

1568

2015-2016 Regular Sessions

I N S E N A T E

January 13, 2015

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

AN ACT to amend the executive law, in relation to 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

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

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1 of this article, and to require them to file [periodic] QUARTERLY
2 reports with the division of minority and women's business development
3 as to the level of minority and women-owned business enterprises partic-
4 ipation in the awarding of agency contracts for goods and services
5 INCLUDING BUT NOT LIMITED TO THE NUMBER OF STATE CONTRACTS AWARDED TO
6 CERTIFIED MINORITY-OWNED OR WOMEN-OWNED BUSINESS ENTERPRISES, THE MAXI-
7 MUM DOLLAR AMOUNT OBLIGATED PURSUANT TO ALL THOSE CONTRACTS, AND THE
8 TOTAL EXPENDITURES MADE PURSUANT TO ALL SUCH CONTRACTS; THE NUMBER OF
9 STATE CONTRACTS AWARDED TO CERTIFIED MINORITY OR WOMEN-OWNED BUSINESS
10 ENTERPRISES, THE MAXIMUM DOLLAR AMOUNT OBLIGATED PURSUANT TO ALL THOSE
11 CONTRACTS, AND THE TOTAL EXPENDITURES MADE PURSUANT TO ALL SUCH
12 CONTRACTS; THE NUMBER OF STATE CONTRACTS AWARDED WHICH INCLUDE A UTILI-
13 ZATION PLAN FOR BUSINESS PARTICIPATION BY CERTIFIED MINORITY OR
14 WOMEN-OWNED BUSINESS ENTERPRISES, THE MAXIMUM AMOUNT OBLIGATED PURSUANT
15 TO THOSE CONTRACTS, AND THE TOTAL EXPENDITURES MADE PURSUANT TO ALL SUCH
16 CONTRACTS; THE NUMBER OF STATE CONTRACTS AWARDED UPON WHICH A WAIVER WAS
17 GRANTED FROM GOALS REQUIRED BY THE CONTRACTS FOR BUSINESS PARTICIPATION
18 BY CERTIFIED MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES, AND THE MAXI-
19 MUM AMOUNT OBLIGATED PURSUANT TO THOSE CONTRACTS; THE NUMBER OF STATE
20 CONTRACTS AWARDED WHICH REQUIRED GOALS FOR EMPLOYMENT OF MINORITY GROUP
21 MEMBERS AND WOMEN; AND THE NUMBER OF STATE CONTRACTS AWARDED FOR WHICH
22 WAIVERS OF EMPLOYMENT GOALS REQUIRED BY THE CONTRACTS HAVE BEEN GRANTED;

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

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

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

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

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

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

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

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

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

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

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

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

53 S 3. Subdivisions 2-a, 3 and paragraph (a) of subdivision 5 of section
54 313 of the executive law, subdivision 2-a as added and subdivision 3 and
55 paragraph (a) of subdivision 5 as amended by chapter 175 of the laws of
56 2010, are amended to read as follows:

1 2-a. The director shall promulgate rules and regulations that will
2 accomplish the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

1 fied in the directory of certified businesses provided to the contract-
2 ing agency by the office; (b) requiring the parties to agree as a condi-
3 tion of entering into such contract, to be bound by the provisions of
4 section three hundred sixteen of this article; and (c) requiring the
5 contractor to include the provisions set forth in paragraphs (a) and (b)
6 of this subdivision in every subcontract in a manner that the provisions
7 will be binding upon each subcontractor as to work in connection with
8 such contract. Provided, however, that no such provisions shall be bind-
9 ing upon contractors or subcontractors in the performance of work or the
10 provision of services that are unrelated, separate or distinct from the
11 state contract as expressed by its terms, and nothing in this section
12 shall authorize the director or any contracting agency to impose any
13 requirement on a contractor or subcontractor except with respect to a
14 state contract.

15 (a) Contracting agencies shall administer the rules and regulations
16 promulgated by the director in a good faith effort to meet the maximum
17 feasible portion of the agency's goals adopted pursuant to this article
18 and the regulations of the director. Such rules and regulations: shall
19 require a contractor to submit a utilization plan [after bids are
20 opened] AT THE TIME THE BIDS ARE SUBMITTED, when bids are required[, but
21 prior to the award of a state contract]; shall require the contracting
22 agency to review the utilization plan submitted by the contractor and to
23 post the utilization plan and any waivers of compliance issued pursuant
24 to subdivision six of this section on the website of the contracting
25 agency within a reasonable period of time as established by the direc-
26 tor; shall require the contracting agency to notify the contractor in
27 writing within a period of time specified by the director as to any
28 deficiencies contained in the contractor's utilization plan; shall
29 require remedy thereof within a period of time specified by the direc-
30 tor; shall require the contractor to submit [periodic] QUARTERLY compli-
31 ance reports relating to the operation and implementation of any utili-
32 zation plan; shall not allow any automatic waivers but shall allow a
33 contractor to apply for a partial or total waiver of the minority and
34 women-owned business enterprise participation requirements pursuant to
35 subdivisions six and seven of this section; shall allow a contractor to
36 file a complaint with the director pursuant to subdivision eight of this
37 section in the event a contracting agency has failed or refused to issue
38 a waiver of the minority and women-owned business enterprise partic-
39 ipation requirements or has denied such request for a waiver; and shall
40 allow a contracting agency to file a complaint with the director pursu-
41 ant to subdivision nine of this section in the event a contractor is
42 failing or has failed to comply with the minority and women-owned busi-
43 ness enterprise participation requirements set forth in the state
44 contract where no waiver has been granted.

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

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

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

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

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

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

52 (B) IN ADDITION, EACH CONTRACTING AGENCY SHALL BE RESPONSIBLE FOR THE
53 COST OF AN INDEPENDENT AUDIT RESULTING FROM THE AGENCY'S REPEATED
54 VIOLATIONS OF THIS SECTION.

55 (C) WITHIN THIRTY DAYS AFTER COMPLETION, A COPY OF THE QUARTERLY
56 MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE REPORT SHALL BE TRANSMITTED

TO THE COMMISSIONER OF ECONOMIC DEVELOPMENT, THE COMMISSIONER OF GENERAL SERVICES, AND THE DIRECTOR. A CONTRACTING AGENCY, WHICH HAS NOT LET MORE THAN TWO MILLION DOLLARS IN SERVICE AND/OR CONSTRUCTION CONTRACTS WITHIN THE APPLICABLE PERIOD MAY APPLY TO THE COMMISSIONER OF ECONOMIC DEVELOPMENT, AND THE DIRECTOR FOR A WAIVER OF THE REQUIRED ANNUAL REPORT. THE WAIVER APPLICATION SHALL BE MADE ON SUCH FORM AS THE COMMISSIONER OF ECONOMIC DEVELOPMENT AND THE DIRECTOR MAY PRESCRIBE.

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

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

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

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

S 5. 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] VIOLATIONS AND ENFORCEMENT. 1. IT SHALL BE A VIOLATION FOR ANY PERSON OR ENTITY TO:

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

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

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

2. 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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