

9141

I N   A S S E M B L Y

January 29, 2016

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Introduced by M. of A. SIMON -- read once and referred to the Committee  
on Governmental Operations

AN ACT to amend the executive law, in relation to participation by  
minority group members and women with respect to certain state  
contracts; and to amend the state finance law, in relation to estab-  
lishing a mentor-protege program for small and minority and women-  
owned business concerns and in relation to performance and payment  
bond requirements

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

1     Section 1. Subdivisions 3 and 4 of section 311 of the executive law,  
2     subdivision 3 as added by chapter 261 of the laws of 1988, paragraphs  
3     (d) and (e) of subdivision 3 as amended by chapter 55 of the laws of  
4     1992, paragraphs (g) and (h) of subdivision 3 as amended and paragraph  
5     (i) of subdivision 3 as added by section 1 of part BB of chapter 59 of  
6     the laws of 2006 and subdivision 4 as amended by chapter 361 of the laws  
7     of 2009, are amended to read as follows:  
8     3. The director shall have the following powers and duties:  
9     (a) to encourage and assist contracting agencies in their efforts to  
10    increase participation by minority and women-owned business enterprises  
11    on state contracts and subcontracts so as to facilitate the award of a  
12    fair share of such contracts to them AND TO PROVIDE ON THE DIVISION'S  
13    WEBSITE A LIST OF EACH CONTRACTING AGENCY'S MINORITY AND WOMEN-OWNED  
14    BUSINESS ENTERPRISES CERTIFICATION OUTREACH SEMINARS;  
15    (b) to develop standardized forms and reporting documents necessary to  
16    implement this article;  
17    (c) to conduct educational OUTREACH programs TO ENCOURAGE THE CERTIF-  
18    ICATION OF MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES consistent with  
19    the purposes of this article;  
20    (d) to review [periodically] QUARTERLY the practices and procedures of  
21    each contracting agency with respect to compliance with the provisions  
22    of this article, and to require them to file [periodic] QUARTERLY  
23    reports with the division of minority and women's business development  
24    as to the level of minority and women-owned business enterprises partic-

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

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1 ipation in the awarding of agency contracts for goods and services  
2 INCLUDING BUT NOT LIMITED TO THE NUMBER OF STATE CONTRACTS AWARDED TO  
3 CERTIFIED MINORITY-OWNED OR WOMEN-OWNED BUSINESS ENTERPRISES, THE MAXI-  
4 MUM DOLLAR AMOUNT OBLIGATED PURSUANT TO ALL THOSE CONTRACTS, AND THE  
5 TOTAL EXPENDITURES MADE PURSUANT TO ALL SUCH CONTRACTS; THE NUMBER OF  
6 STATE CONTRACTS AWARDED TO CERTIFIED MINORITY OR WOMEN-OWNED BUSINESS  
7 ENTERPRISES, THE MAXIMUM DOLLAR AMOUNT OBLIGATED PURSUANT TO ALL THOSE  
8 CONTRACTS, AND THE TOTAL EXPENDITURES MADE PURSUANT TO ALL SUCH  
9 CONTRACTS; THE NUMBER OF STATE CONTRACTS AWARDED WHICH INCLUDE A UTILI-  
10 ZATION PLAN FOR BUSINESS PARTICIPATION BY CERTIFIED MINORITY OR  
11 WOMEN-OWNED BUSINESS ENTERPRISES, THE MAXIMUM AMOUNT OBLIGATED PURSUANT  
12 TO THOSE CONTRACTS, AND THE TOTAL EXPENDITURES MADE PURSUANT TO ALL SUCH  
13 CONTRACTS; THE NUMBER OF STATE CONTRACTS AWARDED UPON WHICH A WAIVER WAS  
14 GRANTED FROM GOALS REQUIRED BY THE CONTRACTS FOR BUSINESS PARTICIPATION  
15 BY CERTIFIED MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES, AND THE MAXI-  
16 MUM AMOUNT OBLIGATED PURSUANT TO THOSE CONTRACTS; THE NUMBER OF STATE  
17 CONTRACTS AWARDED WHICH REQUIRED GOALS FOR EMPLOYMENT OF MINORITY GROUP  
18 MEMBERS AND WOMEN; AND THE NUMBER OF STATE CONTRACTS AWARDED FOR WHICH  
19 WAIVERS OF EMPLOYMENT GOALS REQUIRED BY THE CONTRACTS HAVE BEEN GRANTED;

20 (e) on January first of each year report to the governor, THE TEMPO-  
21 RARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, THE MINORITY  
22 LEADERS OF THE SENATE AND THE ASSEMBLY, and the chairpersons of the  
23 senate finance and assembly ways and means committees on the [level]  
24 ACTUAL VERSUS PROJECTED LEVELS of minority and women-owned business  
25 enterprises participating in each agency's contracts for goods [and],  
26 services AND CONSTRUCTION, INCLUDING BUT NOT LIMITED TO THE NUMBER OF  
27 STATE CONTRACTS AWARDED TO CERTIFIED MINORITY-OWNED OR WOMEN-OWNED BUSI-  
28 NESS ENTERPRISES, THE MAXIMUM DOLLAR AMOUNT OBLIGATED PURSUANT TO ALL  
29 THOSE CONTRACTS, AND THE TOTAL EXPENDITURES MADE PURSUANT TO ALL SUCH  
30 CONTRACTS, and on activities of the office and effort by each contract-  
31 ing agency to promote employment of minority group members and women,  
32 and to promote and increase participation by certified businesses with  
33 respect to state contracts and subcontracts so as to facilitate the  
34 award of a fair share of state contracts to such businesses. The comp-  
35 troller shall assist the division in collecting information on the  
36 participation of certified business for each contracting agency. Such  
37 report may recommend new activities and programs to effectuate the  
38 purposes of this article;

39 (f) THE DIRECTOR SHALL LIST IN THE DIVISION'S ANNUAL REPORT THE NAMES  
40 OF NON-COMPLIANT AGENCIES AND THE EXTENT OF THEIR NONCOMPLIANCE IN  
41 SUBMITTING ITS QUARTERLY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE  
42 UTILIZATION REPORTS; AND, SHALL IMPLEMENT A MASTER LIST OF ALL THE STATE  
43 AGENCIES REQUIRED TO FILE QUARTERLY COMPLIANCE REPORTS AND SHALL ATTACH  
44 SUCH LIST TO THE DIVISION'S ANNUAL REPORT.

45 (G) to prepare and update [periodically] QUARTERLY a directory of  
46 certified minority and women-owned business enterprises which shall,  
47 wherever practicable, be divided into categories of labor, services,  
48 supplies, equipment, materials and recognized construction trades and  
49 which shall indicate areas or locations of the state where such enter-  
50 prises are available to perform services, AND TO USE THIS INFORMATION TO  
51 CREATE AN INTERNET BASED, CENTRALIZED STATE REGISTRY TO ENABLE APPROPRI-  
52 ATE STATE CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES TO  
53 ACCESS CONTRACT AND SUBCONTRACT OPPORTUNITIES;

54 [(g)] (H) to appoint independent hearing officers who by contract or  
55 terms of employment shall preside over adjudicatory hearings pursuant to

1 section three hundred fourteen of this article for the office and who  
2 are assigned no other work by the office;

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

10 [(i)] (J) to streamline the state certification process to accept  
11 federal and municipal corporation certifications.

12 4. The director [may] SHALL provide assistance to, and facilitate  
13 access to programs serving certified businesses as well as applicants to  
14 ensure that such businesses benefit, as needed, from technical, manage-  
15 rial and financial, and general business assistance; training; market-  
16 ing; organization and personnel skill development; project management  
17 assistance; technology assistance; bond and insurance education assist-  
18 ance; and other business development assistance. In addition, the direc-  
19 tor [may] SHALL, either independently or in conjunction with other state  
20 agencies:

21 (a) develop a clearinghouse of information on programs and services  
22 provided by entities that may assist such businesses;

23 (b) review bonding and paperwork requirements imposed by contracting  
24 agencies that may unnecessarily impede the ability of such businesses to  
25 compete; and

26 (c) seek to maximize utilization by minority and women-owned business  
27 enterprises of available federal resources including but not limited to  
28 federal grants, loans, loan guarantees, surety bonding guarantees, tech-  
29 nical assistance, and programs and services of the federal small busi-  
30 ness administration.

31 S 2. Subdivision 5 of section 312 of the executive law, as added by  
32 chapter 261 of the laws of 1988, is amended to read as follows:

33 5. The director shall promulgate rules and regulations to ensure that  
34 contractors and subcontractors undertake programs of affirmative action  
35 and equal employment opportunity as required by this section. Such rules  
36 and regulations as they pertain to any particular agency shall be devel-  
37 oped after consultation with contracting agencies. Such rules and regu-  
38 lations [may] SHALL require a contractor, after notice in a bid solici-  
39 tation, to submit an equal employment opportunity program [after bid  
40 opening and prior to the award of any contract] AT THE TIME BIDS ARE  
41 SUBMITTED, and [may] SHALL require the contractor or subcontractor to  
42 submit compliance reports relating to the contractor's or subcontrac-  
43 tor's operation and implementation of any equal employment opportunity  
44 program in effect as of the date the contract is executed. The contract-  
45 ing agency [may recommend to the director that] SHALL HAVE THE RIGHT TO  
46 RECOMMEND THAT the director take appropriate action according to the  
47 procedures set forth in section three hundred sixteen of this article  
48 against the contractor for noncompliance with the requirements of this  
49 section. The contracting agency shall be responsible for monitoring  
50 compliance with this section.

51 S 3. Subdivisions 2-a, 3 and paragraph (a) of subdivision 5 of section  
52 313 of the executive law, subdivision 2-a as added and subdivision 3 and  
53 paragraph (a) of subdivision 5 as amended by chapter 175 of the laws of  
54 2010, are amended to read as follows:

55 2-a. The director shall promulgate rules and regulations that will  
56 accomplish the following:

1 (a) provide for the certification and decertification of minority and  
2 women-owned business enterprises for all agencies through a single proc-  
3 ess that meets applicable requirements;

4 (b) require that each contract solicitation document accompanying each  
5 solicitation set forth the expected degree of minority and women-owned  
6 business enterprise participation based, in part, on:

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

9 (ii) the availability, as contained within the study, of certified  
10 minority and women-owned business enterprises to respond competitively  
11 to the potential subcontract opportunities;

12 (c) require that each agency provide a current list of certified  
13 minority business enterprises to each prospective contractor;

14 (d) allow a contractor that is a certified minority-owned or women-  
15 owned business enterprise to use the work it performs to meet require-  
16 ments for use of certified minority-owned or women-owned business enter-  
17 prises as subcontractors;

18 (e) provide for joint ventures, which a bidder may count toward meet-  
19 ing its minority and women-owned business enterprise participation;

20 (f) consistent with subdivision six of this section, provide for  
21 circumstances under which an agency may waive obligations of the  
22 contractor relating to minority and women-owned business enterprise  
23 participation;

24 (g) require that an agency verify that minority and women-owned busi-  
25 ness enterprises listed in a successful bid are actually participating  
26 to the extent listed in the project for which the bid was submitted;

27 (h) provide for the collection of statistical data by each agency  
28 concerning actual minority and women-owned business enterprise partic-  
29 ipation; [and]

30 (i) require each agency to consult the most current disparity study  
31 when calculating agency-wide and contract specific participation goals  
32 pursuant to this article[.]; AND

33 (J) ENCOURAGE JOINT VENTURES, PARTNERSHIPS, AND MENTOR-PROTEGE  
34 RELATIONSHIPS AS DEFINED IN SECTION ONE HUNDRED FORTY-SEVEN OF THE STATE  
35 FINANCE LAW, BETWEEN PRIME CONTRACTORS AND MINORITY AND WOMEN-OWNED  
36 BUSINESS ENTERPRISES.

37 3. Solely for the purpose of providing the opportunity for meaningful  
38 participation by certified businesses in the performance of state  
39 contracts as provided in this section, state contracts shall include  
40 leases of real property by a state agency to a lessee where: the terms  
41 of such leases provide for the construction, demolition, replacement,  
42 major repair or renovation of real property and improvements thereon by  
43 such lessee; and the cost of such construction, demolition, replacement,  
44 major repair or renovation of real property and improvements thereon  
45 shall exceed the sum of one hundred thousand dollars. Reports to the  
46 director pursuant to section three hundred fifteen of this article shall  
47 include activities with respect to all such state contracts. Contracting  
48 agencies shall include or require to be included with respect to state  
49 contracts for the acquisition, construction, demolition, replacement,  
50 major repair or renovation of real property and improvements thereon,  
51 such provisions as [may] SHALL be necessary to effectuate the provisions  
52 of this section in every bid specification and state contract, includ-  
53 ing, but not limited to: (a) provisions requiring contractors to make a  
54 good faith effort to solicit active participation by enterprises identi-  
55 fied in the directory of certified businesses provided to the contract-  
56 ing agency by the office; (b) requiring the parties to agree as a condi-

tion 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.

(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] AT THE TIME THE BIDS ARE SUBMITTED, 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] QUARTERLY compliance reports relating to the operation and implementation of any utilization plan; shall not allow any automatic waivers but shall allow a contractor to apply for a partial or total waiver of the minority and women-owned business enterprise participation requirements pursuant to subdivisions 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 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 business enterprise participation requirements set forth in the state contract where no waiver has been granted.

S 4. Subdivisions 1, 2 and 3 of section 315 of the executive law, subdivisions 1 and 2 as added by chapter 261 of the laws of 1988 and subdivision 3 as amended by chapter 175 of the laws of 2010 are amended and a new subdivision 2-a is added to read as follows:

1. Each contracting agency shall be responsible for monitoring state contracts under its jurisdiction, and recommending matters to the office respecting non-compliance with the provisions of this article so that the office [may] SHALL take such action as [is appropriate] STATED IN SUBDIVISION THREE OF SECTION THREE HUNDRED SIXTEEN OF THIS ARTICLE. EACH CONTRACTING AGENCY SHALL HAVE THE RIGHT TO RECOMMEND THAT THE DIRECTOR IMPOSE A SANCTION, PENALTY, OR FINE FOR THREE OR MORE VIOLATIONS OF SUBDIVISION ONE OF SECTION THREE HUNDRED SIXTEEN OF THIS ARTICLE, to insure compliance with the provisions of this article, the rules and regulations of the director issued hereunder and the contractual

1 provisions required pursuant to this article. All contracting agencies  
2 shall comply with the rules and regulations of the office and are  
3 directed to cooperate with the office and to furnish to the office such  
4 information and assistance as may be required in the performance of its  
5 functions under this article.

6 2. Each contracting agency shall provide to prospective bidders a  
7 current copy of the directory of certified businesses, and a copy of the  
8 regulations required pursuant to sections three hundred twelve and three  
9 hundred thirteen of this article at the time bids or proposals are  
10 solicited.

11 2-A. EACH CONTRACTING AGENCY WHEN NOTIFYING A CONTRACTOR OF A WINNING  
12 BID AWARD SHALL ALSO NOTIFY ANY MINORITY OR WOMEN-OWNED BUSINESS ENTER-  
13 PRISES AFFILIATED WITH SUCH CONTRACTOR, PER THE CONTRACTOR'S SUBMITTED  
14 UTILIZATION PLAN, OF SUCH CONTRACTOR'S RECEIPT OF THE WINNING BID AWARD.

15 3. [Each contracting agency shall report to the director with respect  
16 to activities undertaken to promote employment of minority group members  
17 and women and promote and increase participation by certified businesses  
18 with respect to state contracts and subcontracts. Such reports shall be  
19 submitted periodically, but not less frequently than annually, as  
20 required by the director, and shall include such information as is  
21 necessary for the director to determine whether the contracting agency  
22 and contractor have complied with the purposes of this article, includ-  
23 ing, without limitation, a summary of all waivers of the requirements of  
24 subdivisions six and seven of section three hundred thirteen of this  
25 article allowed by the contracting agency during the period covered by  
26 the report, including a description of the basis of the waiver request  
27 and the rationale for granting any such waiver. Each agency shall also  
28 include in such annual report whether or not it has been required to  
29 prepare a remedial plan, and, if so, the plan and the extent to which  
30 the agency has complied with each element of the plan.] (A) EACH  
31 CONTRACTING AGENCY SHALL PREPARE A QUARTERLY REPORT AND SUBMIT COPIES TO  
32 THE COMMISSIONER OF ECONOMIC DEVELOPMENT, THE COMMISSIONER OF GENERAL  
33 SERVICES, AND THE DIRECTOR AS TO THE LEVEL OF MINORITY AND WOMEN-OWNED  
34 BUSINESS ENTERPRISES PARTICIPATION IN THE AWARDING OF AGENCY CONTRACTS  
35 FOR GOODS AND SERVICES, INCLUDING BUT NOT LIMITED TO, THE NUMBER OF  
36 STATE CONTRACTS AWARDED TO CERTIFIED MINORITY OR WOMEN-OWNED BUSINESS  
37 ENTERPRISES; THE MAXIMUM DOLLAR AMOUNT OBLIGATED PURSUANT TO ALL THOSE  
38 CONTRACTS, AND THE TOTAL EXPENDITURES MADE PURSUANT TO ALL SUCH  
39 CONTRACTS; THE NUMBER OF STATE CONTRACTS AWARDED WHICH INCLUDE A UTILI-  
40 ZATION PLAN FOR BUSINESS PARTICIPATION BY CERTIFIED MINORITY OR  
41 WOMEN-OWNED BUSINESS ENTERPRISES, THE MAXIMUM AMOUNT OBLIGATED PURSUANT  
42 TO THOSE CONTRACTS, AND THE TOTAL EXPENDITURES MADE PURSUANT TO ALL SUCH  
43 CONTRACTS; THE NUMBER OF STATE CONTRACTS AWARDED UPON WHICH A WAIVER WAS  
44 GRANTED FROM GOALS REQUIRED BY THE CONTRACTS FOR BUSINESS PARTICIPATION  
45 BY CERTIFIED MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES, AND THE MAXI-  
46 MUM AMOUNT OBLIGATED PURSUANT TO THOSE CONTRACTS; THE NUMBER OF STATE  
47 CONTRACTS AWARDED WHICH REQUIRED GOALS FOR EMPLOYMENT OF MINORITY GROUP  
48 MEMBERS AND WOMEN; AND THE NUMBER OF STATE CONTRACTS AWARDED FOR WHICH  
49 WAIVERS OF EMPLOYMENT GOALS REQUIRED BY THE CONTRACTS HAVE BEEN GRANTED;  
50 (B) IN ADDITION, EACH CONTRACTING AGENCY SHALL BE RESPONSIBLE FOR THE  
51 COST OF AN INDEPENDENT AUDIT RESULTING FROM THE AGENCY'S REPEATED  
52 VIOLATIONS OF THIS SECTION.

53 (C) WITHIN THIRTY DAYS AFTER COMPLETION, A COPY OF THE QUARTERLY  
54 MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE REPORT SHALL BE TRANSMITTED  
55 TO THE COMMISSIONER OF ECONOMIC DEVELOPMENT, THE COMMISSIONER OF GENERAL  
56 SERVICES, AND THE DIRECTOR. A CONTRACTING AGENCY, WHICH HAS NOT LET MORE

1 THAN TWO MILLION DOLLARS IN SERVICE AND/OR CONSTRUCTION CONTRACTS WITHIN  
2 THE APPLICABLE PERIOD MAY APPLY TO THE COMMISSIONER OF ECONOMIC DEVELOP-  
3 MENT, AND THE DIRECTOR FOR A WAIVER OF THE REQUIRED ANNUAL REPORT. THE  
4 WAIVER APPLICATION SHALL BE MADE ON SUCH FORM AS THE COMMISSIONER OF  
5 ECONOMIC DEVELOPMENT AND THE DIRECTOR MAY PRESCRIBE.

6 (D) IF A CONTRACTING AGENCY SHALL FAIL TO FILE OR SUBSTANTIALLY  
7 COMPLETE, AS DETERMINED BY THE COMMISSIONER OF ECONOMIC DEVELOPMENT AND  
8 THE DIRECTOR, THE REPORT REQUIRED BY THIS SECTION, THE DIRECTOR SHALL  
9 PROVIDE NOTICE TO THE CONTRACTING AGENCY. THE NOTICE SHALL STATE THE  
10 FOLLOWING:

11 (I) THAT THE FAILURE TO FILE A REPORT AS REQUIRED IS A VIOLATION OF  
12 THIS SECTION, OR IN THE CASE OF AN INSUFFICIENT REPORT, THE MANNER IN  
13 WHICH THE REPORT SUBMITTED IS DEFICIENT;

14 (II) THAT THE CONTRACTING AGENCY HAS THIRTY DAYS TO COMPLY WITH THIS  
15 SECTION OR PROVIDE AN ADEQUATE WRITTEN EXPLANATION TO THE COMMISSIONER  
16 OF ECONOMIC DEVELOPMENT AND THE COMMISSIONER OF GENERAL SERVICES AND THE  
17 DIRECTOR OF THE CONTRACTING AGENCY'S REASONS FOR THE INABILITY TO  
18 COMPLY; AND

19 (III) THAT THE CONTRACTING AGENCY'S CONTINUED FAILURE TO PROVIDE  
20 EITHER THE REQUIRED REPORT OR AN ADEQUATE EXPLANATION WILL RESULT IN AN  
21 INDEPENDENT AUDIT OF THE CONTRACTING AGENCY, THE COST OF WHICH SHALL BE  
22 BORNE BY THE CONTRACTING AGENCY.

23 S 5. Section 316 of the executive law, as amended by chapter 175 of  
24 the laws of 2010, is amended to read as follows:

25 S 316. [Enforcement] VIOLATIONS AND ENFORCEMENT. 1. IT SHALL BE A  
26 VIOLATION FOR ANY PERSON OR ENTITY TO:

27 (A) INTENTIONALLY USE OR ACQUIRE AN MWBE NAME THROUGH DECEIT OR OTHER  
28 DISHONEST MEANS IN ORDER TO NEGOTIATE A LOWER BID FROM A NON-MWBE.

29 (B) SUBMIT TO THE DEPARTMENT OF ECONOMIC DEVELOPMENT, DOCUMENTS OR  
30 OTHER MATERIAL AS EVIDENCE OF A GOOD FAITH EFFORT TO COMPLY WITH THE  
31 PROVISIONS OF THIS ARTICLE WITHOUT, IN FACT, HAVING ENTERED INTO ANY  
32 CONTRACT, AGREEMENT, SUBCONTRACT, OR SUB-AGREEMENT WITH AN MWBE FOR THE  
33 USE OR PURCHASE OF SUCH BUSINESS ENTERPRISE'S GOODS OR SERVICES IN THE  
34 PERFORMANCE OF THE AWARDED STATE CONTRACT.

35 (C) FAIL TO PROVIDE AN MWBE WITH SUFFICIENT INFORMATION OR OTHER  
36 REQUIRED SUPPORTING DOCUMENTATION IN ORDER FOR THE MWBE TO PREPARE A  
37 PROPER BID.

38 2. Upon receipt by the director of a complaint by a contracting agency  
39 that a contractor has violated the provisions of a state contract which  
40 have been included to comply with the provisions of this article or of a  
41 contractor that a contracting agency has violated such provisions or has  
42 failed or refused to issue a waiver where one has been applied for  
43 pursuant to subdivision six of section three hundred thirteen of this  
44 article or has denied such application, the director shall attempt to  
45 resolve the matter giving rise to such complaint. If efforts to resolve  
46 such matter to the satisfaction of all parties are unsuccessful, the  
47 director shall refer the matter, within thirty days of the receipt of  
48 the complaint, to the division's hearing officers. Upon conclusion of  
49 the administrative hearing, the hearing officer shall submit to the  
50 director his or her decision regarding the alleged violation of the  
51 contract and recommendations regarding the imposition of sanctions,  
52 fines or penalties. The director, within ten days of receipt of the  
53 decision, shall file a determination of such matter and shall cause a  
54 copy of such determination along with a copy of this article to be  
55 served upon the contractor by personal service or by certified mail  
56 return receipt requested. The decision of the hearing officer shall be

1 final and may only be vacated or modified as provided in article seven-  
2 ty-eight of the civil practice law and rules upon an application made  
3 within the time provided by such article. The determination of the  
4 director as to the imposition of any fines, sanctions or penalties shall  
5 be reviewable pursuant to article seventy-eight of the civil practice  
6 law and rules. The penalties imposed for any violation which is premised  
7 upon either a fraudulent or intentional misrepresentation by the  
8 contractor or the contractor's willful and intentional disregard of the  
9 minority and women-owned participation requirement included in the  
10 contract may include a determination that the contractor shall be ineli-  
11 gible to submit a bid to any contracting agency or be awarded any such  
12 contract for a period not to exceed one year following the final deter-  
13 mination; provided however, if a contractor has previously been deter-  
14 mined to be ineligible to submit a bid pursuant to this section, the  
15 penalties imposed for any subsequent violation, if such violation occurs  
16 within five years of the first violation, may include a determination  
17 that the contractor shall be ineligible to submit a bid to any contract-  
18 ing agency or be awarded any such contract for a period not to exceed  
19 five years following the final determination. The division of minority  
20 and women's business development shall maintain a website listing all  
21 contractors that have been deemed ineligible to submit a bid pursuant to  
22 this section and the date after which each contractor shall once again  
23 become eligible to submit bids.

24 3. THE DIRECTOR SHALL IMPOSE A SANCTION, PENALTY, OR FINE ON ANY  
25 INDIVIDUAL OR ENTITY THAT HAS THREE OR MORE VIOLATIONS OF THIS ARTICLE  
26 WITHIN FIVE YEARS. SUCH FINE SHALL BE PAID BY SUCH INDIVIDUAL OR ENTITY.  
27 SUCH FINE SHALL BE REMITTED AND DEPOSITED INTO A FUND, TO BE MANAGED BY  
28 THE COMMISSIONER OF ECONOMIC DEVELOPMENT. SUCH FUNDS SHALL BE USED TO  
29 SUBSIDIZE THE FACILITATION OF THE PROVISIONS OF THIS ARTICLE. OTHER  
30 SANCTIONS SHALL INCLUDE BARRING SUCH ENTITY OR INDIVIDUAL FROM CONTRACT-  
31 ING WITH SUCH AGENCY FOR A PERIOD NOT TO EXCEED FIVE YEARS.

32 S 6. Subdivision 1 of section 137 of the state finance law, as sepa-  
33 rately amended by section 17 of part MM of chapter 57 and by chapter 619  
34 of the laws of 2008, is amended to read as follows:

35 1. In addition to other bond or bonds, if any, required by law for the  
36 completion of a work specified in a contract for the prosecution of a  
37 public improvement for the state of New York a municipal corporation, a  
38 public benefit corporation or a commission appointed pursuant to law, or  
39 in the absence of any such requirement, the comptroller may or the other  
40 appropriate official, respectively, shall nevertheless require prior to  
41 the approval of any such contract a bond guaranteeing prompt payment of  
42 moneys due to all persons furnishing labor or materials to the contrac-  
43 tor or any subcontractors in the prosecution of the work provided for in  
44 such contract. Whenever a municipal corporation issues a permit subject  
45 to compliance with section two hundred twenty of the labor law, such  
46 permittee or its contractor or subcontractors furnishing workers shall  
47 post a payment bond subject to this section. Provided, however, that all  
48 performance bonds and payment bonds may, at the discretion of the head  
49 of the state agency, public benefit corporation or commission, or his or  
50 her designee, be dispensed with for the completion of a work specified  
51 in a contract for the prosecution of a public improvement for the state  
52 of New York for which bids are solicited where the aggregate amount of  
53 the contract is under one hundred FIFTY thousand dollars and provided  
54 further, that in a case where the contract is not subject to the multi-  
55 ple contract award requirements of section one hundred thirty-five of  
56 this article, such requirements may be dispensed with where the head of



1 the state agency, public benefit corporation or commission finds it to  
2 be in the public interest and where the aggregate amount of the contract  
3 awarded or to be awarded is less than two hundred thousand dollars. THE  
4 HEAD OF THE STATE AGENCY, PUBLIC BENEFIT CORPORATION OR COMMISSION, OR  
5 HIS OR HER DESIGNEE, SHALL ADJUST THE AGGREGATE CONTRACT AMOUNTS LISTED  
6 IN THIS SUBDIVISION EVERY YEAR TO ACCOUNT FOR INCREASES IN THE COSTS OF  
7 CONSTRUCTION. ADVERTISEMENTS FOR BIDS SHALL PROVIDE INFORMATION ON THE  
8 REQUIREMENTS FOR, OR DISPENSATION OF, PERFORMANCE AND PAYMENT BONDS.  
9 Provided further, that in a case where a performance or payment bond is  
10 dispensed with, twenty per centum may be retained from each progress  
11 payment or estimate until the entire contract work has been completed  
12 and accepted, at which time the head of the state agency, public benefit  
13 corporation or commission shall, pending the payment of the final esti-  
14 mate, pay not to exceed seventy-five per centum of the amount of the  
15 retained percentage.

16 S 7. Subdivision 4 of section 139-f of the state finance law, as  
17 amended by chapter 83 of the laws of 1995, is amended to read as  
18 follows:

19 4. Notwithstanding any other provision of this section or other law,  
20 requirements for the furnishing of a performance bond or a payment bond  
21 may be dispensed with at the discretion of the head of the state agency  
22 or corporation, or his or her designee, where the public owner is a  
23 state agency or corporation described in subdivision one-a of this  
24 section and the aggregate amount of the contract awarded or to be  
25 awarded is under fifty thousand dollars and, in a case where the  
26 contract is not subject to the multiple contract award requirements of  
27 section one hundred thirty-five of this article, such requirements may  
28 be dispensed with where the head of the state agency or corporation  
29 finds it to be in the public interest and where the aggregate amount of  
30 the contract awarded or to be awarded is under [two] THREE hundred thou-  
31 sand dollars. THE HEAD OF THE STATE AGENCY, PUBLIC BENEFIT CORPORATION  
32 OR COMMISSION, OR HIS OR HER DESIGNEE, SHALL ADJUST THE AGGREGATE  
33 CONTRACT AMOUNTS LISTED IN THIS SUBDIVISION EVERY YEAR TO ACCOUNT FOR  
34 INCREASES IN THE COSTS OF CONSTRUCTION. ADVERTISEMENTS FOR BIDS SHALL  
35 PROVIDE INFORMATION ON THE REQUIREMENTS FOR, OR DISPENSATION OF,  
36 PERFORMANCE AND PAYMENT BONDS. Provided further, that in a case where a  
37 performance or payment bond is dispensed with, twenty per centum may be  
38 retained from each progress payment or estimate until the entire  
39 contract work has been completed and accepted, at which time the head of  
40 the state agency or corporation shall, pending the payment of the final  
41 estimate, pay not to exceed seventy-five per centum of the amount of the  
42 retained percentage.

43 S 8. The opening paragraph of section 139-g of the state finance law,  
44 as amended by chapter 636 of the laws of 2003, is amended to read as  
45 follows:

46 In every state agency, department and authority which has let more  
47 than two million dollars in service and construction contracts AND STATE  
48 ASSISTED PROJECT CONTRACTS in the prior fiscal year, the chief executive  
49 officer of that agency, department or authority shall, with respect to  
50 those contracts AND STATE ASSISTED PROJECT CONTRACTS let by his OR HER  
51 agency, department or authority:

52 S 9. The opening paragraph of subdivision (b) of section 139-g of the  
53 state finance law, as amended by chapter 636 of the laws of 2003, is  
54 amended to read as follows:

55 identify all small-business and certified women and minority-owned  
56 business concerns which, in the judgment of the chief executive officer

1 of that agency, department or authority, can bid on those contracts AND  
2 STATE ASSISTED PROJECT CONTRACTS which are usually and customarily let  
3 by that agency, department or authority, OR IN WHICH THAT AUTHORITY  
4 PROVIDES A GRANT OR LOAN OR TAX EXEMPT FINANCING, with a reasonable  
5 expectation of success. Such chief executive officers shall carry out  
6 the provisions of this subdivision:

7 S 10. Section 139-g of the state finance law is amended by adding a  
8 new subdivision (e) to read as follows:

9 (E) FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING WORDS SHALL HAVE  
10 THE FOLLOWING MEANINGS:

11 (I) "STATE ASSISTED PROJECT CONTRACT" SHALL MEAN ANY WRITTEN AGREEMENT  
12 ARISING OUT OF A STATE ASSISTED HOUSING PROJECT OR STATE ASSISTED  
13 ECONOMIC DEVELOPMENT PROJECT OR STATE ASSISTED HIGHER EDUCATION PROJECT  
14 OR STATE ASSISTED HOSPITAL OR HEALTH CARE FACILITY PROJECT, FOR WHICH  
15 THE TOTAL PROJECT COST EXCEEDS TWO MILLION DOLLARS AND FOR WHICH THE  
16 PROJECT OWNER IS COMMITTED TO SPEND OR DOES EXPEND FUNDS FOR THE ACQUI-  
17 SITION, CONSTRUCTION, DEMOLITION, REPLACEMENT, MAJOR REPAIR, OR RENO-  
18 VATION OF REAL PROPERTY AND IMPROVEMENTS THEREON FOR SUCH PROJECT.

19 (II) "STATE ASSISTED HOUSING PROJECT" SHALL MEAN THOSE PROJECTS WHICH  
20 RECEIVE FROM THE NEW YORK STATE HOUSING FINANCE AGENCY TAX-EXEMPT  
21 FINANCING FOR ALL OR PART OF THE TOTAL PROJECT COST.

22 (III) "STATE ASSISTED ECONOMIC DEVELOPMENT PROJECT" SHALL MEAN THOSE  
23 PROJECTS WHICH RECEIVE FROM THE NEW YORK FOUNDATION OF SCIENCE TECHNOLO-  
24 GY AND INNOVATION, OR THE URBAN DEVELOPMENT CORPORATION AND ITS SUBSID-  
25 IARIES A GRANT OR LOAN OR TAX-EXEMPT FINANCING FOR ALL OR PART OF THE  
26 TOTAL PROJECT COST.

27 (IV) "STATE ASSISTED HIGHER EDUCATION PROJECT" SHALL MEAN THOSE  
28 PROJECTS WHICH RECEIVE FROM THE DORMITORY AUTHORITY OF THE STATE OF NEW  
29 YORK A GRANT OR LOAN OR TAX-EXEMPT FINANCING FOR ALL OR PART OF THE  
30 TOTAL PROJECT COST.

31 (V) "STATE ASSISTED HOSPITAL OR HEALTH CARE FACILITY PROJECT" SHALL  
32 MEAN THOSE PROJECTS WHICH RECEIVE FROM THE DORMITORY AUTHORITY OF THE  
33 STATE OF NEW YORK A GRANT OR LOAN OR TAX-EXEMPT FINANCING FOR ALL OR  
34 PART OF THE TOTAL PROJECT COST.

35 S 11. This act shall take effect immediately, provided however, the  
36 amendments to article 15-A of the executive law made by sections one,  
37 two, three, four and five of this act shall not affect the expiration of  
38 such article and shall expire therewith.