings specified in section one hundred seventy-six of the retirement and social security law.

d. The board is also authorized to:

(i) periodically provide notice of the existence of such strategy so that [MWBE] MWVBE asset managers, [MWBE] MWVBE financial institutions and other [MWBE] MWVBE professional service firms are made aware of the opportunities made available pursuant to this strategy;

(ii) within sixty days of the end of each fiscal year following the effective date of this paragraph, the board shall report to the governor, legislature and the chief diversity officer of the state of New York on the participation of [MWBE] MWVBE asset managers, [MWBE] MWVBE financial institutions and [MWBE] MWVBE professional service providers in investment and brokerage transactions with or as providers of services for the deferred compensation plans, including a comparative

analysis of such activity relative to such activity with all asset managers, financial institutions and professional service providers for the relevant period and on the progress and the success of the efforts undertaken during such period to achieve the goals of such strategy. Each report shall be simultaneously published on the website of the deferred compensation plans for not less than sixty days following its release to the governor and the other recipients named above;

(iii) work with the other fiduciary-controlled entities to create a database of such [MWBE] MWVBE entities; and

(iv) periodically, but not less than annually, hold a conference to promote such strategy in conjunction with the other fiduciary-controlled entities.

S 26. Subdivisions 4, 6 and 7 of section 176 of the retirement and social security law, as added by chapter 171 of the laws of 2010, are amended to read as follows:

4. The term "[MWBE] MWVBE asset manager" shall mean an asset manager in any of the following asset classes: public equity or fixed income securities, hedge funds, fund of hedge funds, private equity (including venture capital), fund of private equity funds, real estate investment funds, fund of real estate funds, or any other asset class for which an applicable fiduciary-controlled entity engages external asset managers that is (a) a [MWBE] MWVBE; and (b) a registered investment advisor or exempt from such registration and (c) certified pursuant to the provisions of subdivision three of section four hundred twenty-three-c of this chapter.

6. The term "[MWBE] MWVBE" for the purpose of engaging in business with the fiduciary-controlled entities covered by this section, means a business enterprise, including without limitation, a sole proprietorship, partnership, limited partnership, limited liability partnership, limited liability company, corporation or other similar entity whether domestic or foreign, that is:

(a)(i) at least fifty-one percent owned by (A) one or more minority group members, or (B) one or more women, OR (C) ONE OR MORE VETERANS in each case, who have significant experience in asset management, brokerage, other financial services or related professional services such as accounting, valuation or legal services, or (ii) substantially owned and/or operated by women, VETERANS or minority group members who have significant experience in asset management, brokerage, other financial services or related professional services such as accounting, valuation or legal services;

(b) an enterprise in which such minority [or], women OR VETERAN ownership or operation is real, substantial and continuing;

(c) an enterprise in which such minority [or], women OR VETERAN ownership or operation has and exercises the authority to control independently the day-to-day business decisions of the enterprise;

(d) an enterprise authorized to do business in this state; and

(e) an enterprise certified by the state comptroller pursuant to section four hundred twenty-three-c of this chapter.

7. The term "[MWBE] MWVBE financial institution" shall mean (a) as it relates to brokerage services, a registered broker dealer that is an [MWBE] MWVBE certified pursuant to the provisions of subdivision three of section four hundred twenty-three-c of this chapter and (b) as it relates to any other financial services, an [MWBE] MWVBE certified pursuant to the provisions of subdivision three of section four hundred twenty-three-c of this chapter that provides banking, financial advi-

sory, insurance, financial research, valuation or other financial services.

S 27. Section 423-c of the retirement and social security law, as added by chapter 171 of the laws of 2010, is amended to read as follows:

S 423-c. [MWBE] MWVBE asset management and financial institution strategy. 1. Within the discretion of the state comptroller and in accordance with and subject to his or her fiduciary duties and obligations as trustee of the common retirement fund and to the members, retirees and beneficiaries of such fund and such other investment limitations as may be prescribed by this chapter, the comptroller is authorized to establish an [MWBE] MWVBE asset management and financial institution strategy including reasonable goals for utilization of [MWBE] MWVBE asset managers, [MWBE] MWVBE financial institutions and [MWBE] MWVBE financial and professional service firms, which strategy shall include, but shall not be limited to, the following objectives:

(a) investing assets of the common retirement fund with [MWBE] MWVBE asset managers;

(b) subject to best execution: (i) conducting trades of public equity securities with [MWBE] MWVBE financial institutions; and (ii) conducting trades of fixed-income securities through [MWBE] MWVBE financial institutions;

(c) allocating investments of assets of the common retirement fund either through: (i) direct investments in the equities and debt securities of [MWBEs] MWVBES; or (ii) indirectly through special programs involving [MWBE] MWVBE asset managers; and

(d) awarding contracts for accounting, banking, financial advisory, insurance, legal, research, valuation and other financial and professional services to [MWBE] MWVBE financial institutions and other [MWBE] MWVBE professional service firms.

2. The comptroller is also authorized to: (a) periodically advertise the existence of the strategy established in this section so that [MWBE] MWVBE asset managers, [MWBE] MWVBE financial institutions and other [MWBE] MWVBE professional service firms are made aware of the opportunities made available pursuant to such strategy;

(b) within sixty days of the end of each fiscal year following the effective date of this section, the state comptroller shall report to the governor, legislature and the chief diversity officer of the state of New York on the participation of [MWBE] MWVBE asset managers, [MWBE] MWVBE financial institutions and [MWBE] MWVBE professional service providers in investment and brokerage transactions with or as providers of services for the common retirement fund, including a comparative analysis of such activity relative to such activity with all asset managers, financial institutions and professional service providers for the relevant period and on the progress and success of the efforts undertaken during such period to achieve the goals of such strategy. Each report shall be simultaneously published on the website of the common retirement fund for not less than sixty days following its release to the governor and the other recipients named above;

(c) work with the other fiduciary-controlled entities to create a database of such [MWBE] MWVBE entities; and

(d) periodically, but not less than annually, hold a conference to promote such strategy in conjunction with the other fiduciary-controlled entities.

3. (a) The state comptroller shall establish and adopt a certification process and guidelines for the sole purpose of identification and reporting on [MWBE] MWVBE firms providing asset management, brokerage,

or other financial or professional services as such term is defined in subdivision six of section one hundred seventy-six of this chapter. Such certification shall differentiate and the comptroller shall maintain separate categories for [MWBE] MWVBE asset managers meeting the criteria of subparagraph (i) of paragraph (a) of subdivision six of section one hundred seventy-six of this chapter and [MWBE] MWVBE asset managers meeting the criteria of subparagraph (ii) of paragraph (a) of such subdivision.

(b) Such certification process shall include, but need not be limited to, a request for the following information relating to each managing principal, principal, operating principal, chief financial officer, operating vice-president, vice-president, partner, owner and employee associated with a prospective [MWBE] MWVBE entity:

(i) title;

(ii) position;

(iii) ownership percentage;

(iv) ethnicity;

(v) gender; and

(vi) length of service.

S 28. Section 147 of the state finance law, as added by chapter 360 of the laws of 2009, is amended to read as follows:

S 147. Mentor-protege program. 1. In every state agency, department and authority which has let more than ten million dollars in service and construction contracts in the prior fiscal year, the chief executive officer of that agency, department or authority shall develop a mentor-protege program to foster long-term relationships between approved mentor firms, and small business concerns and minority [and women-owned], WOMEN AND VETERAN-OWNED businesses certified pursuant to article fifteen-A of the executive law, in order to enhance the capabilities of small and minority [and women-owned], WOMEN AND VETERAN-OWNED business concerns, improve their success in contracting with the state or receiving subcontracts under a state contract, and to create sources of reliable contractors and subcontractors ready to perform larger jobs and responsibilities. Participation in the program shall be voluntary for both the mentor firm and the protege firm.

2. The chief executive officer of each agency, department or authority, in consultation with the division of minority [and], women's AND VETERANS' business development and the division for small-business shall develop requirements for:

(a) approval of contractors participating in the program established pursuant to subdivision one of this section, to be known, for the purposes of such program, as "mentor firms". Mentor firms must demonstrate commitment and ability to assist protege firms, including favorable financial health, good character, and experience in contracting with the state. Once approved, a mentor firm must annually certify that it continues to possess good character and a favorable financial position. Incentives for mentor firms to participate in the program may include: (i) where contracts are awarded by best value, additional evaluation points as specified in the request for proposal; and (ii) where protege firms are certified minority [and women-owned], WOMEN AND VETERAN-OWNED businesses, credit towards fulfillment of minority [and women-owned], WOMEN AND VETERAN-OWNED business participation requirements, including without limitation additional credit towards fulfillment of minority [and women-owned], WOMEN AND VETERAN-OWNED business subcontracting participation goals based on costs incurred by a mentor firm in provid-

ing assistance to a certified minority [and women-owned], WOMEN AND VETERAN-OWNED business protege firm.

(b) approval for small and certified minority [and women-owned], WOMEN AND VETERAN-OWNED business concerns receiving assistance under the program established pursuant to subdivision one of this section, to be known, for the purposes of such program, as "protege firms". A protege firm may have only one mentor at a time and may participate in the mentor-protege program for a maximum of five years.

(c) a process by which each mentor firm, before providing assistance to a protege firm under the program, shall enter into a mentor-protege agreement regarding the assistance to be provided by the mentor firm, for a period as determined by the chief executive officer of the agency, department or authority. A mentor firm may provide a protege firm with assistance and training in general business management; financial management, engineering, safety and technical matters; bonding assistance or bonding waivers; subcontracts; rent-free use of facilities and/or equipment; joint venture arrangements; and any other assistance as determined by the chief executive officer of the agency, department or authority. Mentor-protege agreements shall be approved by the chief executive officer of the agency, department or authority, and shall provide that either party may terminate the agreement with thirty days advance notice and notice to the chief executive officer. No determination of affiliation or control may be found between a protege firm and its mentor firm based on the mentor-protege agreement or any assistance provided pursuant to such agreement.

S 29. Subdivision 7 of section 2777 of the public authorities law, as added by chapter 686 of the laws of 1993, is amended to read as follows:

7. It is hereby found and declared that it has been and remains the policy of the state of New York to promote equal opportunity in employment for all persons, without discrimination on account of race, creed, color, national origin, sex, age, disability or marital status, to promote equality of economic opportunity for minority group members [and], women AND VETERANS, and business enterprises owned by them, and to eradicate the effects of private and governmental discrimination which has erected and continues to maintain barriers that unreasonably impair access by minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises to state contract opportunities.

Recent reviews and analyses of contracting in New York, including the study by the division of minority [and], women's AND VETERANS' business development of the department of economic development entitled "Opportunity Denied! A Study of Racial and Sexual Discrimination Related to Government Contracting in New York State," confirm through direct evidence of racial and sexual discrimination in and by New York state sufficient to justify race and sex conscious remedies. For the purpose of furthering the state's compelling interest in eradicating the effects of racial and sexual discrimination therefore, it is necessary and proper that article fifteen-A of the executive law, concerning participation by minority group members [and], women AND VETERANS and business enterprises owned by them, shall apply to the Albany county airport authority.

S 30. Subdivisions 3 and 6 of section 2879 of the public authorities law, subdivision 3 as amended by chapter 564 of the laws of 1988, paragraph (b) of subdivision 3 as amended by chapter 45 of the laws of 1994, subparagraph (iv) of paragraph (b) of subdivision 3 as amended by chapter 383 of the laws of 1994, paragraph (m) of subdivision 3 as added by chapter 862 of the laws of 1990, paragraph (n) of subdivision 3 as

amended by chapter 531 of the laws of 1993, paragraphs (o) and (p) of subdivision 3 as added by chapter 844 of the laws of 1992, subparagraph (i) of paragraph (b) of subdivision 3 and subdivision 6 as amended, paragraphs (f), (g), (h), (i) and (j) of subdivision 3 as added and paragraphs (k), (l), (m), (n), (o) and (p) of subdivision 3 as relettered by chapter 174 of the laws of 2010, are amended to read as follows:

3. The guidelines approved by the corporation shall include, but not be limited to the following:

(a) A description of the types of goods purchased, and for procurement contracts for services, a description of those areas of responsibility and oversight requiring the use of personal services and the reasons for the use of personal services in such areas.

(b) Requirements regarding the selection of contractors, which shall include provisions:

(i) for the selection of such contractors on a competitive basis, and provisions relating to the circumstances under which the board may by resolution waive competition, including, notwithstanding any other provision of law requiring competition, the purchase of goods or services from small business concerns or those certified as minority [or women-owned], WOMEN OR VETERAN-OWNED business enterprises, or goods or technology that are recycled or remanufactured, in an amount not to exceed two hundred thousand dollars without a formal competitive process;

(ii) describing when the award of procurement contracts shall require approval of the board by resolution, provided that any contract involving services to be rendered over a period in excess of one year shall require the approval of the board by resolution and an annual review of the contract by the board;

(iii) setting forth responsibilities of contractors;

(iv) as used in this subparagraph, the term "professional firm" shall be defined as any individual or sole proprietorship, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture, engineering or surveying.

The corporation shall not refuse to negotiate with a professional firm solely because the ratio of the "allowable indirect costs" to direct labor costs of the professional firm or the hourly labor rate in any labor category of the professional firm exceeds a limitation generally set by the corporation in the determination of the reasonableness of the estimated cost of services to be rendered by the professional firm, but rather the corporation should also consider the reasonableness of cost based on the total estimated cost of the service of the professional firm which should include, among other things, all the direct labor costs of the professional firm for such services plus all "allowable indirect costs," other direct costs, and negotiated profit of the professional firm. "Allowable indirect costs" of a professional firm are defined as those costs generally associated with overhead which cannot be specifically identified with a single project or contract and are considered reasonable and allowable under specific state contract or allowability limits.

(c) An identification of those areas or types of contracts for which minority [or women-owned], WOMEN OR VETERAN-OWNED business enterprises may best bid so as to promote and assist participation by such enterprises and facilitate a fair share of the awarding of contracts to such enterprises. For the purposes of this section, a minority business

enterprise means any business enterprise, including a sole proprietorship, partnership or corporation that is:

(i) at least fifty-one percent owned by one or more minority group members or in the case of a publicly-owned business at least fifty-one percent of the common stock or other voting interests of which is owned by one or more minority group members;

(ii) an enterprise in which the minority ownership is real, substantial and continuing;

(iii) an enterprise in which the minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and

(iv) an enterprise authorized to do business in New York state, independently owned and operated, and not dominant in its field.

(d) For the purposes of this section, a minority group member means a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups:

(i) Black persons having origins in any of the Black African racial groups not of Hispanic origin;

(ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race;

(iii) Asian and Pacific Islander persons having origins in any of the Far East, Southeast Asia, the Indian sub-continent or the Pacific Islands; or

(iv) Native American persons having origins in any of the original peoples of North America.

(e) For the purposes of this section, a women-owned business enterprise means a business enterprise, including a sole proprietorship, partnership or corporation which is:

(i) at least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are women or in the case of a publicly-owned business at least fifty-one percent of the common stock or other voting interests of which is owned by United States citizens or permanent resident aliens who are women;

(ii) an enterprise in which the ownership interest of women is real, substantial and continuing;

(iii) an enterprise in which the women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and

(iv) an enterprise authorized to do business in New York state, independently owned and operated, and not dominant in its field.

(E-1) FOR THE PURPOSES OF THIS SECTION, A VETERAN-OWNED BUSINESS ENTERPRISE MEANS A BUSINESS ENTERPRISE, INCLUDING A SOLE PROPRIETORSHIP, PARTNERSHIP OR CORPORATION WHICH IS:

(I) AT LEAST FIFTY-ONE PERCENT OWNED BY ONE OR MORE UNITED STATES CITIZENS OR PERMANENT RESIDENT ALIENS WHO ARE VETERANS OR IN THE CASE OF A PUBLICLY-OWNED BUSINESS AT LEAST FIFTY-ONE PERCENT OF THE COMMON STOCK OR OTHER VOTING INTERESTS OF WHICH IS OWNED BY UNITED STATES CITIZENS OR PERMANENT RESIDENT ALIENS WHO ARE VETERANS;

(II) AN ENTERPRISE IN WHICH THE OWNERSHIP INTEREST OF VETERANS IS REAL, SUBSTANTIAL AND CONTINUING;

(III) AN ENTERPRISE IN WHICH THE VETERAN OWNERSHIP HAS AND EXERCISES THE AUTHORITY TO CONTROL INDEPENDENTLY THE DAY-TO-DAY BUSINESS DECISIONS OF THE ENTERPRISE; AND

(IV) AN ENTERPRISE AUTHORIZED TO DO BUSINESS IN NEW YORK STATE, INDEPENDENTLY OWNED AND OPERATED, AND NOT DOMINANT IN ITS FIELD.

(f) Requirements for the designation of one or more senior staff of the corporation to oversee the corporation's programs established to promote and assist: (i) participation by certified minority [or women-owned], WOMEN OR VETERAN-OWNED business enterprises in the corporation's procurement opportunities and facilitation of the award of procurement contracts to such enterprises; (ii) the utilization of certified minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises as subcontractors and suppliers by entities having procurement contracts with the corporation; and (iii) the utilization of partnerships, joint ventures or other similar arrangements between certified minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises and other entities having procurement contracts with the corporation. Such staff shall be familiar with the procurement of the types of construction, financial, legal or professional services utilized by the corporation, report directly to the corporation's executive director, president or chief executive officer and either directly or through their designees participate in the procurement process.

(g) Requirements for providing notice, in addition to any other notice of procurement opportunities required by law, to professional and other organizations that serve minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises providing the types of services procured by the corporation.

(h) Procedures for maintaining lists of qualified certified minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises, including professional firms that have expressed an interest in doing business with the corporation and ensuring that such lists are updated regularly. The corporation shall also consult the lists of certified minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises maintained by the department of economic development pursuant to article fifteen-A of the executive law.

(i) The establishment of appropriate goals for participation by minority [or women-owned], WOMEN OR VETERAN-OWNED business enterprises in procurement contracts awarded by the corporation and for the utilization of minority [and women-owned], WOMEN OR VETERAN-OWNED enterprises as subcontractors and suppliers by entities having procurement contracts with the corporation. Statewide numerical participation target goals shall be established by each authority based on the findings of the two thousand ten disparity study AND THEREAFTER THE TWO THOUSAND FIFTEEN DISPARITY STUDY.

(j) Requirements to conduct procurements in a manner that will enable the corporation to achieve the maximum feasible portion of the goals established pursuant to paragraph (i) of this subdivision and that eliminates barriers to participation by minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises in the corporation's procurements. Such procurement requirements shall include the following:

(A) Measures and procedures to ensure that certified businesses shall be given the opportunity for maximum feasible participation in the performance of state contracts and to assist in the corporation's identification of 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 corporation's achievement of the maximum feasible portion of the goals for state contracts to such businesses;

(B) Provisions designating the division of minority [and women-owned], WOMEN AND VETERAN-OWNED business development to certify and decertify minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises

for all corporations through a single process that meets applicable state and federal requirements;

(C) A requirement that each contract solicitation document accompanying each solicitation set forth the expected degree of minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprise participation based, in part, on:

I. the potential subcontract opportunities available in the prime procurement contract; and

II. the availability of certified minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises to respond competitively to the potential subcontract opportunities;

(D) A requirement that each corporation provide a current list of certified minority business enterprises to each prospective contractor;

(E) Provisions relating to joint ventures, under which a bidder may count toward meeting its minority business enterprise participation goal, the minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprise portion of the joint venture;

(F) Provisions under which the corporation may waive obligations of the contractor relating to minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprise participation after a showing of good faith efforts to comply with the requirements of this act pursuant to the waiver provisions contained in subdivision six of section three hundred thirteen of the executive law;

(G) A requirement that the corporation verify that minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises listed in a successful bid are actually participating to the extent listed in the project for which the bid was submitted;

(H) In the implementation of this section, the contracting corporation shall:

I. consider, where practicable, the severability of construction projects and other bundled contracts;

II. implement a program that will enable the corporation to evaluate each contract to determine the appropriateness of the goal pursuant to paragraph (i) of this subdivision;

III. consider compliance with the requirements of any federal law concerning opportunities for minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises which effectuates the purpose of this section; and

IV. consult the most recent disparity study pursuant to article fifteen-A of the executive law.

(k) A listing of the types of provisions to be contained in procurement contracts, including provisions concerning the nature and monitoring of the work to be performed, the use of corporate supplies and facilities, the use of corporate personnel and any other provisions.

(l) Provisions regarding procurement contracts which involve former officers or employees of the corporation.

(m) Procedures regarding procurement contracts which are exempt from the publication requirements of article four-C of the economic development law.

(n) Policies to promote the participation by New York state business enterprises and New York state residents in procurement contracts, including, but not limited to:

(i) providing for the corporation to collect and to consult the specifications of New York state business enterprises in developing specifications for any procurement contract for the purchase of goods where possible, practicable, feasible and consistent with open bidding, except

for procurement contracts for which the corporation would be expending funds received from another state. The corporation shall, where feasible, make use of the stock item specification forms prepared by the commissioner of general services, and where necessary, consult with the commissioner of the office of general services, in developing such specifications and make such determinations; and

(ii) with the cooperation of the department of economic development and through cooperative efforts with contractors, providing for the notification of New York state business enterprises of opportunities to participate as subcontractors and suppliers on procurement contracts let by the corporation in an amount estimated to be equal to or greater than one million dollars and promulgating procedures which will assure compliance by contractors with such notification. Once awarded the contract such contractors shall document their efforts to encourage the participation of New York state business enterprises as suppliers and subcontractors on procurement contracts equal to or greater than one million dollars. Documented efforts by a successful contractor shall consist of and be limited to showing that such contractor has (a) solicited bids, in a timely and adequate manner, from New York state business enterprises including certified minority [and women-owned], WOMEN AND VETERAN-OWNED business, or (b) contacted the New York state department of economic development to obtain listings of New York state business enterprises, or (c) placed notices for subcontractors and suppliers in newspapers, journals and other trade publications distributed in New York state, or (d) participated in bidder outreach conferences. If the contractor determines that New York state business enterprises are not available to participate on the contract as subcontractors or suppliers, the contractor shall provide a statement indicating the method by which such determination was made. If the contractor does not intend to use subcontractors on the contract, the contractor shall provide a statement verifying such intent; and

(iii) except for procurement contracts for which the corporation would be expending funds received from another state, the corporation shall include in all bid documents provided to potential bidders a statement that information concerning the availability of New York state subcontractors and suppliers is available from the New York state department of economic development, which shall include the directory of certified minority [and women-owned], WOMEN AND VETERAN-OWNED businesses, and it is the policy of New York state to encourage the use of New York state subcontractors and suppliers, and to promote the participation of minority [and women-owned], WOMEN AND VETERAN-OWNED businesses where possible, in the procurement of goods and services; and

(iv) with the cooperation of the community services division of the department of labor and through cooperative efforts with contractors, providing for the notification of New York state residents of employment opportunities arising in New York state out of procurement contracts let by the corporation in an amount estimated to be equal to or greater than one million dollars; and promulgating procedures which will assure compliance by contractors with such notification by requiring contractors to submit post-award compliance reports documenting their efforts to provide such notification through listing any such positions with the community services division, or providing for such notification in such manner as is consistent with existing collective bargaining contracts or agreements; and

(v) including in each set of documents soliciting bids on procurement contracts to let by the corporation a statement notifying potential

bidders located in foreign countries that the corporation may assign or otherwise transfer offset credits created by such procurement contract to third parties located in New York state; providing for the assignment or other form of transfer of offset credits created by such procurement contracts, directly or indirectly, to third parties located in New York state, in accordance with the written directions of the commissioner of economic development; and providing for the corporation to otherwise cooperate with the department of economic development in efforts to get foreign countries to recognize offset credits assigned or transferred to third parties located in New York state created by such procurement contracts; and

(vi) promulgating procedures which will assure compliance with the federal equal employment opportunity act of 1972 (P.L. 92-261), as amended, by contractors of the corporation.

(o) For the purposes of this section, a "New York state business enterprise" means a business enterprise, including a sole proprietorship, partnership, or corporation, which offers for sale or lease or other form of exchange, goods which are sought by the corporation and which are substantially manufactured, produced or assembled in New York state, or services which are sought by the corporation and which are substantially performed within New York state.

(p) For the purposes of this section, a "New York resident" means a natural person who maintains a fixed, permanent and principal home located within New York state and to which such person, whenever temporarily located, always intends to return.

6. Each corporation, as part of the guidelines established pursuant to subdivision three of this section, shall establish policies regarding the preparation of publicly available reports on procurement contracts entered into by such corporation. Such policies shall provide, at the minimum, for the preparation of a report no less frequently than annually, summarizing procurement activity by such corporation for the period of the report, including a listing of all procurement contracts entered into, all contracts entered into with New York state business enterprises and the subject matter and value thereof, all contracts entered into with certified minority [or women-owned], WOMEN OR VETERAN-OWNED business enterprises and the subject matter and value thereof, all referrals made and all penalties imposed pursuant to section three hundred sixteen of the executive law, all contracts entered into with foreign business enterprises, and the subject matter and value thereof, the selection process used to select such contractors, all procurement contracts which were exempt from the publication requirements of article four-C of the economic development law, the basis for any such exemption and the status of existing procurement contracts.

S 31. Section 6-129 of the administrative code of the city of New York, as amended by local law number 1 of the city of New York for the year 2013, is amended to read as follows:

S 6-129. Participation by minority-owned [and], women-owned AND VETERAN-OWNED business enterprises and emerging business enterprises in city procurement.

a. Programs established. There are hereby established a program, to be administered by the department of small business services in accordance with the provisions of this section, designed to enhance participation by minority-owned [and], women-owned AND VETERAN-OWNED business enterprises in city procurement and a program, also to be administered by such department in accordance with the provisions of this section,

designed to enhance participation by emerging business enterprises in city procurement.

b. Policy. It is the policy of the city to seek to ensure fair participation in city procurement; and in furtherance of such policy to fully and vigorously enforce all laws prohibiting discrimination, and to promote equal opportunity in city procurement by vigorously enforcing the city's contractual rights and pursuing its contractual remedies. The program established pursuant to this section is intended to address the impact of discrimination on the city's procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for city business, and lowering contract costs.

c. Definitions. For purposes of this section, the following terms shall have the following meaning:

(1) "Agency" means a city, county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.

(2) "Agency chief contracting officer" means the individual to whom an agency head has delegated authority to organize and supervise the agency's procurement activity.

(3) "Availability rate" means the percentage of business enterprises within an industry classification that are owned by minorities, women, VETERANS or individuals who are socially and economically disadvantaged willing and able to perform agency contracts.

(4) "Bidder" means any person submitting a bid or proposal in response to a solicitation for such bid or proposal from an agency.

(5) "Bidders list" or "proposers list" means a list maintained by an agency that includes persons from whom bids or proposals can be solicited.

(6) "City" means the city of New York.

(7) "City chief procurement officer" means the individual to whom the mayor has delegated authority to coordinate and oversee the procurement activity of mayoral agency staff, including the agency chief contracting officers and any offices that have oversight responsibility for procurement.

(8) "Commercially useful function" means a real and actual service that is a distinct and verifiable element of the work called for in a contract. In determining whether an MBE, WBE, VBE or EBE is performing a commercially useful function, factors including but not limited to the following shall be considered:

(a) whether it has the skill and expertise to perform the work for which it is being utilized, and possesses all necessary licenses;

(b) whether it is in the business of performing, managing or supervising the work for which it has been certified and is being utilized; and

(c) whether it purchases goods and/or services from another business and whether its participation in the contract would have the principal effect of allowing it to act as a middle person or broker in which case it may not be considered to be performing a commercially useful function for purposes of this section.

(9) "Commissioner" shall mean the commissioner of small business services.

(10) "Construction" means construction, reconstruction, demolition, excavation, renovation, alteration, improvement, rehabilitation, or repair of any building, facility, physical structure of any kind.

(11) "Contract" means any agreement, purchase order or other instrument whereby the city is committed to expend or does expend funds in return for goods, professional services, standard services, or construction.

(12) "Contractor" means a person who has been awarded a contract by a city agency.

(13) "Direct subcontractor" means a person who has entered into an agreement with a contractor to provide services or perform work that is required pursuant to a contract with a city agency.

(14) "Director" means an individual designated by the mayor to perform the oversight functions of the director described in this section, who either reports directly to the mayor or is a commissioner.

(15) "Directory" means a list prepared by the division of firms certified pursuant to section 1304 of the charter.

(16) "Division" shall mean the division of economic and financial opportunity within the department of small business services.

(17) "EBE" means an emerging business enterprise certified in accordance with section 1304 of the charter.

(18) "Geographic market of the city" means the following counties: Bronx, Kings, New York, Queens, Richmond, Nassau, Putnam, Rockland, Suffolk and Westchester within the State of New York; and Bergen, Hudson, and Passaic within the state of New Jersey.

(19) "Goal" means a numerical target.

(20) "Graduate MBE," "graduate WBE," "GRADUATE VBE," or "graduate EBE" means an MBE, WBE, VBE or EBE which shall have been awarded contracts by one or more agencies within the past three years where the total city funding from the expense and capital budgets for such contracts was equal to or greater than fifty million dollars and whose size has exceeded the size standards established for its industry by the United States small business administration for three years.

(21) "Human services" means services provided to third parties, including social services such as day care, foster care, home care, homeless assistance, housing and shelter assistance, preventive services, youth services, and senior centers; health or medical services including those provided by health maintenance organizations; legal services; employment assistance services, vocational and educational programs; and recreation programs.

(22) "Indirect subcontractor" means a person who has entered into an agreement with a direct subcontractor to provide services or perform work that is required pursuant to the direct subcontractor's contract with a contractor.

(23) "Industry classification" means one of the following classifications:

(a) construction;

(b) professional services;

(c) standard services; and

(d) goods.

(24) "Joint venture" means an association, of limited scope and duration, between two or more persons who have entered into an agreement to perform and/or provide services required by a contract, in which each such person contributes property, capital, effort, skill and/or knowledge, and in which each such person is entitled to share in the profits and losses of the venture in reasonable proportion to the economic value of its contribution.

(25) "MBE" means a minority-owned business enterprise certified in accordance with section 1304 of the charter.

(26) "Minority group" means Black Americans; Asian Americans, and Hispanic Americans, provided that the commissioner shall be authorized to add additional groups to this definition upon a finding that there is statistically significant disparity between the availability of firms owned by individuals in such a group and the utilization of such firms in city procurement.

(27) "Non-certified firm" means a business enterprise that has not been certified as an MBE, WBE or EBE in accordance with section 1304 of the charter OR VBE.

(28) "Person" means any business, individual, partnership, corporation, firm, company, or other form of doing business.

(29) "Professional services" means services that require specialized skills and the exercise of judgment, including but not limited to accountants, lawyers, doctors, computer programmers and consultants, architectural and engineering services, and construction management services.

(30) "Qualified joint venture agreement" means a joint venture between one or more MBEs, WBEs, VBES, and/or EBEs and another person, in which the percentage of profit or loss to which the certified firm or firms is entitled or exposed for participation in the contract, as set forth in the joint venture agreement, is at least 25% of the total profit or loss.

(31) "Scope of work" means specific tasks required in a contract and/or services or goods that must be provided to perform specific tasks required in a contract.

(32) "Standard services" means services other than professional services and human services.

(33) "Utilization rate" means the percentage of total contract expenditures expended on contracts or subcontracts with firms that are owned by women, VETERANS, minorities, or individuals who are socially and economically disadvantaged, respectively, in one or more industry classifications.

(34) "WBE" means a women-owned business enterprise certified in accordance with section 1304 of the charter.

(35) "VBE" MEANS A VETERAN-OWNED BUSINESS ENTERPRISE.

d. Citywide goals. (1) The citywide contracting participation goals for MBEs, WBEs, VBES and EBEs, which may be met through awards of prime contracts or subcontracts as described in subdivision j of this section, shall be as follows:

For construction contracts:

Category:	Participation goal:
Black Americans	8% of total annual agency expenditures on such contracts
Asian Americans	8% of total annual agency expenditures on such contracts
Hispanic Americans	4% of total annual agency expenditures on such contracts
Women	18% of total annual agency expenditures on such contracts
VETERANS	A PERCENTAGE TO BE DETERMINED BY THE COMMISSIONER IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH FOUR OF THIS SUBDIVISION
Emerging	6% of total annual agency expenditures on such contracts

For professional services contracts:

Category:	Participation goal:
Black Americans	12% of total annual agency expenditures on such contracts
Hispanic Americans	8% of total annual agency expenditures on such contracts
Women	37% of total annual agency expenditures on such contracts
VETERANS	A PERCENTAGE TO BE DETERMINED BY THE COMMISSIONER IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH FOUR OF THIS SUBDIVISION expenditures on such contracts
Emerging	6% of total annual agency expenditures on such contracts

For standard services contracts:

Category:	Participation goal:
Black Americans	12% of total annual agency expenditures on such contracts
Asian Americans	3% of total annual agency expenditures on such contracts
Hispanic Americans	6% of total annual agency expenditures on such contracts
Women	10% of total annual agency expenditures on such contracts
VETERANS	A PERCENTAGE TO BE DETERMINED BY THE COMMISSIONER IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH FOUR OF THIS SUBDIVISION
Emerging	6% of total annual agency expenditures on such contracts

For goods contracts under one hundred thousand dollars:

Category:	Participation goal:
Black Americans	7% of total annual agency expenditures on such contracts
Asian Americans	8% of total annual agency expenditures on such contracts
Hispanic Americans	5% of total annual agency expenditures on such contracts
Women	25% of total annual agency expenditures on such contracts
VETERANS	A PERCENTAGE TO BE DETERMINED BY THE COMMISSIONER IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH FOUR OF THIS SUBDIVISION
Emerging	6% of total annual agency expenditures on such contracts

(2) (a) The division and the city chief procurement officer shall develop a citywide utilization plan for procurements of goods.

(b) Agencies shall develop agency utilization plans pursuant to subdivision g of this section. The citywide goals shall not be summarily adopted as goals for all annual agency utilization plans; rather, goals for such plans may be set at levels higher, lower, or the same as the citywide goals, subject to the approval of the commissioner as described in paragraph three of subdivision g of this section. When setting its goals, each agency shall consider the citywide goals, the size and nature of its own procurement portfolio, and the availability of MBEs,

WBEs, VBES and EBEs with the capacity to perform the specific types and scale of work for which the agency anticipates it will solicit procurements during the year. Agencies shall seek to ensure substantial progress toward the attainment of each of these goals in as short a time as practicable.

(3) The citywide goals shall not be summarily adopted as goals for individual procurements; rather, as set forth in subdivision i of this section, goals for such procurements may be set at levels higher, lower, or the same as the citywide goals. In setting such goals, each agency shall take into account the citywide goals and the agency's annual utilization plan, the size and nature of the procurement, and the availability of MBEs, WBEs, VBES and EBEs with the capacity to perform the specific types and scale of work involved in its procurements.

(4) (a) No later than 2015, the commissioner, in consultation with the city chief procurement officer, shall, for each industry classification and each minority group, review and compare the availability rates of firms owned by minorities [and], women AND VETERANS to the utilization rates of such firms in agency contracts and direct subcontracts, and shall on the basis of such review and any other relevant information, where appropriate, revise by rule the citywide participation goals set forth in this subdivision AND DETERMINE APPROPRIATE CONTRACTING PERCENTAGE GOALS FOR VETERANS. In making such revision, the commissioner shall consider the extent to which discrimination continues to have an impact on the ability of minorities [and], women AND VETERANS to compete for city contracts and subcontracts. The commissioner shall submit the results of such review and any proposed revisions to the participation goals to the speaker of the council at least sixty days prior to publishing a proposed rule that would revise participation goals. Such review shall thereafter be conducted at least once every two years.

(b) No later than 2015, the commissioner shall review information collected by the department to determine the availability and utilization of EBEs, and shall on the basis of such review and any other relevant information, where appropriate, revise by rule the citywide participation goals set forth in this subdivision AND INCLUDE VETERANS IN SUCH GOALS. Such revised goals shall be set at a level intended to assist in overcoming the impact of discrimination on such businesses. Such review shall be conducted in 2015 and at least once every two years thereafter.

e. Responsibilities of the division.

(1) The division shall create and maintain and periodically update directories by industry classification of MBEs, WBEs, VBES and EBEs which it shall supply to all agencies, post on its website and on other relevant city websites and make available for dissemination and/or public inspection at its offices and other locations within each borough.

(2) The division shall make its resources available to assist agencies and contractors in (i) determining the availability of MBEs, WBEs, VBES and EBEs to participate in their contracts as prime contractors and/or subcontractors; and (ii) identifying opportunities appropriate for participation by MBEs, WBEs, VBES and EBEs in contracts.

(3) The division shall develop and maintain relationships with organizations representing contractors, including MBEs, WBEs, VBES and EBEs, and solicit their support and assistance in efforts to increase participation of MBEs, WBEs, VBES and EBEs in city procurement.

(4) The division shall coordinate with city and state entities that maintain databases of MBEs, WBEs, VBES and EBEs and work to enhance city availability data and directories.

(5) The division shall keep agency M/WBE AND VBE officers informed of conferences, contractor fairs, and other services that are available to assist them in pursuing the objectives of this section.

(6) The division shall conduct, coordinate and facilitate technical assistance and educational programs for MBEs, WBEs, VBES and EBEs and other contractors designed to enhance participation of MBEs, WBEs, VBES and EBEs in city procurement. The division shall further develop a clearinghouse of information on programs and services available to MBEs, WBEs, VBES and EBEs. The division shall conduct meetings with MBEs, WBEs, VBES and EBEs to discuss what agencies look for in evaluating bids and proposals. The division shall also educate prime contractors on opportunities to partner or subcontract with certified MBEs, WBEs, VBES and EBEs.

(7) The division shall develop standardized forms and reporting documents for agencies and contractors to facilitate the reporting requirements of this section.

(8) The division shall direct and assist agencies in their efforts to increase participation by MBEs, WBEs, VBES and EBEs in any city-operated financial, technical, and management assistance program.

(9) The division shall study and recommend to the commissioner methods to streamline the M/WBE, VBE and EBE certification process.

(10) Each fiscal year the division, in consultation with the city chief procurement officer, shall audit at least 5% of all open contracts for which contractor utilization plans have been established in accordance with subdivision i of this section and 5% of all contracts awarded to MBEs, WBEs, VBES, and EBEs to assess compliance with this section. All solicitations for contracts for which contractor utilization plans are to be established shall include notice of potential audit.

(11) The division shall assist agencies in identifying and seeking ways to reduce or eliminate practices such as bonding requirements or delays in payment by prime contractors that may present barriers to competition by MBEs, WBEs, VBES and EBEs.

(12) The division shall encourage prime contractors to enter joint venture agreements with MBEs, WBEs, VBES and EBEs.

(13) (a) The division shall, upon reviewing applications for certification and recertification, determine whether a firm qualifies as a graduate MBE, WBE, VBE or EBE.

(b) The division shall promulgate regulations establishing a process by which a certified MBE, WBE, VBE or EBE may challenge a determination that it qualifies as a graduate MBE, WBE, VBE or EBE.

(c) At any time more than two years after the division has determined that a firm qualifies as a graduate MBE, WBE, VBE or EBE, the firm may apply to have such designation lifted. The division shall lift the designation if the firm demonstrates that it has been below the size standards established by the United States small business administration for its industry for a period of two years or more.

f. Responsibilities of agency M/WBE AND VBE officers. Each agency head shall designate a deputy commissioner or other executive officer to act as the agency M/WBE AND VBE officer who shall be directly accountable to the agency head concerning the activities of the agency in carrying out its responsibilities pursuant to this section, including the responsibilities relating to EBE participation. The duties of the M/WBE AND VBE officer shall include, but not be limited to:

(1) creating the agency's utilization plan in accordance with subdivision g of this section;

(2) acting as the agency's liaison with the division;

(3) acting as a liaison with organizations and/or associations of MBEs, WBEs, VBES and EBEs, informing such organizations and/or associations of the agency's procurement procedures, and advising them of future procurement opportunities;

(4) ensuring that agency bid solicitations and requests for proposals are sent to MBEs, WBEs, VBES and EBEs in a timely manner, consistent with this section and rules of the procurement policy board;

(5) referring MBEs, WBEs, VBES and EBEs to technical assistance services available from agencies and other organizations;

(6) reviewing requests for waivers and/or modifications of participation goals and contractor utilization plans in accordance with paragraphs 11 and/or 12 of subdivision i of this section;

(7) working with the division and city chief procurement officer in creating directories as required pursuant to subdivision k of this section. In fulfilling this duty, the agency M/WBE AND VBE officer shall track and record each contractor that is an MBE, WBE, VBE or EBE and each subcontractor hired pursuant to such officer's agency contracts that is an MBE, WBE, VBE or EBE, and shall share such information with the director, the commissioner, and the city chief procurement officer;

(8) for contracts for which contractor utilization plans have been established pursuant to subdivision i of this section, monitoring each contractor's compliance with its utilization plan by appropriate means, which shall include, but need not be limited to, job site inspections, contacting MBEs, WBEs, VBES and EBEs identified in the plan to confirm their participation, and auditing the contractor's books and records;

(9) monitoring the agency's procurement activities to ensure compliance with its agency utilization plan and progress towards the participation goals as established in such plan;

(10) providing to the city chief procurement officer information for the reports required in subdivision l of this section and providing any other plans and/or reports required pursuant to this section or requested by the director and/or the city chief procurement officer; and

(11) participating in meetings required pursuant to subdivision m of this section.

g. Agency utilization plans.

(1) Beginning May 15, 2006, and on April 1 of each year thereafter, each agency which, during the fiscal year which ended on June 30 of the preceding year, has made procurements in excess of five million dollars, without counting procurements that are exempt pursuant to paragraph two of subdivision q of this section, shall submit an agency utilization plan for the fiscal year commencing in July of the year when such plan is to be submitted to the commissioner. Upon approval by the commissioner such plan shall be submitted to the speaker of the council. Each such plan shall, at a minimum, include the following:

(a) the agency's participation goals for MBEs, WBEs, VBES and EBEs for the year, provided however, that when setting its goals, each agency shall consider the citywide goals, the size and nature of its own procurement portfolio (excluding contracts described in paragraph two of subdivision q of this section), and the availability of MBEs, WBEs, VBES and EBEs with the capacity to perform the specific types and scale of work for which the agency anticipates it will solicit procurements during the year;

(b) an explanation for any agency goal that is different than the participation goal for the relevant group and industry classification as determined pursuant to subdivision d of this section;

(c) a list of the names and titles of agency personnel responsible for implementation of the agency utilization plan;

(d) methods and relevant activities proposed for achieving the agency's participation goals; and

(e) any other information which the agency or the commissioner deems relevant or necessary.

(2) An agency utilization plan shall set forth specific participation goals for MBEs, WBEs, VBES and/or EBEs for purchases of professional services, standard services, construction and goods valued at or below twenty thousand dollars, and for purchases of professional services, standard services, construction and goods valued at or below one hundred thousand dollars. When setting its goals for such purchases, in addition to the factors set forth in paragraph (1) of this subdivision, each agency shall specifically consider the potential for such purchases to provide opportunities for MBEs, WBEs, VBES and EBEs to develop greater capacity, thereby increasing competition for city procurements.

(3) An agency utilization plan may be amended from time to time to reflect changes in the agency's projected expenditures or other relevant circumstances and resulting changes in such agency's participation goals. Such amendments shall be submitted to the commissioner, the city chief procurement officer and the speaker of the council at least thirty days prior to implementation.

(4) Prior to approving individual agency utilization plans, the commissioner, in consultation with the city chief procurement officer, shall consider whether such plans viewed in the aggregate establish any goals exceeding the corresponding citywide goals set forth in subdivision d of this section. If any aggregated goals are found to exceed the corresponding citywide goal, the commissioner shall require agencies to adjust their goals so that plans, viewed in the aggregate, do not establish goals exceeding the citywide goals. Nothing in this paragraph shall be construed to limit the awards of contracts and subcontracts that may be made to MBEs, WBEs, VBES and EBEs without using goals.

(5) The commissioner, in consultation with the city chief procurement officer, shall, no later than July 31 of each year, publish on the division's website a plan and schedule for each agency detailing the anticipated contracting actions for the upcoming fiscal year that form the basis for the agency utilization plan of each such agency. The plan and schedule shall include information specific to each prospective invitation for bids, request for proposal, or other solicitation, including, but not limited to, the specific type and scale of the services and/or goods to be procured, the term of the proposed contract, the method of solicitation the agency intends to utilize, and the anticipated fiscal year quarter of the planned solicitation.

h. Achieving agency participation goals.

(1) Each agency head shall be directly accountable for the goals set forth in his or her agency's utilization plan.

(2) Each agency shall make all reasonable efforts to meet the participation goals established in its agency utilization plan. Agencies shall, at a minimum, use the following methods to achieve participation goals:

(a) Agencies shall engage in outreach activities to encourage MBEs, WBEs, VBES and EBEs to compete for all facets of their procurement activities, including contracts awarded by negotiated acquisition, emergency and sole source contracts, and each agency shall seek to utilize MBEs, WBEs, VBES and/or EBEs for all types of goods, services and construction they procure.

(b) Agencies shall encourage eligible businesses to apply for certification as MBEs, WBEs, VBES and EBEs and inclusion in the directories of MBEs, WBEs, VBES and EBEs. Agencies shall also encourage MBEs, WBEs, VBES and EBEs to have their names included on their bidders lists, seek pre-qualification where applicable, and compete for city business as contractors and subcontractors. Agencies are encouraged to advertise procurement opportunities in general circulation media, trade and professional association publications and small business media, and publications of minority [and], women's AND VETERANS' business organizations, and send written notice of specific procurement opportunities to minority [and], women's AND VETERANS' business organizations.

(c) All agency solicitations for bids or proposals shall include information referring potential bidders or proposers to the directories of MBEs, WBEs, VBES and EBEs prepared by the division.

(d) In planning procurements, agencies shall consider the effect of the scope, specifications and size of a contract on opportunities for participation by MBEs, WBEs, VBES and EBEs.

(e) Prior to soliciting bids or proposals for contracts valued at over ten million dollars, other than contracts for capital projects valued at over twenty-five million dollars and contracts that are exempt pursuant to paragraph two of subdivision q of this section, an agency shall submit the bid or proposal to the city chief procurement officer for a determination whether it is practicable to divide the proposed contract into smaller contracts and whether doing so will enhance competition for such contracts among MBEs, WBEs, VBES and EBEs and other potential bidders or proposers. If the city chief procurement officer determines that it is both practicable and advantageous in light of cost and other relevant factors to divide such contracts into smaller contracts, then he or she shall direct the agency to do so.

(f) Agencies shall examine their internal procurement policies, procedures and practices and, where practicable, address those elements, if any, that may negatively affect participation of MBEs, WBEs, VBES and EBEs in city procurement.

i. Participation goals for contracts for construction and professional and standard services.

(1) Prior to issuing the solicitation of bids or proposals for individual contracts, agencies shall establish participation goals for MBEs, WBEs, VBES and/or EBEs. Such goals may be greater than, less than or the same as the relevant citywide goal or goals established pursuant to subdivision d of this section. Taking into account the factors listed in this subdivision, an agency may establish a goal for a procurement that may be achieved by a combination of prime contract and subcontract dollars, a combination of construction and services performed pursuant to the contract, and/or a combination of MBEs, WBEs, VBES and/or EBEs. Alternatively, an agency may establish specific goals for particular types of services, and/or goals for particular types of certified firms. In determining the participation goals for a particular contract, an agency shall consider the following factors:

(a) the scope of work;

(b) the availability of MBEs, WBEs, VBES and EBEs able to perform the particular tasks required in the contract;

(c) the extent to which the type and scale of work involved in the contract present prime contracting and subcontracting opportunities for amounts within the capacity of MBEs, WBEs, VBES and EBEs;

(d) the agency's progress to date toward meeting its annual participation goals through race-neutral, gender-neutral and other means, and

the agency's expectations as to the effect such methods will have on participation of MBEs, WBEs, VBES and EBEs in the agency's future contracts; and

(e) any other factors the contracting agency deems relevant.

(2) A contracting agency shall not be required to establish participation goals for

(i) procurements described in subdivision q of this section; or

(ii) when the agency has already attained the relevant goal in its annual utilization plan, or expects that it will attain such goal without the use of such participation goals.

(3) For each contract in which a contracting agency has established participation goals, such agency shall state in the solicitation for such contract that bidders and/or proposers shall be required to agree as a material term of the contract that the contractor shall meet the participation goals unless such goals are waived or modified by the agency in accordance with this section. A contractor that is an MBE, WBE, VBE or EBE shall be permitted to count its own participation toward fulfillment of the relevant participation goal, provided that the value of such a contractor's participation shall be determined by subtracting from the total value of the contract any amounts that the contractor pays to direct subcontractors. A contractor that is a qualified joint venture shall be permitted to count a percentage of its own participation toward fulfillment of the relevant participation goal. The value of such a contractor's participation shall be determined by subtracting from the total value of the contract any amounts that the contractor pays to direct subcontractors, and then multiplying the remainder by the percentage to be applied to total profit to determine the amount to which an MBE, WBE, VBE or EBE is entitled pursuant to the joint venture agreement. Notwithstanding any provision of this paragraph to the contrary, a contractor's achievement of participation goals shall be determined as described in paragraph two of subdivision j of this section.

(4) For each contract in which participation goals are established, the agency shall include in its solicitation and/or bidding materials a referral to the directories prepared by the division pursuant to this section.

(5) For each contract for which participation goals are established, the contractor shall be required to submit with its bid or proposal a contractor utilization plan indicating:

(a) whether the contractor is an MBE, WBE, VBE, EBE, or a qualified joint venture;

(b) the percentage of work it intends to award to direct subcontractors; and

(c) in cases where the contractor intends to award direct subcontracts, a description of the type and dollar value of work designated for participation by MBEs, WBEs, VBES and/or EBEs, and the time frames in which such work is scheduled to begin and end.

When the contractor utilization plan indicates that the bidder or proposer does not intend to meet the participation goals, the bid or proposal shall not be deemed responsive unless the agency has granted a pre-award request for change pursuant to paragraph 11 of this subdivision.

(6) (a) For each contract for which a contractor utilization plan has been submitted, the contracting agency shall require that within thirty days of the issuance of notice to proceed, and at least once per year thereafter, the contractor submit a list of persons to which it intends

to award subcontracts within the next twelve months. In the event that a contracting agency disapproves a contractor's selection of a subcontractor or subcontractors, the contracting agency shall allow such contractor a reasonable time to propose alternate subcontractors.

(b) The contracting agency may also require the contractor to report periodically about the contracts awarded by its direct subcontractors to indirect subcontractors.

(7) For each contract for which a contractor utilization plan has been submitted, the contractor shall, with each voucher for payment, and/or periodically as the agency may require, submit statements, certified under penalty of perjury, which shall include, but not be limited to, the total amount the contractor paid to its direct subcontractors, and, where applicable pursuant to subparagraph (1) of paragraph (1) of subdivision j of this section, the total amount direct subcontractors paid to indirect subcontractors, the names, addresses and contact numbers of each MBE, WBE, VBE or EBE hired as a subcontractor by the contractor or any of the contractor's direct subcontractors, as well as the dates and amounts paid to each MBE, WBE, VBE or EBE. The contractor shall also submit, along with its voucher for final payment, the total amount it paid to subcontractors, and, where applicable pursuant to subparagraph (1) of paragraph (1) of subdivision j of this section, the total amount its direct subcontractors paid directly to their indirect subcontractors; and a final list, certified under penalty of perjury, which shall include the name, address and contact information of each subcontractor that is an MBE, WBE, VBE or EBE, the work performed by, and the dates and amounts paid to each.

(8) If payments made to, or work performed by, MBEs, WBEs, VBES or EBEs are less than the amount specified in the contractor's utilization plan, the agency shall take appropriate action in accordance with subdivision o of this section, unless the contractor has obtained a modification of its utilization plan pursuant to paragraph 12 of this subdivision.

(9) When advertising a solicitation for bids or proposals for a contract for which a participation goal has been established, agencies shall include in the advertisement a general statement that the contract will be subject to participation goals for MBEs, WBEs, VBES and/or EBEs.

(10) In the event that a contractor with a contract that includes a contractor utilization plan submits a request for a change order the value of which exceeds the greater of ten percent of such contract or $500,000, the agency shall review the scope of work for the contract, and the scale and types of work involved in the change order, and determine whether the participation goals should be modified.

(11) Requests from bidders or proposers for changes in participation goals.

(a) A bidder or proposer may request that an agency change the participation goal or goals established for the procurement on the grounds that goals are unreasonable in light of the availability of certified firms to perform the services required, or by demonstrating that it has legitimate business reasons for proposing a lower level of subcontracting in its utilization plan.

(b) If the contracting agency determines that the participation goals established for the procurement are unreasonable in light of the availability of certified firms to perform the services required, it shall revise the solicitation and extend the deadline for bids and proposals.

(c) Subject to subparagraph (d) of this paragraph, the contracting agency may grant a full or partial waiver of the participation goals to

a bidder or proposer who demonstrates that it has legitimate business reasons for proposing the level of subcontracting in its utilization plan. The contracting agency shall make its determination in light of factors that shall include, but not be limited to, whether the bidder or proposer has the capacity and the bona fide intention to perform the contract without any subcontracting, or to perform the contract without awarding the amount of subcontracts represented by the participation goals. In making such determination, the agency may consider whether the utilization plan is consistent with past subcontracting practices of the bidder or proposer, whether the bidder or proposer has made efforts to form a joint venture with a certified firm, and whether the bidder or proposer has made good faith efforts to identify portions of the contract that it intends to subcontract. The city chief contracting officer shall notify the council of any such waiver granted with respect to a registered contract in the quarterly report required pursuant to subdivision 1 of this section.

(d) The agency M/WBE AND VBE officer shall provide written notice of requests for a full or partial waiver of the participation goals to the division and the city chief procurement officer and shall not approve any such request without the approval of the city chief procurement officer, provided that the city chief procurement officer, upon adequate assurances of an agency's ability to administer its utilization plan in accordance with the provisions of this section, may determine that further approval from the city chief procurement officer is not required with respect to such requests for an agency's contracts or particular categories of an agency's contracts. The city chief procurement officer shall notify the speaker of the council in writing in the quarterly report required pursuant to subdivision 1 of this section following the registration of a contract for which a request for a full or partial waiver of a participation goal was granted, provided that where an agency has been authorized to grant waivers without approval of the chief procurement officer, such notice shall be provided to the speaker of the council by the agency. Such notification shall include, but not be limited to, the name of the contractor, the original participation goal, the waiver request, including all documentation, and an explanation for the approval of such request.

(12) Modification of utilization plans at contractor's request or agency's initiative. (a) A contractor may request modification of its utilization plan after the award of a contract. Subject to subparagraph (b) of this paragraph, an agency may grant such request if it determines that such contractor has established, with appropriate documentary and other evidence, that it made all reasonable, good faith efforts to meet the goals set by the agency for the contract. In making such determination, the agency shall consider evidence of the following efforts, as applicable, along with any other relevant factors:

(i) The contractor advertised opportunities to participate in the contract, where appropriate, in general circulation media, trade and professional association publications and small business media, and publications of minority [and], women's AND VETERANS' business organizations;

(ii) The contractor provided notice of specific opportunities to participate in the contract, in a timely manner, to minority [and], women's AND VETERANS' business organizations;

(iii) The contractor sent written notices, by certified mail or facsimile, in a timely manner, to advise MBEs, WBEs, VBES or EBEs that their interest in the contract was solicited;

(iv) The contractor made efforts to identify portions of the work that could be substituted for portions originally designated for participation by MBEs, WBEs, VBES and/or EBEs in the contractor utilization plan, and for which the contractor claims an inability to retain MBEs, WBEs, VBES or EBEs;

(v) The contractor held meetings with MBEs, WBEs, VBES and/or EBEs prior to the date their bids or proposals were due, for the purpose of explaining in detail the scope and requirements of the work for which their bids or proposals were solicited;

(vi) The contractor made efforts to negotiate with MBEs, WBEs, VBES and/or EBEs as relevant to perform specific subcontracts, or act as suppliers or service providers;

(vii) Timely written requests for assistance made by the contractor to the agency M/WBE AND VBE liaison officer and to the division; and

(viii) Description of how recommendations made by the division and the contracting agency were acted upon and an explanation of why action upon such recommendations did not lead to the desired level of participation of MBEs, WBEs, VBES and/or EBEs.

(b) The agency M/WBE AND VBE officer shall provide written notice of requests for such modifications to the division and the city chief procurement officer and shall not approve any such request for modification without the approval of the city chief procurement officer, provided that the city chief procurement officer, upon adequate assurances of an agency's ability to administer its utilization plan in accordance with the provisions of this section, may determine that further approval from the city chief procurement officer is not required with respect to such requests for an agency's contracts or particular categories of an agency's contracts. The city chief procurement officer, shall notify the speaker of the council in writing within seven days of the approval of a request for modification of a utilization plan, provided that where an agency has been authorized to grant modifications without approval of the chief procurement officer, such notice shall be provided to the speaker of the council by the agency. Such notification shall include, but not be limited to, the name of the contractor, the original utilization plan, the modification request, including all documentation, and an explanation for the approval of such request.

(c) An agency may modify the participation goals established for a procurement when the scope of the work has been changed by the agency in a manner that affects the scale and types of work that the contractor indicated in its contractor utilization plan would be awarded to subcontractors.

(d) The agency M/WBE AND VBE officer shall provide written notice to the contractor of its determination that shall include the reasons for such determination.

(13) For each contract in which a contracting agency has established participation goals, the agency shall evaluate and assess the contractor's performance in meeting each such goal. Such evaluation and assessment shall be a part of the contractor's overall contract performance evaluation required pursuant to section 333 of the charter.

j. Determining credit for MBE, WBE, VBE and EBE participation.

(1) An agency's achievement of its annual goals shall be calculated as follows:

(a) The dollar amount that an agency has paid or is obligated to pay to a prime contractor that is an MBE, WBE, VBE or EBE, reduced by the dollar amount the contractor has paid or is obligated to pay its direct subcontractors upon their completion of work, shall be credited toward

the relevant goal. Where an agency has paid or is obligated to pay a prime contractor that is both an MBE and a WBE, such amount shall be credited toward the relevant goal for MBEs or the goal for WBEs. WHERE AN AGENCY HAS PAID OR IS OBLIGATED TO PAY A PRIME CONTRACTOR THAT IS BOTH AN MBE OR WBE AND A VBE, SUCH AMOUNT SHALL BE CREDITED TOWARD THE RELEVANT GOAL FOR MBES OR WBES, AS APPLICABLE, OR THE GOAL FOR VBES.

(b) Except as provided in subparagraph (c) of this paragraph, the total dollar amount that a prime contractor of an agency has paid or is obligated to pay to a direct subcontractor that is an MBE, WBE, VBE or EBE shall be credited toward the relevant goal. Where such a contractor has paid or is obligated to pay a direct subcontractor that is both an MBE and a WBE, such amount shall be credited toward the relevant goal for MBEs or the goal for WBEs. WHERE SUCH A CONTRACTOR HAS PAID OR IS OBLIGATED TO PAY A DIRECT SUBCONTRACTOR THAT IS BOTH AN MBE OR WBE AND A VBE, SUCH AMOUNT SHALL BE CREDITED TOWARD THE RELEVANT GOAL FOR MBES OR WBES, AS APPLICABLE, OR THE GOAL FOR VBES.

(c) In the case of contracts of the types identified pursuant to subparagraph (l) of this paragraph, the total dollar amount that a prime contractor of an agency has paid or is obligated to pay a direct subcontractor that is an MBE, WBE, VBE or EBE, reduced by the dollar amount the direct subcontractor has paid or is obligated to pay its indirect subcontractors upon completion of work, shall be credited toward the relevant goal. Where such a contractor has paid or is obligated to pay a direct contractor that is both an MBE and a WBE, such amount shall be credited toward the relevant goal for MBEs or the goal for WBEs. WHERE SUCH CONTRACTOR HAS PAID OR IS OBLIGATED TO PAY A DIRECT CONTRACTOR THAT IS BOTH AN MBE OR WBE AND A VBE, SUCH AMOUNT SHALL BE CREDITED TOWARD THE RELEVANT GOAL FOR MBES OR WBES, AS APPLICABLE, OR THE GOAL FOR VBES.

(d) In the case of contracts of the types identified pursuant to subparagraph (1) of this paragraph, the total dollar amount that a direct subcontractor of the prime contractor has paid or is obligated to pay to an indirect subcontractor that is an MBE, WBE, VBE or EBE shall be credited toward the relevant goal. Where such a contractor has paid or is obliged to pay an indirect contractor that is both an MBE and a WBE, such amount shall be credited toward the relevant goal for MBEs or the goal for WBEs. WHERE SUCH A CONTRACTOR HAS PAID OR IS OBLIGATED TO PAY A DIRECT CONTRACTOR THAT IS BOTH AN MBE OR WBE AND A VBE, SUCH AMOUNT SHALL BE CREDITED TOWARD THE RELEVANT GOAL FOR MBES OR WBES, AS APPLICABLE, OR THE GOAL FOR VBES.

(e) For requirements contracts, credit shall be given for the actual dollar amount paid under the contract.

(f) Where one or more MBEs, WBEs, VBES or EBEs is participating in a qualified joint venture, the amounts that the joint venture is required to pay its direct subcontractors shall be subtracted as provided in subparagraph (a) of this paragraph, and then a percentage of the remaining dollar amount of the contract equal to the percentage of total profit to which MBEs, WBEs, VBES or EBEs are entitled pursuant to the joint venture agreement shall be credited toward the relevant goal. Where such a participant in a joint venture is both an MBE and a WBE, such amount shall be credited toward the relevant goal for MBEs or the goal for WBEs. WHERE SUCH A CONTRACTOR HAS PAID OR IS OBLIGATED TO PAY A DIRECT CONTRACTOR THAT IS BOTH AN MBE OR WBE AND A VBE, SUCH AMOUNT SHALL BE CREDITED TOWARD THE RELEVANT GOAL FOR MBES OR WBES, AS APPLICABLE, OR THE GOAL FOR VBES.

(g) No credit shall be given for participation in a contract by an MBE, WBE, VBE or EBE that does not perform a commercially useful function.

(h) No credit shall be given for the participation in a contract by any company that has not been certified as an MBE, WBE, VBE or EBE in accordance with section 1304 of the charter.

(i) In the case of a contract for which the contractor is paid on a commission basis, the dollar amount of the contract may be determined on the basis of the commission earned or reasonably anticipated to be earned under the contract.

(j) No credit shall be given to a contractor for participation in a contract by a graduate MBE, WBE, VBE or EBE.

(k) The participation of a certified company shall not be credited toward more than one participation goal.

(1) The city chief procurement officer may identify types of contracts where payments to indirect subcontractors shall be credited toward the relevant participation goals.

(2) A contractor's achievement of its participation goals established in its utilization plan shall be calculated as follows:

(a) A contractor's use of direct subcontractors and their indirect subcontractors toward achievement of each goal established in its utilization plan shall be calculated in the same manner as described for calculating the achievement of agency utilization goals as described in paragraph (1) of this subdivision, except that a contractor's use of a subcontractor that is both an MBE and a WBE, OR IS AN MBE OR WBE AND ALSO A VBE, shall not be credited toward the contractor's achievement of more than one goal;

(b) A contractor that is an MBE, WBE, VBE or EBE shall be permitted to count its own participation toward fulfillment of the relevant participation goal, provided that the value of such a contractor's participation shall be determined by subtracting from the total value of the contract any amounts that the contractor pays to direct subcontractors, and provided further that a contractor that is both an MBE and a WBE, OR IS AN MBE OR WBE AND ALSO A VBE, shall not be credited for its participation toward more than one goal;

(c) No credit shall be given to the contractor for the participation of a company that is not certified in accordance with section 1304 of the charter before the date that the subcontractor completes the work under the subcontract.

(d) A contractor that is a qualified joint venture shall be permitted to count a percentage of its own participation toward fulfillment of the relevant participation goal. The value of such a contractor's participation shall be determined by subtracting from the total value of the contract any amounts that the contractor pays to direct subcontractors, and then multiplying the remainder by the percentage to be applied to total profit to determine the amount to which an MBE, WBE, VBE or EBE is entitled pursuant to the joint venture agreement; provided that where such a participant in a joint venture is both an MBE and a WBE, OR IS AN MBE OR A WBE AND ALSO A VBE, such amount shall not be credited toward more than one goal.

k. Small purchases.

Whenever an agency solicits bids or proposals for small purchases pursuant to section three hundred fourteen of the charter, the agency shall maintain records identifying the MBEs, WBEs, VBES and EBEs it solicited, which shall become part of the contract file.

l. Compliance reporting.

(1) The city chief procurement officer, in consultation with the division, shall prepare and submit quarterly reports to the speaker of the council as described in this section. Preliminary reports containing information for the fiscal year in progress shall be submitted to the speaker of the council by January first, April first, and July first of each year, and a final report containing information for the preceding fiscal year shall be submitted to the speaker of the council by October first of each year. The reports, which shall also be posted on the division's website, shall contain the following information, disaggregated by agency:

(a) the number and total dollar value of contracts awarded, disaggregated by industry classification and size of contract, including but not limited to, contracts valued at or below twenty thousand dollars, contracts valued above twenty thousand dollars and at or below one hundred thousand dollars, contracts valued above one hundred thousand dollars and at or below one million dollars, contracts valued above one million dollars and at or below five million dollars, contracts valued above five million dollars and at or below twenty five million dollars, and contracts valued above twenty five million dollars;

(b) for those contracts for which an agency set participation goals in accordance with subdivision i of this section:

(i) The number and total dollar amount of such contracts disaggregated by industry classification, size of contract and status as MBE, WBE, VBE, EBE, or non-certified firm, and further disaggregated by minority and gender group, and the number and dollar value of such contracts that were awarded to firms that are certified both as MBEs and WBEs, OR AS AN MBE OR WBE AND ALSO A VBE;

(ii) the number and total dollar value of such contracts that were awarded to qualified joint ventures and the total dollar amount attributed to the MBE, WBE, VBE or EBE joint venture partners, disaggregated by minority and gender group, size of contract and industry classification, and the number and dollar value of such contracts that were awarded to firms that are certified both as MBEs and WBEs, OR AS AN MBE OR WBE AND ALSO A VBE;

(iii) The number and total dollar value of subcontracts approved during the reporting period that were entered into pursuant to contracts for which participation requirements under this section have been established (including both contracts awarded during the current reporting period and those awarded in earlier reporting periods that remain open during the current reporting period), and the number and total dollar amount of such subcontracts awarded to MBEs, WBEs, VBES and EBEs, disaggregated by minority and gender group, size of subcontract and industry classification, and the number and dollar value of such subcontracts that were awarded to firms that are certified both as MBEs and WBEs, OR AS AN MBE OR WBE AND ALSO A VBE;

(iv) a list of the requests for full or partial waivers of participation requirements for such contracts made pursuant to paragraph 11 of subdivision i of this section and the determinations made with respect to such requests, and the number and dollar amount of those contracts for which such waivers were granted, disaggregated by industry classification; and

(v) a list of the requests for modification of participation requirements for such contracts made pursuant to paragraph 12 of subdivision i of this section and the determinations made with respect to such requests, and the number and dollar amount of those contracts for which

such modifications were granted, disaggregated by industry classification;

(c) a detailed list of each complaint received pursuant to paragraph 1 of subdivision o of this section which shall, at a minimum, include the nature of each complaint and the action taken in investigating and addressing such complaint including whether and in what manner the enforcement provisions of subdivision o of this section were invoked and the remedies applied;

(d) a detailed list of all non-compliance findings made pursuant to paragraph 4 of subdivision o of this section and actions taken in response to such findings;

(e) the number of firms certified or recertified in accordance with section 1304 of the charter during the six months immediately preceding such report;

(f) the number and percentage of contracts audited pursuant to [section] paragraph 10 of subdivision e of this section and a summary of the results of each audit.

(g) a summary of efforts to reduce or eliminate barriers to competition as required pursuant to paragraph 11 of subdivision e of this section;

(h) a list of all solicitations submitted to the city chief procurement officer pursuant to subparagraph [e] (E) of paragraph 2 of subdivision h of this section and a summary of the determination made regarding each such submission; and

(i) any other information as may be required by the director and/or the commissioner.

(2) The annual reports submitted in October shall, in addition, contain a determination made by the director and the commissioner, as to whether each agency has made substantial progress toward achieving its utilization goals and whether the city has made substantial progress toward achieving the citywide goals established pursuant to subdivision d of this section.

(3) If an agency that has submitted an agency utilization plan pursuant to subdivision g of this section fails to achieve its utilization goal, the agency head shall prepare and submit to the director, the commissioner, the city chief procurement officer, and the speaker of the council by October first a performance improvement plan which shall describe in detail the efforts such agency intends to undertake to increase M/WBE AND VBE participation.

(4) The data that provide the basis for the reports required by this subdivision shall be made available electronically to the council at the time the reports are submitted.

m. Agency compliance.

(1) Each agency shall submit to the commissioner and the city chief procurement officer such information as is necessary for the city chief procurement officer to complete his or her reports as required in subdivision l of this section. The director, the commissioner, and the city chief procurement officer shall review each agency's submissions. The director shall convene the agency M/WBE AND VBE officers for those agencies that have submitted utilization plans pursuant to subdivision g of this section as often as the director deems necessary, but no less frequently than once per quarter, in order to have agency M/WBE AND VBE officers (i) discuss the results of the reports required in subdivision 1 of this section; (ii) offer detailed information concerning their effectuation of their performance improvement plans and any additional efforts undertaken to meet goals established in agency utilization

plans; (iii) share the practices that have yielded successes in increasing M/WBE AND VBE participation; and (iv) devise strategic plans to improve the performance of those failing to meet goals established in agency utilization plans. No less frequently than twice per year, agency heads for those agencies that have submitted utilization plans pursuant to subdivision g of this section shall join such quarterly meetings. Whenever it has been determined that an agency is not making adequate progress toward the goals established in its agency utilization plan, the director, the commissioner, and the city chief procurement officer shall act to improve such agency's performance, and may take any of the following actions:

(a) require the agency to submit more frequent reports about its procurement activity;

(b) require the agency to notify the director, the commissioner, and the city chief procurement officer, prior to solicitation of bids or proposals for, and/or prior to award of, contracts in any category where the agency has not made adequate progress toward achieving its utilization goals;

(c) reduce or rescind contract processing authority delegated by the mayor pursuant to sections 317 and 318 of the charter; and

(d) any other action the director, the commissioner, and the city chief procurement officer deem appropriate.

(2) Noncompliance. Whenever the director, the city chief procurement officer, or the commissioner finds that an agency has failed to comply with its duties under this section, he or she shall attempt to resolve such noncompliance informally with the agency head. In the event that the agency fails to remedy its noncompliance after such informal efforts, the director and the city chief procurement officer shall submit such findings in writing to the mayor and the speaker of the council, and the mayor shall take appropriate measures to ensure compliance.

(3) Failure by an agency to submit information required by the director, the division, or the city chief procurement officer, in accordance with this section, including but not limited to the utilization plan required pursuant to subdivision g of this section, shall be deemed noncompliance.

n. Pre-qualification. An agency establishing a list of pre-qualified bidders or proposers may deny pre-qualification to prospective contractors who fail to demonstrate in their application for pre-qualification that they have complied with applicable federal, state and local requirements for participation of MBEs, WBEs, VBES and EBEs in procurements. A denial of pre-qualification may be appealed pursuant to applicable procurement policy board rules.

o. Enforcement.

(1) Any person who believes that a violation of the requirements of this section, rules promulgated pursuant to its provisions, or any provision of a contract that implements this section or such rules, including, but not limited to, any contractor utilization plan, has occurred may submit a complaint in writing to the division, the city chief procurement officer and the comptroller. The division shall promptly investigate such complaint and determine whether there has been a violation.

(2) Any complaint alleging fraud, corruption or other criminal behavior on, the part of a bidder, proposer, contractor, subcontractor or supplier shall be referred to the commissioner of the department of investigation.

(3) Contract award.

(a) When an agency receives a protest from a bidder or proposer regarding a contracting action that is related to this section, the agency shall send copies of the protest and any appeal thereof, and any decisions made on the protest or such appeal, to the division and the comptroller.

(b) Whenever a contracting agency has determined that a bidder or proposer has violated this section, or rules promulgated pursuant to its provisions, the agency may disqualify such bidder or proposer from competing for such contract and the agency may revoke such bidder's or proposer's prequalification status.

(4) Contract administration.

(a) For each contract for which participation requirements have been established under this section, at least once annually during the term of such contract, the contracting agency shall review the contractor's progress toward attainment of its utilization plan, including but not limited to, by reviewing the percentage of work the contractor has actually awarded to MBE, WBE, VBE and/or EBE subcontractors and the payments the contractor has made to such subcontractors.

(b) Whenever an agency believes that a contractor or a subcontractor is not in compliance with this section, rules promulgated pursuant to its provisions or any provision of a contract that implements this section, including, but not limited to any contractor utilization plan, the agency shall send a written notice to the city chief procurement officer, the division and the contractor describing the alleged noncompliance and offering the contractor an opportunity to be heard. The agency shall then conduct an investigation to determine whether such contractor or subcontractor is in compliance.

(c) In the event that a contractor has been found to have violated this section, rules promulgated pursuant to its provisions, or any provision of a contract that implements this section, including, but not limited to any contractor utilization plan, the contracting agency shall, after consulting with the city chief procurement officer and the division, determine whether any of the following actions should be taken:

(i) enter an agreement with the contractor allowing the contractor to cure the violation;

(ii) revoke the contractor's pre-qualification to bid or make proposals for future contracts;

(iii) make a finding that the contractor is in default of the contract;

(iv) terminate the contract;

(v) declare the contractor to be in breach of contract;

(vi) withhold payment or reimbursement;

(vii) determine not to renew the contract;

(viii) assess actual and consequential damages;

(ix) assess liquidated damages or reduction of fees, provided that liquidated damages may be based on amounts representing costs of delays in carrying out the purposes of the program established by this section, or in meeting the purposes of the contract, the costs of meeting utilization goals through additional procurements, the administrative costs of investigation and enforcement, or other factors set forth in the contract;

(x) exercise rights under the contract to procure goods, services or construction from another contractor and charge the cost of such

contract to the contractor that has been found to be in noncompliance; or

(xi) take any other appropriate remedy.

(5) To the extent available pursuant to rules of the procurement policy board, a contractor may seek resolution of a dispute regarding a contract related to this section. The contracting agency shall submit a copy of such submission to the division.

(6) Whenever an agency has reason to believe that an MBE, WBE, VBE or EBE is not qualified for certification, or is participating in a contract in a manner that does not serve a commercially useful function, or has violated any provision of this section, the agency shall notify the commissioner who shall determine whether the certification of such business enterprise should be revoked.

(7) Statements made in any instrument submitted to an agency pursuant to these rules shall be submitted under penalty of perjury and any false or misleading statement or omission shall be grounds for the application of any applicable criminal and/or civil penalties for perjury. The making of a false or fraudulent statement by an MBE, WBE, VBE or EBE in any instrument submitted pursuant to these rules shall, in addition, be grounds for revocation of its certification.

(8) A contractor's record in implementing its contractor utilization plan shall be a factor in the evaluation of its performance. Whenever a contracting agency determines that a contractor's compliance with a contractor utilization plan has been unsatisfactory, the agency shall, after consultation with the city chief procurement officer, file an advice of caution form for inclusion in VENDEX as caution data.

p. Procurements by elected officials and the council.

(1) In the case of procurements by independently elected city officials other than the mayor, where these rules provide for any action to be taken by the director or the city chief procurement officer, such action shall instead be taken by such elected officials.

(2) In the case of procurements by the council, where these rules provide for any action to be taken by the director or the city chief procurement officer, such action shall instead be taken by the speaker of the council.

q. Applicability. Agencies shall not be required to apply participation requirements to the following types of contracts:

(1) those subject to federal or state funding requirements which preclude the city from imposing the requirements of this subdivision;

(2) those subject to federal or state law participation requirements for MBEs, WBEs, disadvantaged business enterprises, VBES, and/or EBEs;

(3) contracts between agencies;

(4) procurements made through the United States general services administration or another federal agency, or through the New York state office of general services or another state agency, or any other governmental agency.

(5) emergency procurements pursuant to section three hundred fifteen of the charter;

(6) sole source procurements pursuant to section three hundred twenty-one of the charter;

(7) contracts for human services; and

(8) contracts awarded to not-for-profit organizations.

r. Comptroller. The comptroller shall randomly examine contracts for which contractor utilization plans are established to assess compliance with such plans. All solicitations for contracts for which contractor

utilization plans are to be established shall include notice of potential comptroller examinations.

S 32. Paragraphs (a), (b) and (c) of subdivision 12 of section 3.07 of the arts and cultural affairs law, as amended by chapter 255 of the laws of 1988, are amended to read as follows:

(a) All contracts for design, construction, services and materials pursuant to this section of whatever nature and all documents soliciting bids or proposals therefor shall contain or make reference to the following provisions:

(i) That the contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group persons [and], women AND VETERANS are afforded equal opportunity without discrimination. Such programs shall include, but not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selection for training and retraining, including apprenticeship and on-the-job training;

(ii) That the contractor shall request any employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding and which is involved in the performance of the contract to furnish a written statement that it will not discriminate because of race, creed, color, national origin, sex, age, disability or marital status and it will cooperate in the implementation of the contractor's obligations hereunder;

(iii) That the contractor will state, in any solicitations or advertisements for employees placed by or on behalf of the contractor in the performance of the contract, that all qualified applicants will be afforded equal employment opportunity without discrimination because of race, creed, color, national origin, sex, age, disability or marital status;

(iv) That the contractor will include the provisions of subparagraphs (i) through (iii) of this paragraph in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to its work in connection with the contract with the agency.

(b) The council shall establish appropriate measures, procedures and guidelines to ensure that contractors and subcontractors undertake meaningful programs to employ and promote qualified minority group members [and], women AND VETERANS. Such procedures may require after notice in a bid solicitation, the submission of a minority [and], women AND VETERANS workforce utilization program prior to the award of any contract, or at any time thereafter, and may require the submission of compliance reports relating to the operation and implementation of any workforce utilization program adopted hereunder. The council may take appropriate action, including the impositions of sanctions for non-compliance to effectuate the provisions of this subdivision and the monitoring of compliance with this subdivision.

(c) (i) In the performance of projects pursuant to this section, minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises shall be given the opportunity for meaningful participation. For purposes hereof, minority business enterprise shall mean any business enterprise which is at least fifty-one per centum owned by, or in the case of a publicly owned business, at least fifty-one per centum of the

stock or other voting interest is owned by citizens or permanent resident aliens who are Black, Hispanic, Asian, American Indian, Pacific Islander, or Alaskan native, and such ownership interest is real, substantial and continuing and has the authority to independently control the day to day business decisions of the entity for at least one year; [and] women-owned business enterprise shall mean any business enterprise which is at least fifty-one per centum owned by, or in the case of a publicly owned business, at least fifty-one per centum of the stock to other voting interests of which is owned by citizens or permanent resident aliens who are women, and such ownership interest is real, substantial and continuing and has the authority to independently control the day to day business decisions of the entity for at least one year AND VETERAN-OWNED BUSINESS ENTERPRISE SHALL MEAN ANY BUSINESS ENTERPRISE WHICH IS AT LEAST FIFTY-ONE PER CENTUM OWNED BY, OR IN THE CASE OF A PUBLICLY OWNED BUSINESS, AT LEAST FIFTY-ONE PERCENTUM OF THE STOCK TO OTHER VOTING INTERESTS OF WHICH IS OWNED BY CITIZENS OR PERMANENT RESIDENT ALIENS WHO ARE VETERANS, AND SUCH OWNERSHIP INTEREST IS REAL, SUBSTANTIAL AND CONTINUING AND HAS THE AUTHORITY TO INDEPENDENTLY CONTROL THE DAY TO DAY BUSINESS DECISIONS OF THE ENTITY FOR AT LEAST ONE YEAR.

The provisions of this subdivision shall not be construed to limit the ability of any minority business enterprise to bid on any contract.

(ii) In order to implement the requirements and objectives of this section, the council shall request, as appropriate, the assistance of other state agencies to monitor the contractors' compliance with provisions hereof, provide assistance in obtaining competing qualified minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises to perform contracts proposed to be awarded, and take other appropriate measures to improve the access of minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises to these contracts.

S 33. Subdivision 33 of section 454 of the banking law, as amended by chapter 679 of the laws of 2003, is amended to read as follows:

33. Notwithstanding any other provision of this article to the contrary, to participate in the minority - [and women-owned], WOMEN - AND VETERAN-OWNED business development and lending program[, as established in section 16-c of section 1 of chapter 174 of the laws of 1968, constituting the urban development corporation act,] to the extent that such program allows participation by credit unions.

S 34. Section 52-0113 of the environmental conservation law, as added by chapter 512 of the laws of 1986, is amended to read as follows:

S 52-0113. Minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprise program.

1. a. In the performance of projects pursuant to this article minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises shall be given the opportunity for meaningful participation. The department or the office shall establish measures and procedures to secure meaningful participation and identify those contracts and items of work for which minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises may best bid to actively and affirmatively promote and assist their participation in the projects, so as to facilitate the award of a fair share of contracts to such enterprises; provided, however, that nothing in this article shall be construed to limit the ability of the department or office to assure that qualified minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises may participate in the program. For purposes hereof, minority business enterprise shall mean any business enterprise which is at least fifty-one per centum owned by,

or in the case of a publicly owned business, at least fifty-one per centum of the stock of which is owned by citizens or permanent resident aliens who are Black, Hispanic, Asian or American Indian, Pacific Islander or Alaskan natives and such ownership interest is real, substantial and continuing and have the authority to independently control the day to day business decisions of the entity for at least one year; [and] women-owned business enterprise shall mean any business enterprise which is at least fifty-one per centum owned by, or in the case of a publicly owned business, at least fifty-one per centum of the stock of which is owned by citizens or permanent resident aliens who are women, and such ownership interest is real, substantial and continuing and have the authority to independently control the day to day business decisions of the entity for at least one year AND VETERAN-OWNED BUSINESS ENTERPRISE SHALL MEAN ANY BUSINESS ENTERPRISE WHICH IS AT LEAST FIFTY-ONE PER CENTUM OWNED BY, OR IN THE CASE OF A PUBLICLY OWNED BUSINESS, AT LEAST FIFTY-ONE PER CENTUM OF THE STOCK OF WHICH IS OWNED BY CITIZENS OR PERMANENT RESIDENT ALIENS WHO ARE VETERANS, AND SUCH OWNERSHIP INTEREST IS REAL, SUBSTANTIAL AND CONTINUING AND HAVE THE AUTHORITY TO INDEPENDENTLY CONTROL THE DAY TO DAY BUSINESS DECISIONS OF THE ENTITY FOR AT LEAST ONE YEAR.

The provisions of this paragraph shall not be construed to limit the ability of any minority [or women-owned], WOMEN OR VETERAN-OWNED business enterprise to bid on any contract.

b. In the implementation of this section, the department or the office shall consider compliance by any contractor with the requirements of any federal, state, or local law concerning minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises, which may effectuate the requirements of this section. If the department or the office determines that by virtue of the imposition of the requirements of any such law, in respect to capital project contracts, the provisions thereof duplicate or conflict with such law, the department may waive the applicability of this section to the extent of such duplication or conflict.

c. Nothing in this section shall be deemed to require that overall state and federal requirements for participation of minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises in programs authorized under this article be applied without regard to local circumstances to all projects or in all communities.

2. In order to implement the requirements and objectives of this section, the department and the office shall establish procedures to monitor the contractors' compliance with provisions hereof, provide assistance in obtaining competing qualified minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises to perform contracts proposed to be awarded, and take other appropriate measures to improve the access of minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises to these contracts.

S 35. Section 957 of the general municipal law is amended by adding a new subdivision (u) to read as follows:

(U) "VETERAN-OWNED BUSINESS ENTERPRISE" SHALL HAVE THE SAME MEANING AS PROVIDED IN SECTION THREE HUNDRED TEN OF THE EXECUTIVE LAW.

S 36. Subdivisions (a), (g) and (t) of section 959 of the general municipal law, subdivision (a) as amended by section 2 of part R of chapter 57 of the laws of 2010 and subdivisions (g) and (t) as amended by section 3 of part S1 of chapter 57 of the laws of 2009, are amended to read as follows:

(a) After consultation with the director of the budget, the commissioner of labor, and the commissioner of taxation and finance, promul-

gate regulations, which, notwithstanding any provisions to the contrary in the state administrative procedure act, may be adopted on an emergency basis, governing (i) criteria of eligibility for empire zone designation, provided, however, that such criteria be approved by the director of the budget; (ii) the application process; (iii) the certification by the commissioner as to the eligibility of business enterprises for benefits referred to in section nine hundred sixty-six of this article, which shall be governed by criteria including, but not limited to: (1) whether the business enterprise, if certified, is reasonably likely to create new employment or prevent a loss of employment in the zone, (2) whether such new employment opportunities will be for individuals who will perform a substantial part of their employment activities in the zone, (3) whether certification will have the undesired effect of causing individuals to transfer from existing employment with another business enterprise to similar employment with the business enterprise so certified, and transferring existing employment from one or more other municipalities, towns or villages in the state, or transferring existing employment from one or more other businesses in the zone, (4) whether such enterprise is likely to enhance the economic climate of the zone, (5) whether the commissioner of labor establishes that such business enterprise, during the three years preceding the submission of an application for certification, has engaged in a substantial violation or a pattern of violations of laws regulating unemployment insurance, workers compensation, public work, child labor, employment of minorities [and women], WOMEN AND VETERANS, safety and health, or other laws for the protection of workers as determined by final judgment of a judicial or administrative proceeding; (6) whether such business meets the requirements of the cost benefit analysis as established in paragraph (p) of section nine hundred fifty-seven of this article, and (7) if the commissioner of labor establishes that the business enterprise has been found in a criminal proceeding to have violated, in the previous three years, any of the laws referred to in subparagraph five of this paragraph or regulations promulgated pursuant to such laws, the conditions of any permit issued thereunder, or similar statute, regulation, order or permit condition of any other government agency, foreign or domestic, such business shall not be certified; provided, however, that a business enterprise that has shifted its operations, or some portions thereof, from an area within New York state not designated as an empire zone or zone equivalent area to an area so designated shall not be certified to receive such benefits except where such shift is entirely within a municipality and has been approved by the local governing body of such municipality or in situations where it has been established, after a public hearing, that extraordinary circumstances exist which warrant the relocation of a business, in whole or part, into an empire zone or a zone equivalent area from another municipality and the municipality from which the business is relocating approves of such relocation; or where such shift in operations is from a business incubator facility operated by a municipality or by a public or private not-for-profit entity which provides space and business support services to newly established firms; and (iv) the decertification by the commissioner, upon the recommendation of the commissioner of labor, so as to revoke the certification of business enterprises for benefits referred to in section nine hundred sixty-six of this article with respect to an empire zone or zone equivalent area upon a finding that the business enterprise has committed substantial violations of laws for the protection of workers including all federal, state and local labor laws, rules or regulations; and (v)

the decertification by the commissioner so as to revoke the certification of business enterprises for benefits referred to in section nine hundred sixty-six of this article with respect to an empire zone or zone equivalent area upon a finding of any one of the following: (1) the business enterprise made material misrepresentations of fact on its application for certification or in any of its business annual reports, or the business enterprise failed to disclose facts in its application for certification that would constitute grounds for not issuing a certification; (2) the business enterprise has failed to construct, expand, rehabilitate or operate or invest in its facility substantially in accordance with the representations contained in its application for certification; (3) the business enterprise has failed to create new employment or prevent a loss of employment in the empire zone or zone equivalent area; (4) where applicable, the business enterprise has failed to submit an annual report after it has applied for zone tax benefits or program assistance based on new hires or investments or failed to submit other information when due; (5) the business enterprise, if first certified pursuant to this article prior to the first day of August, two thousand two, caused individuals to transfer from existing employment with another business enterprise with similar ownership and located in New York state to similar employment with the certified business enterprise or if the enterprise acquired, purchased, leased, or had transferred to it real property previously owned by an entity with similar ownership, regardless of form of incorporation or organization; (6) the business enterprise has failed to provide economic returns to the state in the form of total remuneration to its employees (i.e. wages and benefits) and investments in its facility greater in value to the tax benefits the business enterprise used and had refunded to it; or (7) the business enterprise has changed ownership or moved its operations out of the empire zone; said regulations shall provide that whenever any business enterprise is decertified with respect to an empire zone: (A) the date determined to be the earliest event constituting grounds for revoking certification shall be the effective date of decertification; (B) its certified single enterprise, if any, may also be decertified; and (C) the commissioner shall notify the commissioner of taxation and finance that such decertification has occurred, and such notification should include the effective date of such decertification and the zone or zone equivalent area to which such decertification applies; with respect to any business enterprise whose certification has been revoked pursuant to subparagraph five or six of this paragraph, that revocation (I) will be effective for a taxable year beginning on or after January first, two thousand eight and before January first, two thousand nine and for subsequent taxable years, unless the business enterprise is subsequently re-certified pursuant to part 11 of title 5 of the New York state codes, rules and regulations for a business enterprise for which a review is required to be conducted pursuant to subdivision (w) of this section in calendar year two thousand nine, and (II) thereafter will be effective for the taxable year during which the commissioner makes his or her determination (prior to any appeal) to revoke the certification of a business enterprise and for subsequent taxable years;

(g) Coordinate, with the local empire zone administrative board and state agencies and authorities, the provision of business development programs and services for each empire zone in order to stimulate the creation and development of new small businesses, including new small minority-owned [and], women-owned AND VETERAN-OWNED business enter-

prises, and may request and shall receive from any department, division, board, bureau, commission, agency or public authority of the state such assistance as may be necessary;

(t) Coordinate with the urban development corporation the creation of a special category of assistance for zones within the regional economic development partnership program, which will make available economic development assistance grants for zone programs and activities, including, but not limited to, planning, service coordination, and local institutional capacity building for human resource development necessary for economic revitalization; planning and development of small business incubators; job placement and preparedness programs for zones residents; education and training programs for zone businesses; child care programs and projects supportive of business development; technical assistance for minority [and women-owned], WOMEN AND VETERAN-OWNED business development; training for zone officials; business and tourism development and marketing programs; and other innovative programs and activities in support of economic and community development within the zones;

S 37. Paragraphs (iii) and (xii) of subdivision (a) of section 963 of the general municipal law, as amended by chapter 708 of the laws of 1993 and further amended by section 15 of part GG of chapter 63 of the laws of 2000, are amended to read as follows:

(iii) undertake efforts to ensure meaningful participation by minority-owned [and women-owned], WOMEN AND VETERAN-OWNED business enterprises in empire zone activities;

(xii) provide within the zone, or contract with a new or existing community-based local development corporation or entity to provide, strategic economic development planning for the zone, marketing and promotion of the zone, assistance to companies in applying for available benefits, preparation of applications for financing assistance and other technical assistance services; coordination of the delivery of state and local programs within the zones; and operation of such other economic development assistance programs in furtherance of the empire zone development plan as may be appropriate. Provided, however, within the amount appropriated therefor and allocated by the director of the budget, the commissioner, through annual administrative contracts, shall, to the maximum extent feasible, make equally available financial support, through contracts or other means, to assist with the administrative expenses of the local zone administrative bodies or community-based development organizations. No funds shall be made available for this purpose unless the amount to be provided has been matched by private or governmental sources, other than state sources, in amounts at least equalling that to be provided by the state. Such matching funds shall be earmarked and used exclusively for the local administration of the zone program or for activities of the zone program. At least fifty percent of such matching funds shall be in cash, provided that the commissioner may waive this requirement for communities with populations of twenty-five thousand or less, and provided, further, that any amounts appropriated for minority [and women-owned], WOMEN AND VETERAN-OWNED business development within the zones shall be distributed by the commissioner pursuant to a competitive proposal solicitation process.

S 38. Subdivision (c) of section 964 of the general municipal law, as amended by chapter 708 of the laws of 1993 and further amended by section 15 of part GG of chapter 63 of the laws of 2000, is amended to read as follows:

(c) Each empire zone capital corporation shall, to the maximum extent feasible, undertake measures and procedures to ensure meaningful partic-

ipation by minority-owned [and], women-owned AND VETERAN-OWNED business enterprises in the activities and investments of such corporation. Each such corporation shall additionally, to the maximum extent feasible, undertake measures and procedures to ensure meaningful participation by locally owned business enterprises in the activities and investments of such corporation.

S 39. Subparagraph 7 of paragraph f of subdivision 3 of section 970-r of the general municipal law, as amended by section 1 of part F of chapter 577 of the laws of 2004, is amended to read as follows:

(7) the financial commitments the applicant will make to the brownfield opportunity area for activities including, but not limited to, marketing of the area for business development, human resource services for residents and businesses in the brownfield opportunity area, and services for small [and], minority [and women-owned], WOMEN AND VETERAN-OWNED businesses.

S 40. Section 3 of section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, is amended by adding a new subdivision 31 to read as follows:

(31) "VETERAN BUSINESS ENTERPRISE". A BUSINESS ENTERPRISE WHICH IS AT LEAST FIFTY-ONE PERCENT OWNED, OR IN THE CASE OF A PUBLICITY-OWNED BUSINESS AT LEAST FIFTY-ONE PERCENT OF THE COMMON STOCK OR OTHER VOTING INTERESTS OF WHICH IS OWNED, BY UNITED STATES CITIZENS OR PERMANENT RESIDENT ALIENS WHO ARE VETERANS, REGARDLESS OF RACE OR ETHNICITY, AND SUCH OWNERSHIP INTEREST IS REAL, SUBSTANTIAL AND CONTINUING AND SUCH VETERANS HAVE AND EXERCISE THE AUTHORITY TO INDEPENDENTLY CONTROL THE DAY TO DAY BUSINESS DECISIONS OF THE ENTERPRISES.

S 41. The second undesignated paragraph of subdivision 1 of section 12 of section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, as added by section 1 of part EE of chapter 60 of the laws of 2011, is amended to read as follows:

The empire state new market corporation, a community development entity certified by the United States Department of the Treasury Community Development Financial Institutions Fund and a corporate subsidiary of the corporation, by resolution, may direct any of its directors, officers, or employees to form limited liability companies pursuant to section 203 of the limited liability company law for the sole purpose of certifying and performing as community development entities that would be eligible to receive an allocation of tax credits under the new markets tax credit program. No limited liability company formed pursuant to this section shall merge or consolidate. Each limited liability company shall act solely in relation to projects selected by the corporation, or a corporate subsidiary of the corporation. Each limited liability company shall be empowered to receive an allocation of tax credits from a federal allocation to the corporation, or a corporate subsidiary of the corporation, under the new markets tax credit program and to do any other act or things incidental to or connected with the foregoing purposes or in advancement thereof. The corporation, or a corporate subsidiary of the corporation, shall be the managing member of each limited liability company created by the corporation. In determining which projects to allocate tax credits to under the new markets tax credit program, the corporation shall prioritize projects demonstrating one or more of the following goals or benefits: (a) creating or retaining jobs in low income communities; (b) increasing the provision of goods and services for low income community residents which would otherwise not be available at the same price or quality; (c) supporting

minority [and women-owned], WOMEN AND VETERAN-OWNED or controlled businesses; (d) expanding housing opportunities for low income community persons; (e) supporting environmentally sustainable outcomes; and (f) supporting efforts that otherwise benefit low income community residents by leveraging further investment in their communities. Provided further, such projects shall be limited to projects that would be authorized under this act and shall be subject to approval by the board of the urban development corporation. The corporation shall publish information regarding the process used to select projects to receive the new markets tax credits and provide a copy to the temporary president of the senate, the speaker of the assembly, the minority leader of the senate and the minority leader of the assembly. The corporation shall strive for regional diversity in the allocation of tax credits under the new markets tax credit program. The corporation shall include in the information required to be submitted annually in accordance with the provisions of subdivision 1 of section 2800 of the public authorities law information regarding assistance provided by it or its subsidiary under the new markets tax credit program, and shall provide financial information with respect to any subsidiary administering the program in the corporation's financial reports, including its certified audited financial statements.

S 42. Paragraph (c) of subdivision 9 of section 16-a of section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, as amended by chapter 477 of the laws of 2002, is amended to read as follows:

(c) of minority [or women-owned], WOMEN OR VETERAN-OWNED enterprises or enterprises owned by dislocated workers, such workers as defined in the Workforce Investment Act (P.L. 105-220); and

S 43. Section 16-c of section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, as added by chapter 169 of the laws of 1994, subparagraphs (i) and (ii) of paragraph (a) subdivision 2 as further amended by section 15 of part GG of chapter 63 of the laws of 2000, is amended to read as follows:

S 16-c. Minority- [and women-owned], WOMEN- AND VETERAN-OWNED business development and lending program.

(1) Minority- [and women-owned], WOMEN- AND VETERAN-OWNED business development and lending program. (a) There is hereby created a minority- [and women-owned], WOMEN- AND VETERAN-OWNED business development and lending program for the purpose of providing financial and technical assistance to minority [and women-entrepreneurs], WOMEN AND VETERAN ENTREPRENEURS.

(b) For the purposes of this section the following words or terms shall mean as follows:

(i) "minority-owned business enterprise" or "minority-owned business" shall mean the same as "minority business enterprise" as defined in subdivision three of section two hundred ten of the economic development law.

(ii) "women-owned business enterprise" or "women-owned business" shall mean the same as "women-owned business enterprise" as defined in subdivision five of section two hundred ten of the economic development law.

(iii) "VETERAN-OWNED BUSINESS ENTERPRISE" OR "VETERAN-OWNED BUSINESS" SHALL MEAN THE SAME AS "VETERAN-OWNED BUSINESS ENTERPRISE" AS DEFINED IN SUBDIVISION SIX OF SECTION TWO HUNDRED TEN OF THE ECONOMIC DEVELOPMENT LAW.

(IV) "incubator" shall mean a facility providing low-cost space, technical assistance and support services, including, but not limited to,

central services shared by tenants of the facility, to minority- [and women-owned], WOMEN- AND VETERAN-OWNED business enterprises.

(c) Assistance shall not be provided under this section for:

(i) the purchase or rehabilitation of real property for speculative purposes;

(ii) payment of any tax or employee benefit arrearage;

(iii) residential construction, renovation or development construction, except for assistance to minority [and], women AND VETERAN contractors under subdivision four of this section;

(iv) educational institutions and proprietary education firms, except licensed child care facilities;

(v) hospitals or residential health care facilities;

(vi) overnight lodging facilities;

(vii) refinancing of debt or equity invested in an enterprise or project.

(d) The corporation is authorized to:

(i) establish programs in conjunction with locally, and community based entities to decentralize lending for small loans and loans to start up minority- [and women-owned], WOMEN- AND VETERAN-OWNED businesses;

(ii) establish a comprehensive program for minority [and], women AND VETERAN contractors, which may include assistance through loans, bonding assistance and technical assistance;

(iii) establish a program to provide loans to established minority- [and women-owned], WOMEN- AND VETERAN-OWNED businesses and for minority- [and women-owned], WOMEN- AND VETERAN-OWNED businesses, including loans to such businesses seeking to acquire or expand a franchise;

(iv) provide loan guarantees to financial institutions and make linked deposits into federally and state chartered credit unions for the purpose of encouraging private financial institutions to make loans to minority- [and women-owned], WOMEN- AND VETERAN-OWNED businesses;

(v) establish a program to create incubators to assist small and high risk minority- [and women-owned], WOMEN- AND VETERAN-OWNED businesses to grow and prosper;

(vi) promote equity investment in minority- [and women-owned], WOMEN- AND VETERAN-OWNED businesses; and

(vii) establish a comprehensive technical assistance program in cooperation with the department of economic development to assist minority- [and women-owned], WOMEN- AND VETERAN-OWNED businesses and potential [minority and women-entrepreneurs] MINORITY-, WOMEN- AND VETERAN-ENTREPRENEURS.

(2) Minority [and], women AND VETERAN revolving loan trust fund. For the purpose of establishing programs in conjunction with locally and community based entities to decentralize lending for small loans and loans to start up minority- [and women-owned], WOMEN- AND VETERAN-OWNED businesses, the corporation shall establish minority [and], women AND VETERAN revolving loan trust fund accounts and related administrative expenses trust fund accounts.

(a) Each minority [and], women AND VETERAN revolving loan trust fund account shall be administered by one or more of the following types of entities that provide services to community businesses and have as one of their primary purposes the provision of services and assistance to minority- [and women-owned], WOMEN- AND VETERAN-OWNED businesses:

(i) empire zone capital corporations established pursuant to section nine hundred sixty-four of the general municipal law;

(ii) community-based local development corporations or industrial development agencies that serve a municipality in which an empire zone has been established pursuant to article eighteen-B of the general municipal law and have as their primary purpose assistance to minority- [and women-owned], WOMEN- AND VETERAN-OWNED businesses located or to be located in such empire zone; or

(iii) local and community development corporations, industrial development agencies, or other not-for-profit entities, representative of the community.

(b) To be eligible to administer a minority [and], women AND VETERAN revolving loan trust fund account, the entity must also: (i) have staff with sufficient expertise to analyze applications for financial assistance, to regularly monitor financial assistance to clients, and to provide management or technical assistance to clients; and (ii) have established a loan committee composed of six or more persons experienced in business management, commercial lending or in the operation of a for-profit business, at least one-half of whom shall be experienced in commercial lending, at least [one-third] ONE-QUARTER of whom shall be minority persons and at least [one-third] ONE-QUARTER of whom shall be women AND AT LEAST ONE-QUARTER OF WHOM SHALL BE VETERANS. Such loan committee shall review every application, determine the feasibility of the proposed project and the likelihood of repayment of the requested financing and shall recommend to the governing body of the entity such action on the application as the loan committee deems appropriate. The corporation shall identify entities eligible to administer minority and women revolving loan trust fund accounts through a competitive statewide request for proposal process.

(c) Any entity selected to administer a minority [and], women AND VETERAN revolving loan trust fund account shall be eligible to draw funds from the account as needed to provide the following types of financial assistance to minority- [and women-owned], WOMEN- AND VETERAN-OWNED businesses upon certification to and acceptance by the corporation that such assistance complies with rules and regulations promulgated by the corporation: (i) working capital loans, provided that the amount of the loan does not exceed thirty-five thousand dollars and the term of the loan does not exceed five years; and (ii) loans for the acquisition and/or improvement of real property and for the acquisition of machinery and equipment provided that the amount of the loan does not exceed fifty thousand dollars and the term of the loan does not exceed the useful life of the equipment or property.

(d) (i) Notwithstanding any provision of law to the contrary, the corporation may establish an administrative expenses trust fund account for the benefit of each entity selected to administer a minority [and], women AND VETERAN revolving loan trust fund account. The initial deposit of funds to an administrative expenses trust fund account shall be an amount determined by the corporation but shall not exceed twenty-five thousand dollars.

(ii) An entity selected to administer a minority [and], women AND VETERAN revolving loan trust fund account may use the funds in the administrative expenses trust fund account for costs incurred by it in the start up and administration of the financial assistance program authorized pursuant to this subdivision.

(iii) The corporation shall deposit into each administrative expenses trust fund account:

(A) all income earned from the moneys on deposit in the corresponding minority [and], women AND VETERAN revolving loan trust fund account

during the first year of the entity's administration of said account; and

(B) beginning with its second year in administering a minority [and], women AND VETERAN revolving loan trust fund account, said amounts may be used for costs incurred by the entity in administering the minority [and], women AND VETERAN revolving loan trust fund account; and

(C) repayments of interest on loans made from the corresponding minority [and], women AND VETERAN revolving loan trust fund account.

(iv) Funds from the administrative expenses trust fund account may be used for costs incurred at any time by an administering entity in its administration of a minority [and], women AND VETERAN revolving loan trust fund account pursuant to this section.

(v) Funds deposited in an administrative expenses trust fund account shall be disbursed by the corporation to the entity that administers the corresponding minority [and], women AND VETERAN revolving loan trust fund account on a periodic basis and shall be expended by the entity in accordance with an annual budget and any updates of same, approved by the corporation.

(e) Any entity selected to administer a minority [and], women AND VETERAN revolving loan trust fund account shall pay to the corporation for deposit any repayments received in connection with financial assistance provided from its account. Payments consisting of the repayment of the principal amount of a loan shall be deposited by the corporation into the minority [and], women AND VETERAN revolving loan trust fund account from which the loan was made. The interest earned by the corporation from the investment of moneys in each minority [and], women AND VETERAN revolving loan trust fund account during and after the second year of a selected entity's administration of said account shall be deposited by the corporation into the corresponding minority [and], women AND VETERAN revolving loan trust fund account and used to provide the financial assistance to minority- [and women-owned], WOMEN- AND VETERAN-OWNED businesses as authorized pursuant to this section.

(f) The provisions of subdivisions eight, nine, and fourteen through nineteen of section sixteen-a of this act pertaining to the regional revolving loan trust fund shall also be applicable to the minority [and], women AND VETERAN revolving loan trust fund, provided that: where the term "regional corporation" appears therein it shall be interpreted to mean an entity selected to administer a minority [and], women AND VETERAN revolving loan trust fund account, and "regional revolving loans trust fund" shall mean a minority [and], women AND VETERAN revolving loan trust fund, and where the term "this section" appears therein it shall mean this section sixteen-c.

(g) The corporation may provide funds from an appropriation for the minority- [and women-owned], WOMEN- AND VETERAN-OWNED business development and lending program to any entity selected to administer a minority [and], women AND VETERAN revolving loan trust fund for the purposes of recapitalizing such account and the entity's corresponding administrative expenses trust fund account following an evaluation by the corporation of the entity's administration and use of such accounts.

(h) Notwithstanding any provision of law to the contrary, the corporation shall establish a minority [and], women AND VETERAN revolving loan trust fund to pay into such fund any moneys made available to the corporation for such fund from any source, including moneys appropriated by the state and any income earned by, or increment to, the account due to the investment thereof, or any repayment of moneys advanced from the fund. The corporation shall not commingle the moneys of such fund with

any moneys held in trust by the corporation, except for investment purposes.

(3) Micro-loan program. (a) For the purposes of this subdivision "micro-loan" shall mean a loan of under seven thousand five hundred dollars.

(b) The corporation shall, pursuant to requests for proposals, enter into agreements for other types of locally, community or regionally administered loan programs than those set forth in subdivision two of this section, including micro-loan programs to be administered by local development corporations, local industrial development organizations, municipalities and not-for-profit organizations, to provide micro-loans to small and high risk minority- [and women-owned], WOMEN- AND VETERAN-OWNED businesses located within their respective service areas, provided that loan review committees are established by such administering entity, including women, VETERANS and minority persons experienced in business management, business development, commercial lending, entrepreneurship, or in the operation of a for-profit business.

(c) Agreements entered into pursuant to paragraph (b) of this subdivision shall be governed by paragraphs (d) through (h) of subdivision two of this section, and minority [and], women AND VETERAN revolving loan trust fund accounts and administrative expenses trust fund accounts shall be established in a similar fashion for entities selected to administer micro-loan funds pursuant to this subdivision.

(4) Minority [and], women AND VETERAN contracting program. For the purpose of establishing a comprehensive program to assist minority [and], women AND VETERAN contractors, the corporation may provide loans, loan guarantees, technical assistance and bonding assistance, the corporation may enter into cooperative agreements with cities, counties, municipalities, authorities, agencies, federally and state chartered credit unions in New York state and federally insured banking organizations and financial institutions for such purposes.

(a) To be eligible for a contractor loan, the borrower must have either (i) a construction contract with, or a contract to provide goods or services to, a governmental entity or authority, (ii) a subcontract on a government-sponsored construction contract, (iii) a contract or subcontract on a government sponsored residential project, or (iv) a contract or subcontract on a construction project previously approved by the corporation pursuant to section ten of this act.

(b) The corporation shall provide technical assistance specifically oriented to [minority and women-owned] MINORITY-, WOMEN- AND VETERAN-OWNED government contractors as part of its comprehensive technical assistance program.

(c) The corporation is authorized to provide assistance through the creation of, or assistance to, a minority [and], women AND VETERAN bonding guarantee program to enable minority [and], women AND VETERAN contractors and subcontractors to meet payment or performance bonding requirements.

(i) Through such program, assistance in the form of working capital loans and loan guarantees pursuant to subdivision six of this section may also be provided to minority [and], women AND VETERAN contractors and subcontractors who have secured contracts by participating in the program.

(ii) The corporation shall either establish criteria for the bonding guarantee program and for any required escrow funds which shall include detailed provisions for eligibility; or if the corporation is providing

assistance to a program other than one established by the corporation, review and approve the criteria established for such other program.

(5) Direct financial assistance for minority- [and women-owned], WOMEN- AND VETERAN-OWNED businesses. For the purpose of establishing a program to provide direct financial assistance to minority- [and women-owned], WOMEN- AND VETERAN-OWNED businesses, the corporation is authorized to provide assistance in the form of:

(a) Business development loans and loan guarantees pursuant to subdivision six of this section to eligible enterprises for the acquisition or improvement of real property, machinery, equipment or working capital, provided that to be eligible for a business development loan, the borrowers must have been in business for at least three years and provided that the loans must be in an amount equal to or in excess of fifty thousand dollars;

(b) Franchise loans to eligible enterprises seeking to acquire or expand franchises of nationally recognized corporations, provided that disbursements by the corporation of such loans shall be conditioned on obtaining such franchises;

(c) Equity assistance for eligible [minority and women-owned] MINORITY-, WOMEN- AND VETERAN-OWNED enterprises to match equity contributions to such enterprises by financial institutions and community development equity capital funds, provided, however, that such assistance shall be targeted to start-up and early stage enterprises in the manufacturing, retail and service sectors located in economically distressed areas.

(6) Deposits and loan guarantees. For the purpose of encouraging private financial institutions to make loans to eligible enterprises pursuant to this section for any of the eligible projects pursuant to subdivisions four and five of this section, the corporation is authorized to:

(a) Make linked deposits of funds into federally and state chartered credit unions in New York state, in order to encourage such organizations to make small loans to [minority and women-owned] MINORITY-, WOMEN- AND VETERAN-OWNED businesses; and

(b) Provide loan guarantees to private financial institutions for loans made to eligible minority- [and women-owned], WOMEN- AND VETERAN-OWNED businesses pursuant to this subdivision for eligible projects, provided that the guarantee shall be at least fifty percent backed by funds of the corporation. Any such loan guaranteed by the corporation shall be made to borrowers that are approved by the corporation and substantially meet the underwriting criteria the credit union or financial institution customarily applies to similar borrowers for similar loans supported by similar guarantees, and no guaranteed loan funds shall be disbursed until the corporation has received, reviewed and concurred, in writing, with the recommendation of the credit union or banking or financial institution to make a loan.

(7) Minority [and], women AND VETERAN small business incubator program. (a) The corporation shall establish a minority [and], women AND VETERAN small business incubator program for the purpose of providing financial support for the creation of incubators to nurture [minority and women-owned] MINORITY-, WOMEN- AND VETERAN-OWNED business enterprises with growth potential.

(b) Under this subdivision the corporation is authorized to provide low-interest loans and grants for construction financing and permanent financing of up to seventy-five percent of project costs up to a maximum of six hundred fifty thousand dollars per project, provided that the total amount of grant assistance provided pursuant to this paragraph

shall not exceed twenty percent of an appropriation provided for the purposes of this section.

(c) Incubator projects eligible for such assistance shall involve the renovation or reconstruction of existing facilities or the acquisition of equipment, except that construction shall be allowable in cases in which an applicant can demonstrate to the satisfaction of the corporation that an existing facility is unavailable in the area to be served by the new incubator facility.

(d) Incubator projects are not eligible to receive loans for the purpose of covering operating costs or supplying incubator support services, except that incubators in their first eighteen months of operation may receive one-time grants not to exceed forty thousand dollars, which costs may include administrative costs of employing a resident administrator/advisor to the incubator, provided that the corporation shall not expend a sum greater than two hundred fifty thousand dollars in any one state fiscal year, or so much as may be specifically appropriated for this purpose.

(e) Eligible incubator projects shall be required to demonstrate to the corporation's satisfaction:

(i) public or private support and involvement sufficient to complete the renovation of existing facilities or the construction of new facilities and the acquisition of equipment;

(ii) significant community support for the project;

(iii) the existence of prospective tenants for such incubator space;

(iv) demand for such incubator space, which may include evidence of the unavailability of suitable space for prospective tenants at appropriate rental or lease costs in the community in which such prospective tenants are located; and

(v) the inability of the project to occur without financial assistance from the corporation.

(f) The corporation shall establish criteria for eligibility for funding for incubator projects, including but not limited to the following:

(i) the project must be designed to provide low-cost space and support services to incubator tenants, coordination with other sources of assistance and flexible leasing arrangements for tenants;

(ii) the project sponsors must provide a management plan and a business plan for operating the incubator satisfactory to the corporation; and

(iii) the project gives preference for incubator space and assistance to minority- [and women-owned], WOMEN- AND VETERAN-OWNED businesses which currently receive, or have received, assistance from the corporation pursuant to this section and to incubator projects proposed to be located in economically distressed areas.

(8) Minority- [and women-owned], WOMEN- AND VETERAN-OWNED business technical assistance program. (a) The corporation shall establish a comprehensive technical assistance program within the minority [and], women AND VETERAN business development office, in cooperation with the department of economic development's division of minority- [and women-business], WOMEN- AND VETERAN-BUSINESS development established pursuant to article four-A of the economic development law, to provide technical assistance to minority- [and women-owned], WOMEN- AND VETERAN-OWNED business enterprises and to prospective minority- [and women-business], WOMEN- AND VETERAN-BUSINESS entrepreneurs through third party service providers, which assistance shall include, but not be limited to: (i) technical assistance in development and execution of business plans, including the formation of, acquisition of, management of, or diversifi-

cation of a minority- [or women-owned], WOMEN- OR VETERAN-OWNED business enterprise; (ii) technical assistance with applications for obtaining funds from public and private financing sources; (iii) technical assistance in the development of a working capital budget; (iv) referrals to other providers of technical assistance to minority- [and women-owned], WOMEN- AND VETERAN-OWNED businesses and minority [and], women AND VETERAN entrepreneurs, where appropriate, including the entrepreneurial assistance program established pursuant to article nine of the economic development law; and (v) technical assistance through education programs directed primarily at women , VETERAN and minority entrepreneurs.

(b) Technical assistance may be provided through direct corporate support, through grants to or contracts with service providers or governmental entities, and minority- [and women-owned], WOMEN- AND VETERAN-OWNED business enterprises and individuals.

(9) Priorities. The corporation shall give priority to applications for assistance pursuant to this section in which the business seeking such assistance indicates a commitment to first consider persons eligible to participate in federal job training partnership act (P.L. 97-300) programs.

(10) Non-application of certain provisions. The provisions of section ten and subdivision two of section sixteen of this act shall not apply to assistance or projects authorized pursuant to this section.

(11) Rules and regulations. The corporation shall, assisted by the commissioner of economic development and in consultation with the department of economic development, promulgate rules and regulations in accordance with the state administrative procedure act. Such rules and regulations shall be consistent with the program plan required by subdivision nineteen of section one hundred of the economic development law. No funds shall be disbursed under this program until such rules and regulations have been reviewed and approved by the corporation. All assistance and projects funded under this program shall be funded in accordance with the rules and regulations in effect on the date the completed application for such assistance shall be received by the corporation.

(12) Minority [and], women AND VETERAN business development and lending account. Notwithstanding any provision of law to the contrary, the corporation shall establish within the treasury of the corporation a minority [and], women AND VETERAN business development and lending account, and shall pay into such account any moneys which may be made available to the corporation for this purpose from any source including, but not limited to, moneys appropriated by the state and any repayment of principal and interest on loans made by the corporation pursuant to the minority- [and women-owned], WOMEN- AND VETERAN-OWNED business development and lending program. Funds in the minority [and], women AND VETERAN business development and lending account, including funds from the repayment of principal and interest on loans made by the corporation, may be used for any form of assistance authorized hereunder. The amounts deposited in the minority [and], women AND VETERAN business development and lending account may not be interchanged with any other account, but may be commingled with any other account for investment purposes. All loans disbursed by the corporation shall be repaid into the account. The corporation shall enter into a written agreement with the director of the budget for repayment, to the state comptroller to the credit of the capital projects fund, of all moneys in the account after a period of time to be determined by the corporation and the director of the budget. The corporation shall transfer to the minority

[and], women AND VETERAN business development and lending account: all moneys appropriated or reappropriated by New York state for the minority [and], women AND VETERAN revolving loan trust fund that have not been committed prior to the effective date of the appropriation for the program in the current fiscal year, or become uncommitted subsequent to the effective date of the program's appropriation for the current fiscal year; and all repayments of principal and interest on loans made by the corporation which are currently on deposit in, or payable to, the minority [and], women AND VETERAN business development and lending account.

(13) Standardization. The corporation shall streamline the review and approval process for projects and wherever possible standardize all relevant attendant documentation and legal documents.

(14) Approval cycle. The corporation shall approve eligible loans or grants on at least a four-month cycle and shall give priority consideration to the comparative degree of economic distress within the areas in which the project is located. Other factors to be considered by the corporation shall include the impact of the project on the employment and economic condition of the community and the financial feasibility of the project.

(15) Repayment. Notwithstanding the provisions of section forty-a of the state finance law and any other general or special law, no written agreement under this program shall require repayment at any time or on any terms inconsistent with the provisions of this act or the New York state project finance agency act; except, however, that the corporation may make grants to projects using funds appropriated for this purpose and that the repayment provision may not apply to such grants.

(16) Reports. The chairman of the corporation shall submit to the director of the budget, the speaker of the assembly and the temporary president of the senate an evaluation of the effectiveness of the program prepared by an entity independent of the corporation. The corporation shall select the program evaluator through a request for proposal process. Such evaluation shall determine whether the assistance provided has enhanced the economic condition of assisted companies or communities, and shall make recommendation for improvements which would make the program more effective. Such evaluation shall be submitted by September first, nineteen hundred ninety-five and September first every two years thereafter.

S 44. Subparagraphs (viii) and (x) of paragraph (e) of subdivision 7 of section 16-d of section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, as added by chapter 169 of the laws of 1994, are amended to read as follows:

(viii) export, marketing, procurement and subcontracting assistance to small and medium-sized industrial firms, including minority- [and women-owned], WOMEN- AND VETERAN-OWNED businesses, and to flexible manufacturing networks, and programs to assist regional and multi-county business marketing and procurement programs;

(x) business planning, management assistance and counseling, and financial packaging assistance to small and medium-sized industrial firms, including minority- [and women-owned], WOMEN- AND VETERAN-OWNED businesses, flexible manufacturing networks, and new enterprises and small businesses, including the establishment of neighborhood-based business service centers designed to deliver comprehensive technical assistance to new and small businesses in specific communities and neighborhoods;

S 45. Subparagraph (ii) of paragraph (h) of subdivision 7 of section 16-d of section 1 of chapter 174 of the laws of 1968, constituting the

New York state urban development corporation act, as added by chapter 169 of the laws of 1994, is amended to read as follows:

(ii) support for business development projects of women, members of minority groups, VETERANS or dislocated workers;

S 46. Clause (B) of subparagraph (i) of paragraph (h) of subdivision 8 of section 16-d of section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, as added by chapter 169 of the laws of 1994 and as further amended by section 15 of part GG of chapter 63 of the laws of 2000, is amended to read as follows:

(B) community based local development corporations, industrial development agencies, or other not-for-profit entities which serve a municipality in which an empire zone has been established and which, as one of their primary purposes, provide services and assistance to business enterprises located or to be located in such empire zone, including minority- [and women-owned], WOMEN- AND VETERAN-OWNED businesses;

S 47. Paragraph (b) of subdivision 14 of section 16-d of section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, as added by chapter 169 of the laws of 1994, is amended to read as follows:

(b) Submit to the director of the budget, the speaker of the assembly and the temporary president of the senate an evaluation of the effectiveness of the urban and community development program prepared by an entity independent of the corporation. The corporation shall select the program evaluator through a request for proposal process. Such evaluation shall discuss the variety and types of programs supported by the corporation under this program; and, as appropriate, the extent to which the program has served to create and maintain jobs; the extent to which the program has helped to increase the vitality of local communities; the extent to which the program is coordinated with other related state and local assistance programs; the extent to which the program serves minorities [and], women AND VETERANS; the extent to which the program serves urban and rural areas; the extent to which the program serves economically distressed and highly distressed areas; the extent to which the program has helped to increase the capacity of local governments and organizations to undertake economic development activities; and such other components as the commissioner of economic development shall deem appropriate; and shall make recommendations for improvements which would make the program more effective. Such evaluation shall be submitted by September first, nineteen hundred ninety-five and by September first every two years thereafter.

S 48. Paragraph (h) of subdivision 1 of section 16-e of section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, as added by chapter 169 of the laws of 1994, is amended to read as follows:

(h) "Revolving loan fund account grants" shall include: (i) grants to provide the local match for federally funded community-based loan funds; (ii) grants to capitalize and recapitalize regional revolving loan trust fund accounts pursuant to section sixteen-a of this act; and (iii) grants to recapitalize minority [and], women AND VETERAN revolving loan trust fund accounts established pursuant to section sixteen-c of this act.

S 49. Subparagraph (i) of paragraph (c) of subdivision 5 of section 16-e of section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, as added by chapter 169 of the laws of 1994, is amended to read as follows:

(i) business development by women, minorities, VETERANS or unemployed persons;

S 50. Subparagraphs (vi) and (ix) of paragraph (c) of subdivision 10 of section 16-e of section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, as added by chapter 169 of the laws of 1994, are amended to read as follows:

(vi) management and procurement assistance to small business, including minority- [and women-owned], WOMEN- AND VETERAN-OWNED businesses;

(ix) assistance to expand the capacity of existing entities administering minority [and], women AND VETERAN revolving loan funds to deliver services;

S 51. Subdivision 13 of section 16-e of section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, as added by chapter 169 of the laws of 1994, is amended to read as follows:

(13) Regional loan fund account grants. Assistance from this program may be provided for grants of up to five hundred thousand dollars to capitalize, and up to two hundred thousand dollars to recapitalize, regional revolving loan trust fund accounts established pursuant to section sixteen-a of this act and up to two hundred thousand dollars to recapitalize minority [and], women AND VETERAN revolving loan trust fund accounts established pursuant to section sixteen-c of this act; and up to two hundred thousand dollars to provide the local match for appropriately federally-financed community-based loan funds.

S 52. Paragraph (d) of subdivision 18 of section 16-e of section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, as added by chapter 169 of the laws of 1994, is amended to read as follows:

(d) The participation of minority- [and women-owned], WOMEN- AND VETERAN-OWNED businesses;

S 53. Subdivision 1 of section 16-f of section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, as added by chapter 169 of the laws of 1994, is amended to read as follows:

(1) Program created. There is hereby created a state bonding guarantee assistance program to enable small businesses, and minority-owned [and], women-owned AND VETERAN-OWNED business enterprises, certified as a minority-owned [or], women-owned OR VETERAN-OWNED business enterprise pursuant to article fifteen-A of the executive law, to meet payment and/or performance bonding requirements by providing additional financial backing needed to induce a surety company to issue a bond for construction projects, including but not limited to, government sponsored, transportation related construction projects. For purposes of this section, the term small business shall have the same meaning as defined in section one hundred thirty-one of the economic development law. Such program shall give preference to minority-owned [and], women-owned AND VETERAN-OWNED business enterprises and shall:

(a) Make available funds to surety companies providing bonds to small businesses and [minority- owned or] MINORITY-OWNED, women-owned OR VETERAN-OWNED business enterprises in an amount equal to a percentage not to exceed fifty percent of the face value of bonds issued by the surety.

(b) Provide technical assistance in completing bonding applications for small businesses and minority-owned [or], women-owned OR VETERAN-OWNED business enterprises seeking to become eligible for bonding in preparation for bidding on construction projects, including

transportation related projects. The corporation shall provide and may refer such businesses to the department of economic development for technical assistance as such businesses may need, including but not limited to:

(i) a review of the applicants' market and business competitive strategy;

(ii) consultation and review of the development and planned implementation of a working capital budget;

(iii) assistance with applications for the receipt of funding from other financial sources and providing referrals to other appropriate public and private sources of financing; and

(iv) assistance from the regional offices of the department of economic development, pursuant to article eleven of the economic development law, and the entrepreneurial assistance program, pursuant to article nine of such law, and any other such program receiving state funds from this act or the department of economic development or any other state agency that is intended to provide technical assistance to small businesses and minority-owned [and], women-owned AND VETERAN-OWNED small business enterprises.

S 54. Paragraph (g) of subdivision 1 of section 16-i of section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, as amended by chapter 471 of the laws of 2001, is amended to read as follows:

(g) Assistance to local or regional organizations to facilitate financing for small- and medium-sized business, including minority- [and], women-owned AND VETERAN-OWNED business enterprises through flexible financing programs, including, but not limited to, loan loss reserve and revolving loan programs, working capital loans, working capital loan guarantees, or other flexible financing programs that leverage traditional financing;

S 55. Subparagraph (i) of paragraph (c) of subdivision 2 of section 16-k of section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, as amended by chapter 103 of the laws of 2011, is amended to read as follows:

(i) provide a plan to the corporation or its agent for the marketing of the capital access program to small businesses, including those in highly distressed areas and to minority- [and], women-owned AND VETERAN-OWNED businesses, with appropriate lending objectives identified by the financial institution for such areas and businesses;

S 56. Subparagraph (i) of paragraph (e) of subdivision 2 of section 16-l of section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, as added by chapter 471 of the laws of 2001, is amended to read as follows:

(i) innovative activities and programs designed to encourage value-added small business development and growth in rural areas, including cottage and crafts industries; group marketing of local products; women-owned industries; VETERAN-OWNED INDUSTRIES; natural resources development; and tourism. Such activities and programs shall also include projects pertaining to agriculture and agribusiness development to stimulate the development and implementation of new and alternative production, processing, storage, distribution and marketing technologies and improvements for New York food, agricultural and forest products. Projects promoting strengthened farm management practices shall also be eligible for assistance;

S 57. Paragraph (g) of subdivision 1 of section 16-m of section 1 of chapter 174 of the laws of 1968, constituting the New York state urban

development corporation act, as added by section 1 of part N of chapter 84 of the laws of 2002, is amended to read as follows:

(g) Assistance to local or regional organizations to facilitate financing for small- and medium-sized business, including minority- [and], women-owned AND VETERAN-OWNED business enterprises through flexible financing programs, including, but not limited to, loan loss reserve and revolving loan programs, working capital loans, working capital loan guarantees, or other flexible financing programs that leverage traditional financing;

S 58. Subparagraph (i) of paragraph (e) of subdivision 7 of section 16-o of section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, as added by chapter 186 of the laws of 2007, is amended to read as follows:

(i) provide jobs for low income people or are owned by low income people, women, VETERANS or minority entrepreneurs; or

S 59. Paragraph (b) of subdivision 1 of section 16-q of section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, as added by section 2 of part QQ of chapter 57 of the laws of 2008, is amended to read as follows:

(b) Support for the attraction or expansion of a business, including, but not limited to, those primarily engaged in activities identified as a strategic industry, and minority-owned [and], women-owned AND VETERAN-OWNED business enterprises as defined by subdivisions (c) and (g) of section nine hundred fifty-seven of the general municipal law.

S 60. Subdivisions 3 and 11 of section 16-t of section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, as amended by section 1 of part II of chapter 59 of the laws of 2013, are amended to read as follows:

3. Program loans to small businesses shall be targeted and marketed to [minority and women-owned] MINORITY-, WOMEN- AND VETERAN-OWNED enterprises and other small businesses that are having difficulty accessing traditional credit markets. Program loans to small businesses shall be used for the creation and retention of jobs, as defined by the corporation, including: (a) working capital; (b) the acquisition and/or improvement of real property; (c) the acquisition of machinery and equipment, property or improvement; or (d) the refinancing of debt obligations. There shall be two categories of loans to small businesses: a micro loan that shall have a principal amount that is less than twenty-five thousand dollars and a regular loan that shall have a principal amount not less than twenty-five thousand dollars. Prior to receiving program funds, the lending organization must certify to the corporation that such loan complies with this section and rules and regulations promulgated for the program and that the lending organization has performed its obligations pursuant to and is in compliance with this section, the program rules and regulations and all agreements entered into between the corporation and the lending organization. The program funds amount used by the lending organization to fund a program applicant loan shall not be more than fifty percent of the principal amount of such loan. The program funds amount used by the lending organization to fund a program applicant loan shall not be greater than one hundred and twenty-five thousand dollars. Minority- [and women-owned], WOMEN- AND VETERAN-OWNED business enterprises and other small businesses who access such program loans under this subdivision shall not be precluded from accessing such short-term financing loans provided under subdivision eleven of this section.

11. Notwithstanding anything to the contrary in this section, the corporation may provide at least five hundred thousand dollars in program funds pursuant to this section to lending organizations for the purpose of making short-term financing available to minority- [and women-owned], WOMEN- AND VETERAN-OWNED business enterprises and other small businesses performing contracts to provide construction or professional services for state procurement purposes. Such loans shall be used to underwrite the cost of labor, materials, and equipment directly associated with (1) the contract being financed or (2) a contract that has been satisfied for which the business is awaiting payment from the state. The program funds amount used by the lending organization to fund a program applicant loan shall not be more than eighty percent of the principal amount of such loan. The program funds amount used by the lending organization to fund a program applicant loan shall not be greater than one hundred twenty-five thousand dollars. Minority- [and women-owned], WOMEN- AND VETERAN-OWNED business enterprises and other small businesses who access such short-term financing loans under this subdivision shall not be precluded from accessing such program loans provided under subdivision three of this section.

S 61. Subparagraph (xvi) of paragraph (b) of subdivision 2 of section 16-v of section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, as added by section 1 of part C of chapter 59 of the laws of 2013, is amended to read as follows:

(xvi) a plan to recruit minority- [and women-owned], WOMEN- AND VETERAN-OWNED businesses for location and participation with the incubator program.

S 62. Paragraph 1 of subdivision (c) of section 30 of section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, as amended by chapter 732 of the laws of 1990, is amended to read as follows:

(1) In addition to any other requirements imposed by the act or otherwise regarding evaluations of programs administered by the corporation, each evaluation shall include an analysis of the job creation effect of such program, the number of small businesses that received assistance, the number of [minority and women-owned] MINORITY-, WOMEN- AND VETERAN-OWNED firms that received assistance, the number of projects undertaken in distressed and highly distressed communities, and, if applicable, the repayment experience of borrowers of funds from the corporation.

S 63. Paragraph 2 of subdivision (e) of section 30-a of section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, as added by section 2 of part M1 of chapter 62 of the laws of 2003, is amended to read as follows:

(2) require projects to be financed out of the empire state economic development fund be approved generally in amounts which are proportional to amounts appropriated for the urban and community development program, and the [minority and women-owned] MINORITY-, WOMEN AND VETERAN-OWNED business development and lending program;

S 64. Section 38 of section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, as amended by chapter 169 of the laws of 1994, is amended to read as follows:

S 38. Small business and minority-owned [and], women-owned AND VETERAN-OWNED business enterprises transportation capital assistance and guaranteed loan program. 1. To provide financial assistance to small business and minority-owned [and], women-owned AND VETERAN-OWNED busi-

ness enterprises engaged in government sponsored, transportation related construction projects, the corporation shall establish a small business and minority-owned [and], women-owned AND VETERAN-OWNED business enterprise transportation capital assistance revolving loan fund which shall provide loans or loan guarantees to small business and minority-owned [and], women-owned AND VETERAN-OWNED business enterprises. For purposes of this section: (a) the term small business shall have the same meaning as defined in section one hundred thirty-one of the economic development law and (b) the term project shall mean a project of state agency or authority that sponsors transportation related construction projects and participates in this program and any definition of project contained elsewhere in this act shall not apply.

2. Such loans, or loan guarantees for loans made by federally and state chartered credit institutions, financial institutions, and federally insured banking organizations to small business and minority-owned [and], women-owned AND VETERAN-OWNED business enterprises, shall be used to (a) enable such businesses, through the acquisition, leasing or improvement of real property, machinery or equipment, or through the provision of working capital to secure service, commodity or construction contracts; (b) restore working capital to such businesses which have successfully completed work under a contract but whose liquidity has been adversely affected by problems resulting from delayed payments; and (c) ensure the completion of the work associated with a governmental service, commodity or construction contract in order to prevent default on such contract.

3. (a) To be eligible for such loans or loan guarantees (i) a minority-owned [or], women-owned OR VETERAN-OWNED business enterprise must be certified as a minority-owned [or], women-owned OR VETERAN-OWNED business enterprise pursuant to article 15-A of the executive law; and (ii) a small business or a minority-owned [or], women-owned OR VETERAN-OWNED business enterprise shall have a contract or sub-contract to provide goods or services related to a government sponsored, transportation related construction project.

(b) Only such business enterprises referred to the corporation by a written application of a state agency or authority that sponsors transportation related construction projects shall be eligible for program assistance. Such assistance shall be provided to such an enterprise only in connection with its performance as a contractor or sub-contractor on a specific transportation related project of the referring agency or authority. In order for such an agency or authority to refer such enterprises to the corporation, such agency or authority shall enter into a master agreement with the corporation covering procedures and requirements for providing program assistance. The corporation shall determine whether or not to approve such an agency's or authority's written application for program assistance to such a business within twenty business days of the corporation's receipt of such application. If it approves the application, the corporation will provide assistance pursuant to the applicable master agreement.

4. The corporation shall give preference to minority-owned [and], women-owned AND VETERAN-OWNED business enterprises in making such loans and loan guarantees and shall establish such other criteria as it may deem necessary for this program and for any required amount that shall be held in reserve for any guarantees made under this program.

5. Notwithstanding any inconsistent provision of law, general, special or local, including pursuant to capital projects budget appropriations or reappropriations, where applicable, the corporation is hereby author-

ized to enter into such agreements as may be necessary for the operation and administration of a small business and minority-owned [and], women-owned AND VETERAN-OWNED business enterprises transportation capital assistance and guaranteed loan program.

6. The corporation is authorized to establish a revolving loan fund account into which funds may be received and from which funds may be expended for the aforementioned purposes.

7. The provisions of section ten and subdivision two of section sixteen of this act shall not apply to assistance provided under this program.

S 65. Paragraph (a) of subdivision 1 of section 9-a of section 1 of chapter 359 of the laws of 1968 constituting the facilities development corporation act, as added by chapter 58 of the laws of 1987, is amended to read as follows:

(a) The contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group persons [and], women AND VETERANS are afforded equal opportunity without discrimination. Such programs shall include, but not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selections for training or retraining, including apprenticeship and on-the-job training.

S 66. Section 9-b of section 1 of chapter 359 of the laws of 1968 constituting the facilities development corporation act, as added by chapter 58 of the laws of 1987, is amended to read as follows:

S 9-b. Minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprise program. 1. (a) Minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises shall be given the opportunity for meaningful participation in all contracts executed by the corporation pursuant to the provisions of this act other than contracts the cost of which is borne solely by a municipality or municipalities. The corporation shall establish measures and procedures to secure meaningful participation and identify those contracts and items of work for which minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises may best bid to actively and affirmatively promote and assist their participation in the projects, so as to facilitate the award of a fair share of contracts to such enterprises; provided, however, that nothing in this act shall be construed to limit the ability of the corporation to assure that qualified minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises may participate in the program. For purposes hereof, minority business enterprise shall mean any business enterprise which is at least fifty-one per centum owned by, or in the case of a publicly owned business, at least fifty-one per centum of the stock of which is owned by citizens or permanent resident aliens who are Black, Hispanic, Asian or American Indian, Pacific Islander or Alaskan natives and such ownership interest is real, substantial and continuing and have the authority to independently control the day to day business decisions of the entity for at least one year; and women-owned business enterprise shall mean any business enterprise which is at least fifty-one per centum owned by, or in the case of a publicly owned business, at least fifty-one per centum of the stock of which is owned by citizens or permanent resident aliens who are women, and such ownership interest is real, substantial and continuing and have the authority to independently control the day to day business decisions of the entity for at least one

year; AND VETERAN-OWNED BUSINESS ENTERPRISE SHALL MEAN ANY BUSINESS ENTERPRISE WHICH IS AT LEAST FIFTY-ONE PER CENTUM OWNED BY, OR IN THE CASE OF A PUBLICLY OWNED BUSINESS, AT LEAST FIFTY-ONE PER CENTUM OF THE STOCK OF WHICH IS OWNED BY CITIZENS OR PERMANENT RESIDENT ALIENS WHO ARE VETERANS, AND SUCH OWNERSHIP INTEREST IS REAL, SUBSTANTIAL AND CONTINUING AND HAVE THE AUTHORITY TO INDEPENDENTLY CONTROL THE DAY TO DAY BUSINESS DECISIONS OF THE ENTITY FOR AT LEAST ONE YEAR.

The provisions of this paragraph shall not be construed to limit the ability of any minority [or women-owned], WOMEN OR VETERAN-OWNED business enterprise to bid on any contract.

(b) In the implementation of this section, the corporation shall consider compliance by any contractor with the requirements of any federal, state, or local law concerning minority [and women-owned], WOMEN OR VETERAN-OWNED business enterprises, which may effectuate the requirements of this section. If the corporation determines that by virtue of the imposition of the requirements of any such law, in respect to contracts, the provisions thereof duplicate or conflict with this section, the corporation may waive the applicability of this section to the extent of such duplication or conflict.

(c) Nothing in this section shall be deemed to require that overall state and federal requirements for participation of minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises in programs authorized under this act be applied without regard to local circumstances to all projects or in all communities.

2. In order to implement the requirements and objectives of this section, the corporation shall establish procedures to monitor the contractors' compliance with provisions hereof, provide assistance in obtaining competing qualified minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises to perform contracts proposed to be awarded, and take other appropriate measures to improve the access of minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises to these contracts.

S 67. Paragraph a of subdivision 1 of section 16-a of section 1 of chapter 392 of the laws of 1973, constituting the New York state medical care facilities finance agency act, as added by chapter 58 of the laws of 1987, is amended to read as follows:

a. The contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group persons [and], women AND VETERANS are afforded equal opportunity without discrimination. Such programs shall include, but not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selections for training or retraining, including apprenticeship and on-the-job training.

S 68. Section 16-b of section 1 of chapter 392 of the laws of 1973, constituting the New York state medical care facilities finance agency act, as added by chapter 58 of the laws of 1987, is amended to read as follows:

S 16-b. Minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprise program. 1. a. In the performance of projects pursuant to this act minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises shall be given the opportunity for meaningful participation. The agency shall establish measures and procedures to secure meaningful participation and identify those contracts and items of work for which

minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises may best bid to actively and affirmatively promote and assist their participation in the projects, so as to facilitate the award of a fair share of contracts to such enterprises; provided, however, that nothing in this act shall be construed to limit the ability of the agency to assure that qualified minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises may participate in the program. For purposes hereof, minority business enterprise shall mean any business enterprise which is at least fifty-one per centum owned by, or in the case of a publicly owned business, at least fifty-one per centum of the stock of which is owned by citizens or permanent resident aliens who are Black, Hispanic, Asian or American Indian, Pacific Islander or Alaskan natives and such ownership interest is real, substantial and continuing and have the authority to independently control the day to day business decisions of the entity for at least one year; and women-owned business enterprise shall mean any business enterprise which is at least fifty-one per centum owned by, or in the case of a publicly owned business, at least fifty-one per centum of the stock of which is owned by citizens or permanent resident aliens who are women, and such ownership interest is real, substantial and continuing and have the authority to independently control the day to day business decisions of the entity for at least one year; AND VETERAN-OWNED BUSINESS ENTERPRISE SHALL MEAN ANY BUSINESS ENTERPRISE WHICH IS AT LEAST FIFTY-ONE PER CENTUM OWNED BY, OR IN THE CASE OF A PUBLICLY OWNED BUSINESS, AT LEAST FIFTY-ONE PER CENTUM OF THE STOCK OF WHICH IS OWNED BY CITIZENS OR PERMANENT RESIDENT ALIENS WHO ARE VETERANS AND SUCH OWNERSHIP INTEREST IS REAL, SUBSTANTIAL AND CONTINUING AND HAVE THE AUTHORITY TO INDEPENDENTLY CONTROL THE DAY TO DAY BUSINESS DECISIONS OF THE ENTITY FOR AT LEAST ONE YEAR.

The provisions of this paragraph shall not be construed to limit the ability of any minority [or women-owned], WOMEN OR VETERAN-OWNED business enterprise to bid on any contract.

b. In the implementation of this section, the agency shall consider compliance by any contractor with the requirements of any federal, state, or local law concerning minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises, which may effectuate the requirements of this section. If the department or the office determines that by virtue of the imposition of the requirements of any such law, in respect to contracts, the provisions thereof duplicate or conflict with this act, the agency may waive the applicability of this section to the extent of such duplication or conflict.

c. Nothing in this section shall be deemed to require that overall state and federal requirements for participation of minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises in programs authorized under this act be applied without regard to local circumstances to all projects or in all communities.

2. In order to implement the requirements and objectives of this section, the agency shall establish procedures to monitor the contractors' compliance with provisions hereof, provide assistance in obtaining competing qualified minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises to perform contracts proposed to be awarded, and take other appropriate measures to improve the access of minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises to these contracts.

S 69. This act shall take effect on the sixtieth day after it shall have become a law; provided however,

a. the amendments to article 15-A of the executive law made by sections one-a, two, three, three-a, four, five, six, seven, eight, nine, ten, eleven, twelve and thirteen of this act shall not affect the expiration of such article and shall expire therewith;

b. the amendments to the second undesignated paragraph of subdivision 1 of section 12 of section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, made by section forty-one of this act shall not affect the expiration and repeal of such paragraph and shall be deemed to expire and be repealed therewith;

c. the amendments to paragraph (g) of subdivision 1 of section 16-i of section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, made by section fifty-four of this act shall not affect the expiration of such paragraph and shall be deemed to expire therewith.