

1655

2015-2016 Regular Sessions

I N S E N A T E

January 13, 2015

Introduced by Sens. MARCHIONE, AVELLA, GALLIVAN, LARKIN, LIBOUS, LITTLE, O'MARA, SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

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:

1 Section 1. This act shall be known and may be cited as "OORAH! An ACT
2 Opening Opportunities, Resources and Access for Heroes".
3 S 1-a. The article heading of article 15-A of the executive law, as
4 added by chapter 261 of the laws of 1988, is amended to read as follows:
5 PARTICIPATION BY MINORITY GROUP MEMBERS [AND],
6 WOMEN AND VETERANS WITH RESPECT TO STATE CONTRACTS
7 S 2. Subdivisions 1, 4, 9, 10, 19 and 22 of section 310 of the execu-
8 tive law, subdivisions 1 and 9 as added by chapter 261 of the laws of
9 1988, subdivisions 4 and 10 as amended by chapter 55 of the laws of 1992
10 and subdivisions 19 and 22 as added by chapter 175 of the laws of 2010,
11 are amended and a new subdivision 15-a is added to read as follows:

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

LBD02812-01-5

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

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

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

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

20 15-A. "VETERAN-OWNED BUSINESS ENTERPRISE" SHALL MEAN A BUSINESS ENTER-
21 PRISE, INCLUDING A SOLE PROPRIETORSHIP, PARTNERSHIP OR CORPORATION THAT
22 IS:

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

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

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

31 (D) AN ENTERPRISE AUTHORIZED TO DO BUSINESS IN THIS STATE AND INDE-
32 PENDENTLY OWNED AND OPERATED;

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

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

40 A FIRM OWNED BY A MINORITY GROUP MEMBER WHO IS ALSO A VETERAN MAY BE
41 CERTIFIED AS A MINORITY-OWNED BUSINESS ENTERPRISE, A VETERAN-OWNED BUSI-
42 NESS ENTERPRISE, OR BOTH, AND MAY BE COUNTED TOWARDS EITHER A MINORITY-
43 OWNED BUSINESS ENTERPRISE GOAL OR A VETERAN-OWNED BUSINESS ENTERPRISE
44 GOAL, IN REGARD TO ANY CONTRACT OR ANY GOAL, SET BY AN AGENCY OR AUTHOR-
45 ITY, BUT SUCH PARTICIPATION MAY NOT BE COUNTED TOWARDS BOTH SUCH GOALS.
46 SUCH AN ENTERPRISE'S PARTICIPATION IN A CONTRACT MAY NOT BE DIVIDED
47 BETWEEN THE MINORITY-OWNED BUSINESS ENTERPRISE GOAL AND THE
48 VETERAN-OWNED BUSINESS ENTERPRISE GOAL. A FIRM OWNED BY A WOMAN WHO IS
49 ALSO A VETERAN MAY BE CERTIFIED AS A WOMEN-OWNED BUSINESS ENTERPRISE, A
50 VETERAN-OWNED BUSINESS ENTERPRISE, OR BOTH, AND MAY BE COUNTED TOWARDS
51 EITHER A WOMEN-OWNED BUSINESS ENTERPRISE GOAL OR A VETERAN-OWNED BUSI-
52 NESS ENTERPRISE GOAL, IN REGARD TO ANY CONTRACT OR ANY GOAL, SET BY AN
53 AGENCY OR AUTHORITY, BUT SUCH PARTICIPATION MAY NOT BE COUNTED TOWARDS
54 BOTH SUCH GOALS. SUCH AN ENTERPRISE'S PARTICIPATION IN A CONTRACT MAY
55 NOT BE DIVIDED BETWEEN THE WOMEN-OWNED BUSINESS ENTERPRISE GOAL AND THE
56 VETERAN-OWNED BUSINESS ENTERPRISE GOAL.

1 19. "Personal net worth" shall mean the aggregate adjusted net value
2 of the assets of an individual remaining after total liabilities are
3 deducted. Personal net worth includes the individual's share of assets
4 held jointly with said individual's spouse and does not include the
5 individual's ownership interest in the certified minority [and women-
6 owned], WOMEN OR VETERAN-OWNED business enterprise, the individual's
7 equity in his or her primary residence, or up to five hundred thousand
8 dollars of the present cash value of any qualified retirement savings
9 plan or individual retirement account held by the individual less any
10 penalties for early withdrawal.

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

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

16 (b) entering into partnerships, joint ventures or other similar
17 arrangements with certified minority [and women-owned], WOMEN OR VETER-
18 AN-OWNED business enterprises as defined in this article or other appli-
19 cable statute or regulation governing an entity's utilization of minori-
20 ty [or women-owned], WOMEN OR VETERAN-OWNED business enterprises.

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

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

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

39 (d) to review periodically the practices and procedures of each
40 contracting agency with respect to compliance with the provisions of
41 this article, and to require them to file periodic reports with the
42 division of minority [and], women's AND VETERANS' business development
43 as to the level of minority [and women-owned], WOMEN AND VETERAN-OWNED
44 business enterprises participation in the awarding of agency contracts
45 for goods and services;

46 (e) on January first of each year report to the governor and the
47 chairpersons of the senate finance and assembly ways and means commit-
48 tees on the level of minority [and women-owned], WOMEN AND VETERAN-OWNED
49 business enterprises participating in each agency's contracts for goods
50 and services and on activities of the office and effort by each
51 contracting agency to promote employment of minority group members
52 [and], women AND VETERANS, and to promote and increase participation by
53 certified businesses with respect to state contracts and subcontracts so
54 as to facilitate the award of a fair share of state contracts to such
55 businesses. The comptroller shall assist the division in collecting
56 information on the participation of certified business for each

1 contracting agency. Such report may recommend new activities and
2 programs to effectuate the purposes of this article;

3 (f) to prepare and update periodically a directory of certified minor-
4 ity [and women-owned], WOMEN AND VETERAN-OWNED business enterprises
5 which shall, wherever practicable, be divided into categories of labor,
6 services, supplies, equipment, materials and recognized construction
7 trades and which shall indicate areas or locations of the state where
8 such enterprises are available to perform services;

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

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

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

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

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

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

45 S 5. The section heading and paragraph (a) of subdivision 1 of section
46 312 of the executive law, as added by chapter 261 of the laws of 1988,
47 are amended to read as follows:

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

50 (a) The contractor will not discriminate against employees or appli-
51 cants for employment because of race, creed, color, national origin,
52 sex, age, disability or marital status, and will undertake or continue
53 existing programs of affirmative action to ensure that minority group
54 members [and], women AND VETERANS are afforded equal employment opportu-
55 nities without discrimination. For purposes of this article affirmative
56 action shall mean recruitment, employment, job assignment, promotion,

1 upgradings, demotion, transfer, layoff, or termination and rates of pay
2 or other forms of compensation.

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

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

16 (a) to determine whether there is a disparity between the number of
17 qualified minority [and women-owned], WOMEN AND VETERAN-OWNED businesses
18 ready, willing and able to perform state contracts for commodities,
19 services and construction, and the number of such contractors actually
20 engaged to perform such contracts, and to determine what changes, if
21 any, should be made to state policies affecting minority [and women-
22 owned], WOMEN AND VETERAN-OWNED business enterprises; and (b) to deter-
23 mine whether there is a disparity between the number of qualified minor-
24 ities [and], women AND VETERANS ready, willing and able, with respect to
25 labor markets, qualifications and other relevant factors, to participate
26 in contractor employment, management level bodies, including boards of
27 directors, and as senior executive officers within contracting entities
28 and the number of such group members actually employed or affiliated
29 with state contractors in the aforementioned capacities, and to deter-
30 mine what changes, if any, should be made to state policies affecting
31 minority [and], women AND VETERAN group populations with regard to state
32 contractors' employment and appointment practices relative to diverse
33 group members. Such study shall include, but not be limited to, an anal-
34 ysis of the history of minority [and women-owned], WOMEN AND
35 VETERAN-OWNED business enterprise programs and their effectiveness as a
36 means of securing and ensuring participation by minorities [and], women
37 AND VETERANS, and a disparity analysis by market area and region of the
38 state. Such study shall distinguish between minority males, minority
39 females and non-minority females, AND BETWEEN MINORITY VETERANS AND
40 NON-MINORITY VETERANS, AND FEMALE VETERANS AND MALE VETERANS, in the
41 statistical analysis.

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

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

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

- 1 (a) construction industry for certified minority-owned business enter-
2 prises: fourteen and thirty-four hundredths percent;
- 3 (b) construction industry for certified women-owned business enter-
4 prises: eight and forty-one hundredths percent;
- 5 (B-1) CONSTRUCTION INDUSTRY FOR CERTIFIED VETERAN-OWNED BUSINESS
6 ENTERPRISES: A PERCENTAGE TO BE DETERMINED BY THE DISPARITY STUDY
7 DESCRIBED IN SUBDIVISION ONE OF SECTION THREE HUNDRED TWELVE-A OF THIS
8 ARTICLE;
- 9 (c) construction related professional services industry for certified
10 minority-owned business enterprises: thirteen and twenty-one hundredths
11 percent;
- 12 (d) construction related professional services industry for certified
13 women-owned business enterprises: eleven and thirty-two hundredths
14 percent;
- 15 (D-1) CONSTRUCTION RELATED PROFESSIONAL SERVICES INDUSTRY FOR CERTI-
16 FIED VETERAN-OWNED BUSINESS ENTERPRISES: A PERCENTAGE TO BE DETERMINED
17 BY THE DISPARITY STUDY DESCRIBED IN SUBDIVISION ONE OF SECTION THREE
18 HUNDRED TWELVE-A OF THIS ARTICLE;
- 19 (e) non-construction related services industry for certified minori-
20 ty-owned business enterprises: nineteen and sixty hundredths percent;
- 21 (f) non-construction related services industry for certified women-
22 owned business enterprises: seventeen and forty-four hundredths percent;
- 23 (F-1) NON-CONSTRUCTION RELATED SERVICES INDUSTRY FOR CERTIFIED VETER-
24 AN-OWNED BUSINESS ENTERPRISES: A PERCENTAGE TO BE DETERMINED BY THE
25 DISPARITY STUDY DESCRIBED IN SUBDIVISION ONE OF SECTION THREE HUNDRED
26 TWELVE-A OF THIS ARTICLE;
- 27 (g) commodities industry for certified minority-owned business enter-
28 prises: sixteen and eleven hundredths percent;
- 29 (h) commodities industry for certified women-owned business enter-
30 prises: ten and ninety-three hundredths percent;
- 31 (H-1) COMMODITIES INDUSTRY FOR CERTIFIED VETERAN-OWNED BUSINESS ENTER-
32 PRIZES: A PERCENTAGE TO BE DETERMINED BY THE DISPARITY STUDY DESCRIBED
33 IN SUBDIVISION ONE OF SECTION THREE HUNDRED TWELVE-A OF THIS ARTICLE;
- 34 (i) overall agency total dollar value of procurement for certified
35 minority-owned business enterprises: sixteen and fifty-three hundredths
36 percent;
- 37 (j) overall agency total dollar value of procurement for certified
38 women-owned business enterprises: twelve and thirty-nine hundredths
39 percent; [and]
- 40 (J-1) OVERALL AGENCY TOTAL DOLLAR VALUE OF PROCUREMENT FOR CERTIFIED
41 VETERAN-OWNED BUSINESS ENTERPRISES: A PERCENTAGE TO BE DETERMINED BY
42 THE DISPARITY STUDY DESCRIBED IN SUBDIVISION ONE OF SECTION THREE
43 HUNDRED TWELVE-A OF THIS ARTICLE;
- 44 (k) overall agency total dollar value of procurement for certified
45 minority, women-owned business enterprises: twenty-eight and ninety-two
46 hundredths percent; AND
- 47 (L) OVERALL AGENCY TOTAL DOLLAR VALUE OF PROCUREMENT FOR CERTIFIED
48 MINORITY, WOMEN, VETERAN-OWNED BUSINESS ENTERPRISES: A PERCENTAGE TO BE
49 DETERMINED BY THE DISPARITY STUDY DESCRIBED IN SUBDIVISION ONE OF
50 SECTION THREE HUNDRED TWELVE-A OF THIS ARTICLE.
- 51 1-a. The director shall ensure that each state agency has been
52 provided with a copy of the two thousand ten disparity study AND THERE-
53 AFTER THE TWO THOUSAND FIFTEEN DISPARITY STUDY.
- 54 1-b. Each agency shall develop and adopt agency-specific goals based
55 on the findings of the two thousand ten disparity study AND THEREAFTER
56 THE TWO THOUSAND SIXTEEN DISPARITY STUDY.

1 2. The director shall promulgate rules and regulations pursuant to the
2 goals established in subdivision one of this section that provide meas-
3 ures and procedures to ensure that certified minority [and women-owned],
4 WOMEN AND VETERAN-OWNED businesses shall be given the opportunity for
5 maximum feasible participation in the performance of state contracts and
6 to assist in the agency's identification of those state contracts for
7 which minority [and women-owned], WOMEN AND VETERAN-OWNED certified
8 businesses may best bid to actively and affirmatively promote and assist
9 their participation in the performance of state contracts so as to
10 facilitate the agency's achievement of the maximum feasible portion of
11 the goals for state contracts to such businesses.

12 2-a. The director shall promulgate rules and regulations that will
13 accomplish the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (b) implement a program that will enable the agency to evaluate each
31 contract to determine the appropriateness of the goal pursuant to subdi-
32 vision one of this section;

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

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

43 5. (a) Contracting agencies shall administer the rules and regulations
44 promulgated by the director in a good faith effort to meet the maximum
45 feasible portion of the agency's goals adopted pursuant to this article
46 and the regulations of the director. Such rules and regulations: shall
47 require a contractor to submit a utilization plan after bids are opened,
48 when bids are required, but prior to the award of a state contract;
49 shall require the contracting agency to review the utilization plan
50 submitted by the contractor and to post the utilization plan and any
51 waivers of compliance issued pursuant to subdivision six of this section
52 on the website of the contracting agency within a reasonable period of
53 time as established by the director; shall require the contracting agen-
54 cy to notify the contractor in writing within a period of time specified
55 by the director as to any deficiencies contained in the contractor's
56 utilization plan; shall require remedy thereof within a period of time

1 specified by the director; shall require the contractor to submit peri-
2 odic compliance reports relating to the operation and implementation of
3 any utilization plan; shall not allow any automatic waivers but shall
4 allow a contractor to apply for a partial or total waiver of the minori-
5 ty [and women-owned], WOMEN AND VETERAN-OWNED business enterprise
6 participation requirements pursuant to subdivisions six and seven of
7 this section; shall allow a contractor to file a complaint with the
8 director pursuant to subdivision eight of this section in the event a
9 contracting agency has failed or refused to issue a waiver of the minori-
10 ty [and women-owned], WOMEN AND VETERAN-OWNED business enterprise
11 participation requirements or has denied such request for a waiver; and
12 shall allow a contracting agency to file a complaint with the director
13 pursuant to subdivision nine of this section in the event a contractor
14 is failing or has failed to comply with the minority [and women-owned],
15 WOMEN AND VETERAN-OWNED business enterprise participation requirements
16 set forth in the state contract where no waiver has been granted.

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

27 (c) Without limiting other grounds for the disqualification of bids or
28 proposals on the basis of non-responsibility, a contracting agency may
29 disqualify the bid or proposal of a contractor as being non-responsible
30 for failure to remedy notified deficiencies contained in the contrac-
31 tor's utilization plan within a period of time specified in regulations
32 promulgated by the director after receiving notification of such defi-
33 ciencies from the contracting agency. Where failure to remedy any noti-
34 fied deficiency in the utilization plan is a ground for disqualifica-
35 tion, that issue and all other grounds for disqualification shall be
36 stated in writing by the contracting agency. Where the contracting agen-
37 cy states that a failure to remedy any notified deficiency in the utili-
38 zation plan is a ground for disqualification the contractor shall be
39 entitled to an administrative hearing, on a record, involving all
40 grounds stated by the contracting agency. Such hearing shall be
41 conducted by the appropriate authority of the contracting agency to
42 review the determination of disqualification. A final administrative
43 determination made following such hearing shall be reviewable in a
44 proceeding commenced under article seventy-eight of the civil practice
45 law and rules, provided that such proceeding is commenced within thirty
46 days of the notice given by certified mail return receipt requested
47 rendering such final administrative determination. Such proceeding shall
48 be commenced in the supreme court, appellate division, third department
49 and such proceeding shall be preferred over all other civil causes
50 except election causes, and shall be heard and determined in preference
51 to all other civil business pending therein, except election matters,
52 irrespective of position on the calendar. Appeals taken to the court of
53 appeals of the state of New York shall be subject to the same prefer-
54 ence.

55 6. Where it appears that a contractor cannot, after a good faith
56 effort, comply with the minority [and women-owned], WOMEN AND

1 VETERAN-OWNED business enterprise participation requirements set forth
2 in a particular state contract, a contractor may file a written applica-
3 tion with the contracting agency requesting a partial or total waiver of
4 such requirements setting forth the reasons for such contractor's
5 inability to meet any or all of the participation requirements together
6 with an explanation of the efforts undertaken by the contractor to
7 obtain the required minority [and women-owned], WOMEN AND VETERAN-OWNED
8 business enterprise participation. In implementing the provisions of
9 this section, the contracting agency shall consider the number and types
10 of minority [and women-owned], WOMEN AND VETERAN-OWNED business enter-
11 prises located in the region in which the state contract is to be
12 performed, the total dollar value of the state contract, the scope of
13 work to be performed and the project size and term. If, based on such
14 considerations, the contracting agency determines there is not a reason-
15 able availability of contractors on the list of certified [business]
16 BUSINESSES to furnish services for the project, it shall issue a waiver
17 of compliance to the contractor. In making such determination, the
18 contracting agency shall first consider the availability of other busi-
19 ness enterprises located in the region and shall thereafter consider the
20 financial ability of minority [and women-owned], WOMEN AND VETERAN-OWNED
21 businesses located outside the region in which the contract is to be
22 performed to perform the state contract.

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

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

33 (ii) whether certified businesses which have been solicited by the
34 contractor have responded in a timely fashion to the contractor's solici-
35 tations for timely competitive bid quotations prior to the contracting
36 agency's bid date; and

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

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

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

55 9. If, after the review of a contractor's minority [and women owned],
56 WOMEN AND VETERAN-OWNED business utilization plan or review of a period-

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

15 S 8. Section 313-a of the executive law, as added by chapter 175 of
16 the laws of 2010, is amended to read as follows:

17 S 313-a. Diversity practices of state contractors. The director shall
18 promulgate rules and regulations setting forth measures and procedures
19 to require all contracting agencies, where practicable, feasible and
20 appropriate, to assess the diversity practices of contractors submitting
21 bids or proposals in connection with the award of a state contract. Such
22 rules and regulations shall take into account: the nature of the labor,
23 services, supplies, equipment or materials being procured by the state
24 agency; the method of procurement required to be used by a state agency
25 to award the contract and minority [and women-owned], WOMEN AND VETER-
26 AN-OWNED business utilization plans required to be submitted pursuant to
27 sections three hundred twelve and three hundred thirteen of this arti-
28 cle; and such other factors as the director deems appropriate or neces-
29 sary to promote the award of state contracts to contractors having sound
30 diversity practices. Such assessment shall not in any way permit the
31 automatic rejection of a bid or procurement contract proposal based on
32 lack of adherence to diversity practices. Each bid or proposal shall be
33 analyzed on an individual per bid or per proposal basis with the
34 contractor's diversity practices considered as only a part of a wider
35 consideration of several factors when deciding to award or decline to
36 award a bid or proposal. The director shall develop the rules and regu-
37 lations required hereunder only after consultation with the state
38 procurement council established by section one hundred sixty-one of the
39 state finance law.

40 S 9. Subdivisions 2 and 2-a of section 314 of the executive law,
41 subdivision 2 as added by chapter 261 of the laws of 1988 and subdivi-
42 sion 2-a as amended by chapter 175 of the laws of 2010, are amended to
43 read as follows:

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

51 2-a. (a) The director shall establish a procedure enabling the office
52 to accept New York municipal corporation certification verification for
53 minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprise
54 applicants in lieu of requiring the applicant to complete the state
55 certification process. The director shall promulgate rules and regu-
56 lations to set forth criteria for the acceptance of municipal corpo-

1 ration certification. All eligible municipal corporation certifications
2 shall require business enterprises seeking certification to meet the
3 following standards:

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

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

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

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

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

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

22 (vii) be an enterprise that is a small business pursuant to subdivi-
23 sion twenty of section three hundred ten of this article.

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

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

37 S 10. Subdivisions 3, 4, 5 and 7 of section 315 of the executive law,
38 subdivision 3 as amended and subdivisions 4, 5 and 7 as added by chapter
39 175 of the laws of 2010, are amended to read as follows:

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

1 4. The division of minority [and], women's AND VETERANS' business
2 development shall issue an annual report which: (a) summarizes the
3 report submitted by each contracting agency pursuant to subdivision
4 three of this section; (b) contains such comparative or other informa-
5 tion as the director deems appropriate, including but not limited to
6 goals compared to actual participation of minority [and women-owned],
7 WOMEN AND VETERAN-OWNED business enterprises in state contracting, to
8 evaluate the effectiveness of the activities undertaken by each such
9 contracting agency to promote increased participation by certified
10 minority [or women-owned], WOMEN OR VETERAN-OWNED businesses with
11 respect to state contracts and subcontracts; (c) contains a summary of
12 all waivers of the requirements of subdivisions six and seven of section
13 three hundred thirteen of this article allowed by each contracting agen-
14 cy during the period covered by the report, including a description of
15 the basis of the waiver request and the contracting agency's rationale
16 for granting any such waiver; (d) describes any efforts to create a
17 database or other information storage and retrieval system containing
18 information relevant to contracting with minority [and women-owned],
19 WOMEN AND VETERAN-OWNED business enterprises; and (e) contains a summary
20 of (i) all determinations of violations of this article by a contractor
21 or a contracting agency made during the period covered by the annual
22 report pursuant to section three hundred sixteen-a of this article and
23 (ii) the penalties or sanctions, if any, assessed in connection with
24 such determinations and the rationale for such penalties or sanctions.
25 Copies of the annual report shall be provided to the commissioner, the
26 governor, the comptroller, the temporary president of the senate, the
27 speaker of the assembly, the minority leader of the senate, the minority
28 leader of the assembly and shall also be made widely available to the
29 public via, among other things, publication on a website maintained by
30 the division of minority [and], women's AND VETERANS' business develop-
31 ment.

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

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

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

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

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

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

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

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

17 S 316. Enforcement. Upon receipt by the director of a complaint by a
18 contracting agency that a contractor has violated the provisions of a
19 state contract which have been included to comply with the provisions of
20 this article or of a contractor that a contracting agency has violated
21 such provisions or has failed or refused to issue a waiver where one has
22 been applied for pursuant to subdivision six of section three hundred
23 thirteen of this article or has denied such application, the director
24 shall attempt to resolve the matter giving rise to such complaint. If
25 efforts to resolve such matter to the satisfaction of all parties are
26 unsuccessful, the director shall refer the matter, within thirty days of
27 the receipt of the complaint, to the division's hearing officers. Upon
28 conclusion of the administrative hearing, the hearing officer shall
29 submit to the director his or her decision regarding the alleged
30 violation of the contract and recommendations regarding the imposition
31 of sanctions, fines or penalties. The director, within ten days of
32 receipt of the decision, shall file a determination of such matter and
33 shall cause a copy of such determination along with a copy of this arti-
34 cle to be served upon the contractor by personal service or by certified
35 mail return receipt requested. The decision of the hearing officer shall
36 be final and may only be vacated or modified as provided in article
37 seventy-eight of the civil practice law and rules upon an application
38 made within the time provided by such article. The determination of the
39 director as to the imposition of any fines, sanctions or penalties shall
40 be reviewable pursuant to article seventy-eight of the civil practice
41 law and rules. The penalties imposed for any violation which is premised
42 upon either a fraudulent or intentional misrepresentation by the
43 contractor or the contractor's willful and intentional disregard of the
44 minority [and women-owned], WOMEN AND VETERAN-OWNED participation
45 requirement included in the contract may include a determination that
46 the contractor shall be ineligible to submit a bid to any contracting
47 agency or be awarded any such contract for a period not to exceed one
48 year following the final determination; provided however, if a contrac-
49 tor has previously been determined to be ineligible to submit a bid
50 pursuant to this section, the penalties imposed for any subsequent
51 violation, if such violation occurs within five years of the first
52 violation, may include a determination that the contractor shall be
53 ineligible to submit a bid to any contracting agency or be awarded any
54 such contract for a period not to exceed five years following the final
55 determination. The division of minority [and women's], WOMEN'S AND
56 VETERANS' business development shall maintain a website listing all

1 contractors that have been deemed ineligible to submit a bid pursuant to
2 this section and the date after which each contractor shall once again
3 become eligible to submit bids.

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

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

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

23 S 317. Superseding effect of article with respect to state law. The
24 provisions of this article shall supersede any other provision of state
25 law, which expressly implements or mandates an equal employment opportu-
26 nity program or a program for securing participation by minority [and
27 women-owned], WOMEN AND VETERAN-OWNED business enterprises, concerning
28 action to be taken by any party to a state contract, to which the
29 provisions of this article apply; provided, however, that the provisions
30 of any state law, not as hereinabove superseded, which expressly imple-
31 ment or mandate such programs shall remain unimpaired by the provisions
32 of this article, except that the provisions of any such law shall be
33 construed as if the provisions of subdivisions five, six, seven and
34 eight of section three hundred thirteen and section three hundred
35 sixteen of this article were fully set forth therein and made applicable
36 only to complaints of violations under such provisions of law occurring
37 on or after September first, nineteen hundred eighty-eight; provided,
38 further, that nothing contained in this article shall be construed to
39 limit, impair, or otherwise restrict any state agency's authority or
40 discretionary power in effect prior to the enactment of this article to
41 establish or continue, by rule, regulation or resolution, an equal
42 opportunity program or a program for securing participation of minority
43 [and women-owned], WOMEN AND VETERAN-OWNED business enterprises with
44 regard to banking relationships, the issuance of insurance policies or
45 contracts for the sale of bonds, notes or other securities; and,
46 provided further, that nothing contained in the immediately preceding
47 proviso shall be construed to create, impair, alter, limit, modify,
48 enlarge, abrogate or restrict any agency's authority or discretionary
49 power with respect to an equal opportunity program or a program for
50 securing participation of minority [and women-owned], WOMEN AND VETER-
51 AN-OWNED enterprises.

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

54 S 4-a. Chief diversity officer. A chief diversity officer for the
55 state shall be appointed by the governor and shall receive a salary to

1 be fixed by the governor within the amount appropriated therefor. The
2 chief diversity officer's responsibilities shall include the following:

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

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

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

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

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

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

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

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

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

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

36 S 16. Section 115 of the economic development law, as added by chapter
37 55 of the laws of 1992, is amended to read as follows:

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

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

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

52 S 17. Section 116 of the economic development law, as added by chapter
53 55 of the laws of 1992, is amended to read as follows:

54 S 116. Office of minority [and], women's AND VETERANS' business devel-
55 opment; transfer. All the functions and powers possessed by and all the
56 obligations and duties of the governor's office of minority [and],

1 women's AND VETERANS' business development office, created and estab-
2 lished in the executive law [pursuant to and by chapter two hundred
3 sixty-one of the laws of nineteen hundred eighty-eight], are hereby
4 transferred and assigned to, assumed by and devolved upon the department
5 of economic development.

6 S 18. Section 117 of the economic development law, as added by chapter
7 55 of the laws of 1992, is amended to read as follows:

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

18 S 19. Section 118 of the economic development law, as added by chapter
19 55 of the laws of 1992 and subdivision 7 as further amended by section
20 15 of part GG of chapter 63 of the laws of 2000, is amended to read as
21 follows:

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

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

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

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

38 4. Advise and make recommendations to the commissioner and the legis-
39 lature on matters affecting the minority [and women-owned], WOMEN OR
40 VETERAN-OWNED business enterprises of the state and promote and encour-
41 age the protection of the legitimate interests of minority [and women-
42 owned], WOMEN OR VETERAN-OWNED business enterprises within the state;

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

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

53 7. Provide technical assistance and information to minority [and
54 women-owned], WOMEN AND VETERAN-OWNED business enterprises in the state
55 on economic development programs administered by the department, includ-
56 ing, but not limited to: (a) the empire zones program, established

1 pursuant to article eighteen-B of the general municipal law, (b) the
2 industrial effectiveness program, established pursuant to article seven
3 of this chapter, (c) the economic development skills training program,
4 established pursuant to article eight of this chapter, and (d) the
5 entrepreneurial assistance program, established pursuant to article nine
6 of this chapter;

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

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

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

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

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

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

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

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

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

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

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

45 1. There is hereby created in the division of minority [and], women's
46 AND VETERANS' business development a minority [and women-owned], WOMEN
47 AND VETERAN-OWNED business enterprise advisory board. The board shall
48 consist of twelve members to be appointed by the governor. The governor
49 shall designate a chairperson from the members of the advisory board, to
50 serve as such at the pleasure of the governor. In appointing the members
51 of the advisory board the governor shall ensure that six of the members
52 are individuals who are currently involved in the ownership and/or oper-
53 ation of a minority [or women-owned], WOMEN OR VETERAN-OWNED business
54 enterprise or who have extensive experience in minority [and women-
55 owned], WOMEN AND VETERAN-OWNED business enterprise ownership and/or
56 operation, and that at least two of the members are individuals repres-

1 enting banking, community development financial, insurance or surety
2 bonding institutions.

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

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

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

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

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

19 (d) advise the commissioner, the governor, and the legislature
20 concerning the development of inter-governmental cooperation among agen-
21 cies of the federal, state and local governments and cooperation between
22 private industry and government so as to assure the optimum development
23 of minority [and women-owned], WOMEN AND VETERAN-OWNED business enter-
24 prises; and

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

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

40 S 21. Section 210 of the economic development law is amended by adding
41 a new subdivision 7 to read as follows:

42 7. "VETERAN-OWNED BUSINESS ENTERPRISE" SHALL MEAN ANY BUSINESS ENTER-
43 PRISE WHICH IS AT LEAST FIFTY-ONE PER CENTUM OWNED BY, OR IN THE CASE OF
44 A PUBLICLY OWNED BUSINESS AT LEAST FIFTY-ONE PER CENTUM OF THE STOCK OF
45 WHICH IS OWNED BY, CITIZENS OR PERMANENT RESIDENT ALIENS WHO ARE VETER-
46 ANS WHERE SUCH OWNERSHIP INTEREST IS REAL, SUBSTANTIAL AND CONTINUING
47 AND WHERE SUCH PERSONS HAVE THE AUTHORITY TO INDEPENDENTLY CONTROL THE
48 DAY-TO-DAY BUSINESS DECISIONS OF THE ENTITY.

49 S 22. Paragraph (h) of subdivision 6 of section 133 of the economic
50 development law, as amended by chapter 491 of the laws of 2013, is
51 amended to read as follows:

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

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

4 1. The department, through its regional offices, is authorized: (a) to
5 serve as a center for information regarding economic development
6 resources available from state, federal and local agencies; (b) to
7 provide outreach to businesses, with attention to small and medium-sized
8 businesses, including minority [and women-owned], WOMEN AND
9 VETERAN-OWNED business enterprises, for financial and technical assist-
10 ance offered by state economic development agencies, authorities, or
11 other economic entities; (c) to serve as a regional center to accept
12 applications for state economic development programs; (d) to coordinate
13 the economic development programs and activities of state agencies and
14 authorities within each region including, but not limited to, outreach
15 to businesses, technical assistance services, skills training assist-
16 ance, sharing of information, strategic economic development plans and
17 programs, to provide or arrange for assistance in compliance with feder-
18 al, state, and local rules, regulations, permits, and licenses, and
19 other measures to enhance regional economic development and eliminate
20 duplication of services; (e) to provide or arrange for assistance to
21 persons, firms, agencies, partnerships or corporations, either public or
22 private, in applying for assistance from state economic development
23 programs or for necessary licenses and permits or seeking to comply with
24 federal, state and local rules and regulations; (f) to review and
25 comment, within their knowledge and expertise, with respect to applica-
26 tions for state assistance in a timely manner and form prescribed by the
27 commissioner; (g) to distribute literature and marketing material
28 describing the facilities, advantages and attractions of the region for
29 business; (h) to provide economic development information, planning
30 services and technical assistance to counties and municipalities within
31 the region; (i) to provide information and assistance in the certif-
32 ication of minority [and women-owned], WOMEN AND VETERAN-OWNED business
33 enterprises; (j) to provide or arrange for assistance to private sector
34 employers, whether operating for profit or not for profit, and to organ-
35 izations and associations of such employers in developing and implement-
36 ing innovative and flexible employee compensation, assistance and bene-
37 fit programs to enhance competitiveness and meet emerging demographic
38 and market conditions; and (k) to provide information and assistance to
39 small businesses on environmental compliance requirements of federal and
40 state law and pollution prevention opportunities in furtherance of poli-
41 cies and programs established in article twenty-eight of the environ-
42 mental conservation law and in coordination with the pollution
43 prevention and environmental compliance coordinating council established
44 in article twenty-eight of the environmental conservation law, including
45 programs operated by the department, the department of environmental
46 conservation or other state or local agencies from which technical
47 assistance, or loans, grants or other financial assistance for compli-
48 ance and pollution prevention may be obtained; and in providing such
49 information and assistance, to promote pollution prevention approaches.

50 S 24. Paragraph (i) of subdivision 3 of section 22-c of the state
51 finance law, as amended by section 1 of part 0 of chapter 59 of the laws
52 of 2009, is amended to read as follows:

53 (i) An explanation of any actions proposed to be taken to achieve
54 increased opportunity for meaningful participation in the performance of
55 state contracts by minority [and women-owned], WOMEN AND VETERAN-OWNED
56 business enterprises in accordance with article fifteen-A of the execu-

1 tive law, including a compliance report to be submitted by July first of
2 each year commencing with the two thousand five--two thousand six fiscal
3 year and for each subsequent year thereafter that includes: all the
4 items of information required in accordance with regulations promulgated
5 by the director of the division of minority [and], women's AND VETERANS'
6 business development in the department of economic development under
7 article fifteen-A of the executive law; goals for participation by
8 certified minority [or women-owned], WOMEN OR VETERAN-OWNED business
9 enterprises for such fiscal year; and a description of the types of
10 expenditures, projects or contracts.

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

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

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

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

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

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

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

48 d. The board is also authorized to:

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

53 (ii) within sixty days of the end of each fiscal year following the
54 effective date of this paragraph, the board shall report to the gover-
55 nor, legislature and the chief diversity officer of the state of New
56 York on the participation of [MWBE] MWVBE asset managers, [MWBE] MWVBE

1 financial institutions and [MWBE] MWVBE professional service providers
2 in investment and brokerage transactions with or as providers of
3 services for the deferred compensation plans, including a comparative
4 analysis of such activity relative to such activity with all asset
5 managers, financial institutions and professional service providers for
6 the relevant period and on the progress and the success of the efforts
7 undertaken during such period to achieve the goals of such strategy.
8 Each report shall be simultaneously published on the website of the
9 deferred compensation plans for not less than sixty days following its
10 release to the governor and the other recipients named above;

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

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

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

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

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

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

44 (b) an enterprise in which such minority [or], women OR VETERAN owner-
45 ship or operation is real, substantial and continuing;

46 (c) an enterprise in which such minority [or], women OR VETERAN owner-
47 ship or operation has and exercises the authority to control independ-
48 ently the day-to-day business decisions of the enterprise;

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

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

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

1 pursuant to the provisions of subdivision three of section four hundred
2 twenty-three-c of this chapter that provides banking, financial advi-
3 sory, insurance, financial research, valuation or other financial
4 services.

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

7 S 423-c. [MWBE] MWVBE asset management and financial institution stra-
8 tegy. 1. Within the discretion of the state comptroller and in accord-
9 ance with and subject to his or her fiduciary duties and obligations as
10 trustee of the common retirement fund and to the members, retirees and
11 beneficiaries of such fund and such other investment limitations as may
12 be prescribed by this chapter, the comptroller is authorized to estab-
13 lish an [MWBE] MWVBE asset management and financial institution strategy
14 including reasonable goals for utilization of [MWBE] MWVBE asset manag-
15 ers, [MWBE] MWVBE financial institutions and [MWBE] MWVBE financial and
16 professional service firms, which strategy shall include, but shall not
17 be limited to, the following objectives:

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

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

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

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

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

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

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

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

1 3. (a) The state comptroller shall establish and adopt a certification
2 process and guidelines for the sole purpose of identification and
3 reporting on [MWBE] MWVBE firms providing asset management, brokerage,
4 or other financial or professional services as such term is defined in
5 subdivision six of section one hundred seventy-six of this chapter. Such
6 certification shall differentiate and the comptroller shall maintain
7 separate categories for [MWBE] MWVBE asset managers meeting the criteria
8 of subparagraph (i) of paragraph (a) of subdivision six of section one
9 hundred seventy-six of this chapter and [MWBE] MWVBE asset managers
10 meeting the criteria of subparagraph (ii) of paragraph (a) of such
11 subdivision.

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

- 17 (i) title;
- 18 (ii) position;
- 19 (iii) ownership percentage;
- 20 (iv) ethnicity;
- 21 (v) gender; and
- 22 (vi) length of service.

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

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

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

43 (a) approval of contractors participating in the program established
44 pursuant to subdivision one of this section, to be known, for the
45 purposes of such program, as "mentor firms". Mentor firms must demon-
46 strate commitment and ability to assist protege firms, including favora-
47 ble financial health, good character, and experience in contracting with
48 the state. Once approved, a mentor firm must annually certify that it
49 continues to possess good character and a favorable financial position.
50 Incentives for mentor firms to participate in the program may include:
51 (i) where contracts are awarded by best value, additional evaluation
52 points as specified in the request for proposal; and (ii) where protege
53 firms are certified minority [and women-owned], WOMEN AND VETERAN-OWNED
54 businesses, credit towards fulfillment of minority [and women-owned],
55 WOMEN AND VETERAN-OWNED business participation requirements, including
56 without limitation additional credit towards fulfillment of minority

1 [and women-owned], WOMEN AND VETERAN-OWNED business subcontracting
2 participation goals based on costs incurred by a mentor firm in provid-
3 ing assistance to a certified minority [and women-owned], WOMEN AND
4 VETERAN-OWNED business protege firm.

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

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

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

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

40 Recent reviews and analyses of contracting in New York, including the
41 study by the division of minority [and], women's AND VETERANS' business
42 development of the department of economic development entitled "Opportu-
43 nity Denied! A Study of Racial and Sexual Discrimination Related to
44 Government Contracting in New York State," confirm through direct
45 evidence of racial and sexual discrimination in and by New York state
46 sufficient to justify race and sex conscious remedies. For the purpose
47 of furthering the state's compelling interest in eradicating the effects
48 of racial and sexual discrimination therefore, it is necessary and prop-
49 er that article fifteen-A of the executive law, concerning participation
50 by minority group members [and], women AND VETERANS and business enter-
51 prises owned by them, shall apply to the Albany county airport authori-
52 ty.

53 S 30. Subdivisions 3 and 6 of section 2879 of the public authorities
54 law, subdivision 3 as amended by chapter 564 of the laws of 1988, para-
55 graph (b) of subdivision 3 as amended by chapter 45 of the laws of 1994,
56 subparagraph (iv) of paragraph (b) of subdivision 3 as amended by chap-

1 ter 383 of the laws of 1994, paragraph (m) of subdivision 3 as added by
2 chapter 862 of the laws of 1990, paragraph (n) of subdivision 3 as
3 amended by chapter 531 of the laws of 1993, paragraphs (o) and (p) of
4 subdivision 3 as added by chapter 844 of the laws of 1992, subparagraph
5 (i) of paragraph (b) of subdivision 3 and subdivision 6 as amended,
6 paragraphs (f), (g), (h), (i) and (j) of subdivision 3 as added and
7 paragraphs (k), (l), (m), (n), (o) and (p) of subdivision 3 as relet-
8 tered by chapter 174 of the laws of 2010, are amended to read as
9 follows:

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

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

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

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

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

32 (iii) setting forth responsibilities of contractors;

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

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

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

1 enterprises. For the purposes of this section, a minority business
2 enterprise means any business enterprise, including a sole proprietor-
3 ship, partnership or corporation that is:

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

8 (ii) an enterprise in which the minority ownership is real, substan-
9 tial and continuing;

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

13 (iv) an enterprise authorized to do business in New York state, inde-
14 pendently owned and operated, and not dominant in its field.

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

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

20 (ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban,
21 Central or South American of either Indian or Hispanic origin, regard-
22 less of race;

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

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

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

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

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

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

41 (iv) an enterprise authorized to do business in New York state, inde-
42 pendently owned and operated, and not dominant in its field.

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

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

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

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

1 (IV) AN ENTERPRISE AUTHORIZED TO DO BUSINESS IN NEW YORK STATE, INDE-
2 PENDENTLY OWNED AND OPERATED, AND NOT DOMINANT IN ITS FIELD.

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

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

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

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

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

48 (A) Measures and procedures to ensure that certified businesses shall
49 be given the opportunity for maximum feasible participation in the
50 performance of state contracts and to assist in the corporation's iden-
51 tification of those state contracts for which certified businesses may
52 best bid to actively and affirmatively promote and assist their partic-
53 ipation in the performance of state contracts so as to facilitate the
54 corporation's achievement of the maximum feasible portion of the goals
55 for state contracts to such businesses;

1 (B) Provisions designating the division of minority [and women-owned],
2 WOMEN AND VETERAN-OWNED business development to certify and decertify
3 minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises
4 for all corporations through a single process that meets applicable
5 state and federal requirements;

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

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

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

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

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

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

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

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

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

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

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

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

44 (k) A listing of the types of provisions to be contained in procure-
45 ment contracts, including provisions concerning the nature and monitor-
46 ing of the work to be performed, the use of corporate supplies and
47 facilities, the use of corporate personnel and any other provisions.

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

50 (m) Procedures regarding procurement contracts which are exempt from
51 the publication requirements of article four-C of the economic develop-
52 ment law.

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

1 (i) providing for the corporation to collect and to consult the spec-
2 ifications of New York state business enterprises in developing specifi-
3 cations for any procurement contract for the purchase of goods where
4 possible, practicable, feasible and consistent with open bidding, except
5 for procurement contracts for which the corporation would be expending
6 funds received from another state. The corporation shall, where feasi-
7 ble, make use of the stock item specification forms prepared by the
8 commissioner of general services, and where necessary, consult with the
9 commissioner of the office of general services, in developing such spec-
10 ifications and make such determinations; and

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

36 (iii) except for procurement contracts for which the corporation would
37 be expending funds received from another state, the corporation shall
38 include in all bid documents provided to potential bidders a statement
39 that information concerning the availability of New York state subcon-
40 tractors and suppliers is available from the New York state department
41 of economic development, which shall include the directory of certified
42 minority [and women-owned], WOMEN AND VETERAN-OWNED businesses, and it
43 is the policy of New York state to encourage the use of New York state
44 subcontractors and suppliers, and to promote the participation of minor-
45 ity [and women-owned], WOMEN AND VETERAN-OWNED businesses where possi-
46 ble, in the procurement of goods and services; and

47 (iv) with the cooperation of the community services division of the
48 department of labor and through cooperative efforts with contractors,
49 providing for the notification of New York state residents of employment
50 opportunities arising in New York state out of procurement contracts let
51 by the corporation in an amount estimated to be equal to or greater than
52 one million dollars; and promulgating procedures which will assure
53 compliance by contractors with such notification by requiring contrac-
54 tors to submit post-award compliance reports documenting their efforts
55 to provide such notification through listing any such positions with the
56 community services division, or providing for such notification in such

1 manner as is consistent with existing collective bargaining contracts or
2 agreements; and

3 (v) including in each set of documents soliciting bids on procurement
4 contracts to let by the corporation a statement notifying potential
5 bidders located in foreign countries that the corporation may assign or
6 otherwise transfer offset credits created by such procurement contract
7 to third parties located in New York state; providing for the assignment
8 or other form of transfer of offset credits created by such procurement
9 contracts, directly or indirectly, to third parties located in New York
10 state, in accordance with the written directions of the commissioner of
11 economic development; and providing for the corporation to otherwise
12 cooperate with the department of economic development in efforts to get
13 foreign countries to recognize offset credits assigned or transferred to
14 third parties located in New York state created by such procurement
15 contracts; and

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

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

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

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

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

51 S 6-129. Participation by minority-owned [and], women-owned AND VETER-
52 AN-OWNED business enterprises and emerging business enterprises in city
53 procurement.

54 a. Programs established. There are hereby established a program, to be
55 administered by the department of small business services in accordance
56 with the provisions of this section, designed to enhance participation

1 by minority-owned [and], women-owned AND VETERAN-OWNED business enter-
2 prises in city procurement and a program, also to be administered by
3 such department in accordance with the provisions of this section,
4 designed to enhance participation by emerging business enterprises in
5 city procurement.

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

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

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

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

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

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

31 (5) "Bidders list" or "proposers list" means a list maintained by an
32 agency that includes persons from whom bids or proposals can be solicit-
33 ed.

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

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

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

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

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

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

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

- 1 (10) "Construction" means construction, reconstruction, demolition,
2 excavation, renovation, alteration, improvement, rehabilitation, or
3 repair of any building, facility, physical structure of any kind.
- 4 (11) "Contract" means any agreement, purchase order or other instru-
5 ment whereby the city is committed to expend or does expend funds in
6 return for goods, professional services, standard services, or
7 construction.
- 8 (12) "Contractor" means a person who has been awarded a contract by a
9 city agency.
- 10 (13) "Direct subcontractor" means a person who has entered into an
11 agreement with a contractor to provide services or perform work that is
12 required pursuant to a contract with a city agency.
- 13 (14) "Director" means an individual designated by the mayor to perform
14 the oversight functions of the director described in this section, who
15 either reports directly to the mayor or is a commissioner.
- 16 (15) "Directory" means a list prepared by the division of firms certi-
17 fied pursuant to section 1304 of the charter.
- 18 (16) "Division" shall mean the division of economic and financial
19 opportunity within the department of small business services.
- 20 (17) "EBE" means an emerging business enterprise certified in accord-
21 ance with section 1304 of the charter.
- 22 (18) "Geographic market of the city" means the following counties:
23 Bronx, Kings, New York, Queens, Richmond, Nassau, Putnam, Rockland,
24 Suffolk and Westchester within the State of New York; and Bergen,
25 Hudson, and Passaic within the state of New Jersey.
- 26 (19) "Goal" means a numerical target.
- 27 (20) "Graduate MBE," "graduate WBE," "GRADUATE VBE," or "graduate EBE"
28 means an MBE, WBE, VBE or EBE which shall have been awarded contracts by
29 one or more agencies within the past three years where the total city
30 funding from the expense and capital budgets for such contracts was
31 equal to or greater than fifty million dollars and whose size has
32 exceeded the size standards established for its industry by the United
33 States small business administration for three years.
- 34 (21) "Human services" means services provided to third parties,
35 including social services such as day care, foster care, home care,
36 homeless assistance, housing and shelter assistance, preventive
37 services, youth services, and senior centers; health or medical services
38 including those provided by health maintenance organizations; legal
39 services; employment assistance services, vocational and educational
40 programs; and recreation programs.
- 41 (22) "Indirect subcontractor" means a person who has entered into an
42 agreement with a direct subcontractor to provide services or perform
43 work that is required pursuant to the direct subcontractor's contract
44 with a contractor.
- 45 (23) "Industry classification" means one of the following classifica-
46 tions:
- 47 (a) construction;
48 (b) professional services;
49 (c) standard services; and
50 (d) goods.
- 51 (24) "Joint venture" means an association, of limited scope and dura-
52 tion, between two or more persons who have entered into an agreement to
53 perform and/or provide services required by a contract, in which each
54 such person contributes property, capital, effort, skill and/or know-
55 ledge, and in which each such person is entitled to share in the profits

1 and losses of the venture in reasonable proportion to the economic value
2 of its contribution.

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

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

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

14 (28) "Person" means any business, individual, partnership, corpo-
15 ration, firm, company, or other form of doing business.

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

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

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

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

32 (33) "Utilization rate" means the percentage of total contract expend-
33 itures expended on contracts or subcontracts with firms that are owned
34 by women, VETERANS, minorities, or individuals who are socially and
35 economically disadvantaged, respectively, in one or more industry clas-
36 sifications.

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

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

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

44 For construction contracts:

45 Category:	Participation goal:
46 Black Americans	8% of total annual
47 Asian Americans	agency expenditures on such contracts
48 Hispanic Americans	8% of total annual agency
49 Women	expenditures on such contracts
50 VETERANS	4% of total annual agency
	expenditures on such contracts
	18% of total annual agency
	expenditures on such contracts
	A PERCENTAGE TO BE DETERMINED
	BY THE COMMISSIONER IN ACCORDANCE
	WITH THE PROVISIONS OF PARAGRAPH

56

1 FOUR OF THIS SUBDIVISION
 2 Emerging 6% of total annual agency expenditures
 3 on such contracts
 4 For professional services contracts:
 5 Category: Participation goal:
 6 Black Americans 12% of total annual agency
 7 expenditures on such contracts
 8 Hispanic Americans 8% of total annual agency
 9 expenditures on such contracts
 10 Women 37% of total annual agency
 11 expenditures on such contracts
 12 VETERANS A PERCENTAGE TO BE DETERMINED BY THE
 13 COMMISSIONER IN ACCORDANCE WITH THE
 14 PROVISIONS OF PARAGRAPH FOUR OF THIS
 15 SUBDIVISION
 16 expenditures on such contracts
 17 Emerging 6% of total annual agency expenditures
 18 on such contracts
 19 For standard services contracts:
 20 Category: Participation goal:
 21 Black Americans 12% of total annual agency
 22 expenditures on such contracts
 23 Asian Americans 3% of total annual agency
 24 expenditures on such contracts
 25 Hispanic Americans 6% of total annual agency
 26 expenditures on such contracts
 27 Women 10% of total annual agency
 28 expenditures on such contracts
 29 VETERANS A PERCENTAGE TO BE DETERMINED BY THE
 30 COMMISSIONER IN ACCORDANCE WITH THE
 31 PROVISIONS OF PARAGRAPH FOUR OF THIS
 32 SUBDIVISION
 33 Emerging 6% of total annual agency expenditures
 34 on such contracts
 35 For goods contracts under one hundred thousand dollars:
 36 Category: Participation goal:
 37 Black Americans 7% of total annual agency
 38 expenditures on such contracts
 39 Asian Americans 8% of total annual agency
 40 expenditures on such contracts
 41 Hispanic Americans 5% of total annual agency
 42 expenditures on such contracts
 43 Women 25% of total annual agency
 44 expenditures on such contracts
 45 VETERANS A PERCENTAGE TO BE DETERMINED BY THE
 46 COMMISSIONER IN ACCORDANCE WITH THE
 47 PROVISIONS OF PARAGRAPH FOUR OF THIS
 48 SUBDIVISION
 49 Emerging 6% of total annual agency expenditures
 50 on such contracts

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

53 (b) Agencies shall develop agency utilization plans pursuant to subdi-
 54 vision g of this section. The citywide goals shall not be summarily
 55 adopted as goals for all annual agency utilization plans; rather, goals
 56 for such plans may be set at levels higher, lower, or the same as the

1 citywide goals, subject to the approval of the commissioner as described
2 in paragraph three of subdivision g of this section. When setting its
3 goals, each agency shall consider the citywide goals, the size and
4 nature of its own procurement portfolio, and the availability of MBEs,
5 WBEs, VBES and EBES with the capacity to perform the specific types and
6 scale of work for which the agency anticipates it will solicit procure-
7 ments during the year. Agencies shall seek to ensure substantial
8 progress toward the attainment of each of these goals in as short a time
9 as practicable.

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

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

34 (b) No later than 2015, the commissioner shall review information
35 collected by the department to determine the availability and utiliza-
36 tion of EBES, and shall on the basis of such review and any other rele-
37 vant information, where appropriate, revise by rule the citywide partic-
38 ipation goals set forth in this subdivision AND INCLUDE VETERANS IN SUCH
39 GOALS. Such revised goals shall be set at a level intended to assist in
40 overcoming the impact of discrimination on such businesses. Such review
41 shall be conducted in 2015 and at least once every two years thereafter.

42 e. Responsibilities of the division.

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

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

54 (3) The division shall develop and maintain relationships with organ-
55 izations representing contractors, including MBEs, WBEs, VBES and EBES,

1 and solicit their support and assistance in efforts to increase partic-
2 ipation of MBES, WBES, VBES and EBES in city procurement.

3 (4) The division shall coordinate with city and state entities that
4 maintain databases of MBES, WBES, VBES and EBES and work to enhance city
5 availability data and directories.

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

9 (6) The division shall conduct, coordinate and facilitate technical
10 assistance and educational programs for MBES, WBES, VBES and EBES and
11 other contractors designed to enhance participation of MBES, WBES, VBES
12 and EBES in city procurement. The division shall further develop a
13 clearinghouse of information on programs and services available to MBES,
14 WBES, VBES and EBES. The division shall conduct meetings with MBES,
15 WBES, VBES and EBES to discuss what agencies look for in evaluating bids
16 and proposals. The division shall also educate prime contractors on
17 opportunities to partner or subcontract with certified MBES, WBES, VBES
18 and EBES.

19 (7) The division shall develop standardized forms and reporting docu-
20 ments for agencies and contractors to facilitate the reporting require-
21 ments of this section.

22 (8) The division shall direct and assist agencies in their efforts to
23 increase participation by MBES, WBES, VBES and EBES in any city-operated
24 financial, technical, and management assistance program.

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

27 (10) Each fiscal year the division, in consultation with the city
28 chief procurement officer, shall audit at least 5% of all open contracts
29 for which contractor utilization plans have been established in accord-
30 ance with subdivision i of this section and 5% of all contracts awarded
31 to MBES, WBES, VBES, and EBES to assess compliance with this section.
32 All solicitations for contracts for which contractor utilization plans
33 are to be established shall include notice of potential audit.

34 (11) The division shall assist agencies in identifying and seeking
35 ways to reduce or eliminate practices such as bonding requirements or
36 delays in payment by prime contractors that may present barriers to
37 competition by MBES, WBES, VBES and EBES.

38 (12) The division shall encourage prime contractors to enter joint
39 venture agreements with MBES, WBES, VBES and EBES.

40 (13) (a) The division shall, upon reviewing applications for certifi-
41 cation and recertification, determine whether a firm qualifies as a
42 graduate MBE, WBE, VBE or EBE.

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

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

52 f. Responsibilities of agency M/WBE AND VBE officers. Each agency head
53 shall designate a deputy commissioner or other executive officer to act
54 as the agency M/WBE AND VBE officer who shall be directly accountable to
55 the agency head concerning the activities of the agency in carrying out
56 its responsibilities pursuant to this section, including the responsi-

1 bilities relating to EBE participation. The duties of the M/WBE AND VBE
2 officer shall include, but not be limited to:

3 (1) creating the agency's utilization plan in accordance with subdivi-
4 sion g of this section;

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

6 (3) acting as a liaison with organizations and/or associations of
7 MBES, WBES, VBES and EBES, informing such organizations and/or associ-
8 ations of the agency's procurement procedures, and advising them of
9 future procurement opportunities;

10 (4) ensuring that agency bid solicitations and requests for proposals
11 are sent to MBES, WBES, VBES and EBES in a timely manner, consistent
12 with this section and rules of the procurement policy board;

13 (5) referring MBES, WBES, VBES and EBES to technical assistance
14 services available from agencies and other organizations;

15 (6) reviewing requests for waivers and/or modifications of partic-
16 ipation goals and contractor utilization plans in accordance with para-
17 graphs 11 and/or 12 of subdivision i of this section;

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

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

31 (9) monitoring the agency's procurement activities to ensure compli-
32 ance with its agency utilization plan and progress towards the partic-
33 ipation goals as established in such plan;

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

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

40 g. Agency utilization plans.

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

50 (a) the agency's participation goals for MBES, WBES, VBES and EBES for
51 the year, provided however, that when setting its goals, each agency
52 shall consider the citywide goals, the size and nature of its own
53 procurement portfolio (excluding contracts described in paragraph two of
54 subdivision q of this section), and the availability of MBES, WBES, VBES
55 and EBES with the capacity to perform the specific types and scale of

1 work for which the agency anticipates it will solicit procurements
2 during the year;

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

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

8 (d) methods and relevant activities proposed for achieving the agen-
9 cy's participation goals; and

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

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

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

28 (4) Prior to approving individual agency utilization plans, the
29 commissioner, in consultation with the city chief procurement officer,
30 shall consider whether such plans viewed in the aggregate establish any
31 goals exceeding the corresponding citywide goals set forth in subdivi-
32 sion d of this section. If any aggregated goals are found to exceed the
33 corresponding citywide goal, the commissioner shall require agencies to
34 adjust their goals so that plans, viewed in the aggregate, do not estab-
35 lish goals exceeding the citywide goals. Nothing in this paragraph shall
36 be construed to limit the awards of contracts and subcontracts that may
37 be made to MBEs, WBEs, VBES and EBES without using goals.

38 (5) The commissioner, in consultation with the city chief procurement
39 officer, shall, no later than July 31 of each year, publish on the divi-
40 sion's website a plan and schedule for each agency detailing the antic-
41 ipated contracting actions for the upcoming fiscal year that form the
42 basis for the agency utilization plan of each such agency. The plan and
43 schedule shall include information specific to each prospective invita-
44 tion for bids, request for proposal, or other solicitation, including,
45 but not limited to, the specific type and scale of the services and/or
46 goods to be procured, the term of the proposed contract, the method of
47 solicitation the agency intends to utilize, and the anticipated fiscal
48 year quarter of the planned solicitation.

49 h. Achieving agency participation goals.

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

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

1 (a) Agencies shall engage in outreach activities to encourage MBES,
2 WBES, VBES and EBES to compete for all facets of their procurement
3 activities, including contracts awarded by negotiated acquisition, emer-
4 gency and sole source contracts, and each agency shall seek to utilize
5 MBES, WBES, VBES and/or EBES for all types of goods, services and
6 construction they procure.

7 (b) Agencies shall encourage eligible businesses to apply for certif-
8 ication as MBES, WBES, VBES and EBES and inclusion in the directories of
9 MBES, WBES, VBES and EBES. Agencies shall also encourage MBES, WBES,
10 VBES and EBES to have their names included on their bidders lists, seek
11 pre-qualification where applicable, and compete for city business as
12 contractors and subcontractors. Agencies are encouraged to advertise
13 procurement opportunities in general circulation media, trade and
14 professional association publications and small business media, and
15 publications of minority [and], women's AND VETERANS' business organiza-
16 tions, and send written notice of specific procurement opportunities to
17 minority [and], women's AND VETERANS' business organizations.

18 (c) All agency solicitations for bids or proposals shall include
19 information referring potential bidders or proposers to the directories
20 of MBES, WBES, VBES and EBES prepared by the division.

21 (d) In planning procurements, agencies shall consider the effect of
22 the scope, specifications and size of a contract on opportunities for
23 participation by MBES, WBES, VBES and EBES.

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

36 (f) Agencies shall examine their internal procurement policies, proce-
37 dures and practices and, where practicable, address those elements, if
38 any, that may negatively affect participation of MBES, WBES, VBES and
39 EBES in city procurement.

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

42 (1) Prior to issuing the solicitation of bids or proposals for indi-
43 vidual contracts, agencies shall establish participation goals for MBES,
44 WBES, VBES and/or EBES. Such goals may be greater than, less than or the
45 same as the relevant citywide goal or goals established pursuant to
46 subdivision d of this section. Taking into account the factors listed in
47 this subdivision, an agency may establish a goal for a procurement that
48 may be achieved by a combination of prime contract and subcontract
49 dollars, a combination of construction and services performed pursuant
50 to the contract, and/or a combination of MBES, WBES, VBES and/or EBES.
51 Alternatively, an agency may establish specific goals for particular
52 types of services, and/or goals for particular types of certified firms.
53 In determining the participation goals for a particular contract, an
54 agency shall consider the following factors:

55 (a) the scope of work;

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

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

6 (d) the agency's progress to date toward meeting its annual partic-
7 ipation goals through race-neutral, gender-neutral and other means, and
8 the agency's expectations as to the effect such methods will have on
9 participation of MBEs, WBEs, VBES and EBEs in the agency's future
10 contracts; and

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

12 (2) A contracting agency shall not be required to establish partic-
13 ipation goals for

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

15 (ii) when the agency has already attained the relevant goal in its
16 annual utilization plan, or expects that it will attain such goal with-
17 out the use of such participation goals.

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

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

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

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

49 (b) the percentage of work it intends to award to direct subcontrac-
50 tors; and

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

55 When the contractor utilization plan indicates that the bidder or
56 proposer does not intend to meet the participation goals, the bid or

1 proposal shall not be deemed responsive unless the agency has granted a
2 pre-award request for change pursuant to paragraph 11 of this subdivi-
3 sion.

4 (6) (a) For each contract for which a contractor utilization plan has
5 been submitted, the contracting agency shall require that within thirty
6 days of the issuance of notice to proceed, and at least once per year
7 thereafter, the contractor submit a list of persons to which it intends
8 to award subcontracts within the next twelve months. In the event that a
9 contracting agency disapproves a contractor's selection of a subcontractor
10 or subcontractors, the contracting agency shall allow such contrac-
11 tor a reasonable time to propose alternate subcontractors.

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

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

34 (8) If payments made to, or work performed by, MBEs, WBEs, VBES or
35 EBES are less than the amount specified in the contractor's utilization
36 plan, the agency shall take appropriate action in accordance with subdivi-
37 sion o of this section, unless the contractor has obtained a modifica-
38 tion of its utilization plan pursuant to paragraph 12 of this subdivi-
39 sion.

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

44 (10) In the event that a contractor with a contract that includes a
45 contractor utilization plan submits a request for a change order the
46 value of which exceeds the greater of ten percent of such contract or
47 \$500,000, the agency shall review the scope of work for the contract,
48 and the scale and types of work involved in the change order, and deter-
49 mine whether the participation goals should be modified.

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

52 (a) A bidder or proposer may request that an agency change the partic-
53 ipation goal or goals established for the procurement on the grounds
54 that goals are unreasonable in light of the availability of certified
55 firms to perform the services required, or by demonstrating that it has

1 legitimate business reasons for proposing a lower level of subcontract-
2 ing in its utilization plan.

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

7 (c) Subject to subparagraph (d) of this paragraph, the contracting
8 agency may grant a full or partial waiver of the participation goals to
9 a bidder or proposer who demonstrates that it has legitimate business
10 reasons for proposing the level of subcontracting in its utilization
11 plan. The contracting agency shall make its determination in light of
12 factors that shall include, but not be limited to, whether the bidder or
13 proposer has the capacity and the bona fide intention to perform the
14 contract without any subcontracting, or to perform the contract without
15 awarding the amount of subcontracts represented by the participation
16 goals. In making such determination, the agency may consider whether the
17 utilization plan is consistent with past subcontracting practices of the
18 bidder or proposer, whether the bidder or proposer has made efforts to
19 form a joint venture with a certified firm, and whether the bidder or
20 proposer has made good faith efforts to identify portions of the
21 contract that it intends to subcontract. The city chief contracting
22 officer shall notify the council of any such waiver granted with respect
23 to a registered contract in the quarterly report required pursuant to
24 subdivision 1 of this section.

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

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

54 (i) The contractor advertised opportunities to participate in the
55 contract, where appropriate, in general circulation media, trade and
56 professional association publications and small business media, and

1 publications of minority [and], women's AND VETERANS' business organiza-
2 tions;

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

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

9 (iv) The contractor made efforts to identify portions of the work that
10 could be substituted for portions originally designated for partic-
11 ipation by MBEs, WBES, VBES and/or EBES in the contractor utilization
12 plan, and for which the contractor claims an inability to retain MBES,
13 WBES, VBES or EBES;

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

18 (vi) The contractor made efforts to negotiate with MBEs, WBES, VBES
19 and/or EBES as relevant to perform specific subcontracts, or act as
20 suppliers or service providers;

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

23 (viii) Description of how recommendations made by the division and the
24 contracting agency were acted upon and an explanation of why action upon
25 such recommendations did not lead to the desired level of participation
26 of MBES, WBES, VBES and/or EBES.

27 (b) The agency M/WBE AND VBE officer shall provide written notice of
28 requests for such modifications to the division and the city chief
29 procurement officer and shall not approve any such request for modifica-
30 tion without the approval of the city chief procurement officer,
31 provided that the city chief procurement officer, upon adequate assur-
32 ances of an agency's ability to administer its utilization plan in
33 accordance with the provisions of this section, may determine that
34 further approval from the city chief procurement officer is not required
35 with respect to such requests for an agency's contracts or particular
36 categories of an agency's contracts. The city chief procurement officer,
37 shall notify the speaker of the council in writing within seven days of
38 the approval of a request for modification of a utilization plan,
39 provided that where an agency has been authorized to grant modifications
40 without approval of the chief procurement officer, such notice shall be
41 provided to the speaker of the council by the agency. Such notification
42 shall include, but not be limited to, the name of the contractor, the
43 original utilization plan, the modification request, including all
44 documentation, and an explanation for the approval of such request.

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

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

53 (13) For each contract in which a contracting agency has established
54 participation goals, the agency shall evaluate and assess the contrac-
55 tor's performance in meeting each such goal. Such evaluation and assess-

1 ment shall be a part of the contractor's overall contract performance
2 evaluation required pursuant to section 333 of the charter.

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

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

6 (a) The dollar amount that an agency has paid or is obligated to pay
7 to a prime contractor that is an MBE, WBE, VBE or EBE, reduced by the
8 dollar amount the contractor has paid or is obligated to pay its direct
9 subcontractors upon their completion of work, shall be credited toward
10 the relevant goal. Where an agency has paid or is obligated to pay a
11 prime contractor that is both an MBE and a WBE, such amount shall be
12 credited toward the relevant goal for MBEs or the goal for WBES. WHERE
13 AN AGENCY HAS PAID OR IS OBLIGATED TO PAY A PRIME CONTRACTOR THAT IS
14 BOTH AN MBE OR WBE AND A VBE, SUCH AMOUNT SHALL BE CREDITED TOWARD THE
15 RELEVANT GOAL FOR MBES OR WBES, AS APPLICABLE, OR THE GOAL FOR VBES.

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

26 (c) In the case of contracts of the types identified pursuant to
27 subparagraph (1) of this paragraph, the total dollar amount that a prime
28 contractor of an agency has paid or is obligated to pay a direct subcon-
29 tractor that is an MBE, WBE, VBE or EBE, reduced by the dollar amount
30 the direct subcontractor has paid or is obligated to pay its indirect
31 subcontractors upon completion of work, shall be credited toward the
32 relevant goal. Where such a contractor has paid or is obligated to pay a
33 direct contractor that is both an MBE and a WBE, such amount shall be
34 credited toward the relevant goal for MBEs or the goal for WBES. WHERE
35 SUCH CONTRACTOR HAS PAID OR IS OBLIGATED TO PAY A DIRECT CONTRACTOR THAT
36 IS BOTH AN MBE OR WBE AND A VBE, SUCH AMOUNT SHALL BE CREDITED TOWARD
37 THE RELEVANT GOAL FOR MBES OR WBES, AS APPLICABLE, OR THE GOAL FOR VBES.

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

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

51 (f) Where one or more MBEs, WBES, VBES or EBES is participating in a
52 qualified joint venture, the amounts that the joint venture is required
53 to pay its direct subcontractors shall be subtracted as provided in
54 subparagraph (a) of this paragraph, and then a percentage of the remain-
55 ing dollar amount of the contract equal to the percentage of total
56 profit to which MBEs, WBES, VBES or EBES are entitled pursuant to the

1 joint venture agreement shall be credited toward the relevant goal.
2 Where such a participant in a joint venture is both an MBE and a WBE,
3 such amount shall be credited toward the relevant goal for MBEs or the
4 goal for WBES. WHERE SUCH A CONTRACTOR HAS PAID OR IS OBLIGATED TO PAY
5 A DIRECT CONTRACTOR THAT IS BOTH AN MBE OR WBE AND A VBE, SUCH AMOUNT
6 SHALL BE CREDITED TOWARD THE RELEVANT GOAL FOR MBES OR WBES, AS APPLICA-
7 BLE, OR THE GOAL FOR VBES.

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

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

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

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

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

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

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

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

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

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

47 (d) A contractor that is a qualified joint venture shall be permitted
48 to count a percentage of its own participation toward fulfillment of the
49 relevant participation goal. The value of such a contractor's partic-
50 ipation shall be determined by subtracting from the total value of the
51 contract any amounts that the contractor pays to direct subcontractors,
52 and then multiplying the remainder by the percentage to be applied to
53 total profit to determine the amount to which an MBE, WBE, VBE or EBE is
54 entitled pursuant to the joint venture agreement; provided that where
55 such a participant in a joint venture is both an MBE and a WBE, OR IS AN

1 MBE OR A WBE AND ALSO A VBE, such amount shall not be credited toward
2 more than one goal.

3 k. Small purchases.

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

8 l. Compliance reporting.

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

19 (a) the number and total dollar value of contracts awarded, disaggre-
20 gated by industry classification and size of contract, including but not
21 limited to, contracts valued at or below twenty thousand dollars,
22 contracts valued above twenty thousand dollars and at or below one
23 hundred thousand dollars, contracts valued above one hundred thousand
24 dollars and at or below one million dollars, contracts valued above one
25 million dollars and at or below five million dollars, contracts valued
26 above five million dollars and at or below twenty five million dollars,
27 and contracts valued above twenty five million dollars;

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

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

36 (ii) the number and total dollar value of such contracts that were
37 awarded to qualified joint ventures and the total dollar amount attri-
38 buted to the MBE, WBE, VBE or EBE joint venture partners, disaggregated
39 by minority and gender group, size of contract and industry classifica-
40 tion, and the number and dollar value of such contracts that were
41 awarded to firms that are certified both as MBEs and WBEs, OR AS AN MBE
42 OR WBE AND ALSO A VBE;

43 (iii) The number and total dollar value of subcontracts approved
44 during the reporting period that were entered into pursuant to contracts
45 for which participation requirements under this section have been estab-
46 lished (including both contracts awarded during the current reporting
47 period and those awarded in earlier reporting periods that remain open
48 during the current reporting period), and the number and total dollar
49 amount of such subcontracts awarded to MBEs, WBEs, VBES and EBEs, disag-
50 gregated by minority and gender group, size of subcontract and industry
51 classification, and the number and dollar value of such subcontracts
52 that were awarded to firms that are certified both as MBEs and WBEs, OR
53 AS AN MBE OR WBE AND ALSO A VBE;

54 (iv) a list of the requests for full or partial waivers of partic-
55 ipation requirements for such contracts made pursuant to paragraph 11 of
56 subdivision i of this section and the determinations made with respect

1 to such requests, and the number and dollar amount of those contracts
2 for which such waivers were granted, disaggregated by industry classi-
3 fication; and

4 (v) a list of the requests for modification of participation require-
5 ments for such contracts made pursuant to paragraph 12 of subdivision i
6 of this section and the determinations made with respect to such
7 requests, and the number and dollar amount of those contracts for which
8 such modifications were granted, disaggregated by industry classifica-
9 tion;

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

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

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

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

25 (g) a summary of efforts to reduce or eliminate barriers to competi-
26 tion as required pursuant to paragraph 11 of subdivision e of this
27 section;

28 (h) a list of all solicitations submitted to the city chief procure-
29 ment officer pursuant to subparagraph [e] (E) of paragraph 2 of subdivi-
30 sion h of this section and a summary of the determination made regarding
31 each such submission; and

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

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

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

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

50 m. Agency compliance.

51 (1) Each agency shall submit to the commissioner and the city chief
52 procurement officer such information as is necessary for the city chief
53 procurement officer to complete his or her reports as required in subdivi-
54 sion l of this section. The director, the commissioner, and the city
55 chief procurement officer shall review each agency's submissions. The
56 director shall convene the agency M/WBE AND VBE officers for those agen-

1 cies that have submitted utilization plans pursuant to subdivision g of
2 this section as often as the director deems necessary, but no less
3 frequently than once per quarter, in order to have agency M/WBE AND VBE
4 officers (i) discuss the results of the reports required in subdivision
5 1 of this section; (ii) offer detailed information concerning their
6 effectuation of their performance improvement plans and any additional
7 efforts undertaken to meet goals established in agency utilization
8 plans; (iii) share the practices that have yielded successes in increas-
9 ing M/WBE AND VBE participation; and (iv) devise strategic plans to
10 improve the performance of those failing to meet goals established in
11 agency utilization plans. No less frequently than twice per year, agency
12 heads for those agencies that have submitted utilization plans pursuant
13 to subdivision g of this section shall join such quarterly meetings.
14 Whenever it has been determined that an agency is not making adequate
15 progress toward the goals established in its agency utilization plan,
16 the director, the commissioner, and the city chief procurement officer
17 shall act to improve such agency's performance, and may take any of the
18 following actions:

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

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

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

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

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

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

44 n. Pre-qualification. An agency establishing a list of pre-qualified
45 bidders or proposers may deny pre-qualification to prospective contrac-
46 tors who fail to demonstrate in their application for pre-qualification
47 that they have complied with applicable federal, state and local
48 requirements for participation of MBEs, WBEs, VBES and EBEs in procure-
49 ments. A denial of pre-qualification may be appealed pursuant to appli-
50 cable procurement policy board rules.

51 o. Enforcement.

52 (1) Any person who believes that a violation of the requirements of
53 this section, rules promulgated pursuant to its provisions, or any
54 provision of a contract that implements this section or such rules,
55 including, but not limited to, any contractor utilization plan, has
56 occurred may submit a complaint in writing to the division, the city

1 chief procurement officer and the comptroller. The division shall
2 promptly investigate such complaint and determine whether there has been
3 a violation.

4 (2) Any complaint alleging fraud, corruption or other criminal behav-
5 ior on, the part of a bidder, proposer, contractor, subcontractor or
6 supplier shall be referred to the commissioner of the department of
7 investigation.

8 (3) Contract award.

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

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

19 (4) Contract administration.

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

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

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

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

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

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

49 (iv) terminate the contract;

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

51 (vi) withhold payment or reimbursement;

52 (vii) determine not to renew the contract;

53 (viii) assess actual and consequential damages;

54 (ix) assess liquidated damages or reduction of fees, provided that
55 liquidated damages may be based on amounts representing costs of delays
56 in carrying out the purposes of the program established by this section,

1 or in meeting the purposes of the contract, the costs of meeting utili-
2 zation goals through additional procurements, the administrative costs
3 of investigation and enforcement, or other factors set forth in the
4 contract;

5 (x) exercise rights under the contract to procure goods, services or
6 construction from another contractor and charge the cost of such
7 contract to the contractor that has been found to be in noncompliance;
8 or

9 (xi) take any other appropriate remedy.

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

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

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

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

33 p. Procurements by elected officials and the council.

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

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

42 q. Applicability. Agencies shall not be required to apply partic-
43 ipation requirements to the following types of contracts:

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

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

48 (3) contracts between agencies;

49 (4) procurements made through the United States general services
50 administration or another federal agency, or through the New York state
51 office of general services or another state agency, or any other govern-
52 mental agency.

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

55 (6) sole source procurements pursuant to section three hundred twen-
56 ty-one of the charter;

1 (7) contracts for human services; and
2 (8) contracts awarded to not-for-profit organizations.

3 r. Comptroller. The comptroller shall randomly examine contracts for
4 which contractor utilization plans are established to assess compliance
5 with such plans. All solicitations for contracts for which contractor
6 utilization plans are to be established shall include notice of poten-
7 tial comptroller examinations.

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

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

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

25 (ii) That the contractor shall request any employment agency, labor
26 union, or authorized representative of workers with which it has a
27 collective bargaining or other agreement or understanding and which is
28 involved in the performance of the contract to furnish a written state-
29 ment that it will not discriminate because of race, creed, color,
30 national origin, sex, age, disability or marital status and it will
31 cooperate in the implementation of the contractor's obligations here-
32 under;

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

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

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

1 (c) (i) In the performance of projects pursuant to this section,
2 minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises
3 shall be given the opportunity for meaningful participation. For
4 purposes hereof, minority business enterprise shall mean any business
5 enterprise which is at least fifty-one per centum owned by, or in the
6 case of a publicly owned business, at least fifty-one per centum of the
7 stock or other voting interest is owned by citizens or permanent resi-
8 dent aliens who are Black, Hispanic, Asian, American Indian, Pacific
9 Islander, or Alaskan native, and such ownership interest is real,
10 substantial and continuing and has the authority to independently
11 control the day to day business decisions of the entity for at least one
12 year; [and] women-owned business enterprise shall mean any business
13 enterprise which is at least fifty-one per centum owned by, or in the
14 case of a publicly owned business, at least fifty-one per centum of the
15 stock to other voting interests of which is owned by citizens or perma-
16 nent resident aliens who are women, and such ownership interest is real,
17 substantial and continuing and has the authority to independently
18 control the day to day business decisions of the entity for at least one
19 year AND VETERAN-OWNED BUSINESS ENTERPRISE SHALL MEAN ANY BUSINESS
20 ENTERPRISE WHICH IS AT LEAST FIFTY-ONE PER CENTUM OWNED BY, OR IN THE
21 CASE OF A PUBLICLY OWNED BUSINESS, AT LEAST FIFTY-ONE PERCENTUM OF THE
22 STOCK TO OTHER VOTING INTERESTS OF WHICH IS OWNED BY CITIZENS OR PERMA-
23 NENT RESIDENT ALIENS WHO ARE VETERANS, AND SUCH OWNERSHIP INTEREST IS
24 REAL, SUBSTANTIAL AND CONTINUING AND HAS THE AUTHORITY TO INDEPENDENTLY
25 CONTROL THE DAY TO DAY BUSINESS DECISIONS OF THE ENTITY FOR AT LEAST ONE
26 YEAR.

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

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

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

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

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

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

49 1. a. In the performance of projects pursuant to this article minority
50 [and women-owned], WOMEN AND VETERAN-OWNED business enterprises shall be
51 given the opportunity for meaningful participation. The department or
52 the office shall establish measures and procedures to secure meaningful
53 participation and identify those contracts and items of work for which
54 minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises
55 may best bid to actively and affirmatively promote and assist their
56 participation in the projects, so as to facilitate the award of a fair

1 share of contracts to such enterprises; provided, however, that nothing
2 in this article shall be construed to limit the ability of the depart-
3 ment or office to assure that qualified minority [and women-owned],
4 WOMEN AND VETERAN-OWNED business enterprises may participate in the
5 program. For purposes hereof, minority business enterprise shall mean
6 any business enterprise which is at least fifty-one per centum owned by,
7 or in the case of a publicly owned business, at least fifty-one per
8 centum of the stock of which is owned by citizens or permanent resident
9 aliens who are Black, Hispanic, Asian or American Indian, Pacific Islan-
10 der or Alaskan natives and such ownership interest is real, substantial
11 and continuing and have the authority to independently control the day
12 to day business decisions of the entity for at least one year; [and]
13 women-owned business enterprise shall mean any business enterprise which
14 is at least fifty-one per centum owned by, or in the case of a publicly
15 owned business, at least fifty-one per centum of the stock of which is
16 owned by citizens or permanent resident aliens who are women, and such
17 ownership interest is real, substantial and continuing and have the
18 authority to independently control the day to day business decisions of
19 the entity for at least one year AND VETERAN-OWNED BUSINESS ENTERPRISE
20 SHALL MEAN ANY BUSINESS ENTERPRISE WHICH IS AT LEAST FIFTY-ONE PER
21 CENTUM OWNED BY, OR IN THE CASE OF A PUBLICLY OWNED BUSINESS, AT LEAST
22 FIFTY-ONE PER CENTUM OF THE STOCK OF WHICH IS OWNED BY CITIZENS OR
23 PERMANENT RESIDENT ALIENS WHO ARE VETERANS, AND SUCH OWNERSHIP INTEREST
24 IS REAL, SUBSTANTIAL AND CONTINUING AND HAVE THE AUTHORITY TO INDEPEND-
25 ENTLY CONTROL THE DAY TO DAY BUSINESS DECISIONS OF THE ENTITY FOR AT
26 LEAST ONE YEAR.

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

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

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

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

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

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

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

6 (a) After consultation with the director of the budget, the commis-
7 sioner of labor, and the commissioner of taxation and finance, promul-
8 gate regulations, which, notwithstanding any provisions to the contrary
9 in the state administrative procedure act, may be adopted on an emergen-
10 cy basis, governing (i) criteria of eligibility for empire zone desig-
11 nation, provided, however, that such criteria be approved by the direc-
12 tor of the budget; (ii) the application process; (iii) the certification
13 by the commissioner as to the eligibility of business enterprises for
14 benefits referred to in section nine hundred sixty-six of this article,
15 which shall be governed by criteria including, but not limited to: (1)
16 whether the business enterprise, if certified, is reasonably likely to
17 create new employment or prevent a loss of employment in the zone, (2)
18 whether such new employment opportunities will be for individuals who
19 will perform a substantial part of their employment activities in the
20 zone, (3) whether certification will have the undesired effect of caus-
21 ing individuals to transfer from existing employment with another busi-
22 ness enterprise to similar employment with the business enterprise so
23 certified, and transferring existing employment from one or more other
24 municipalities, towns or villages in the state, or transferring existing
25 employment from one or more other businesses in the zone, (4) whether
26 such enterprise is likely to enhance the economic climate of the zone,
27 (5) whether the commissioner of labor establishes that such business
28 enterprise, during the three years preceding the submission of an appli-
29 cation for certification, has engaged in a substantial violation or a
30 pattern of violations of laws regulating unemployment insurance, workers
31 compensation, public work, child labor, employment of minorities [and
32 women], WOMEN AND VETERANS, safety and health, or other laws for the
33 protection of workers as determined by final judgment of a judicial or
34 administrative proceeding; (6) whether such business meets the require-
35 ments of the cost benefit analysis as established in paragraph (p) of
36 section nine hundred fifty-seven of this article, and (7) if the commis-
37 sioner of labor establishes that the business enterprise has been found
38 in a criminal proceeding to have violated, in the previous three years,
39 any of the laws referred to in subparagraph five of this paragraph or
40 regulations promulgated pursuant to such laws, the conditions of any
41 permit issued thereunder, or similar statute, regulation, order or
42 permit condition of any other government agency, foreign or domestic,
43 such business shall not be certified; provided, however, that a business
44 enterprise that has shifted its operations, or some portions thereof,
45 from an area within New York state not designated as an empire zone or
46 zone equivalent area to an area so designated shall not be certified to
47 receive such benefits except where such shift is entirely within a muni-
48 cipality and has been approved by the local governing body of such muni-
49 cipality or in situations where it has been established, after a public
50 hearing, that extraordinary circumstances exist which warrant the relo-
51 cation of a business, in whole or part, into an empire zone or a zone
52 equivalent area from another municipality and the municipality from
53 which the business is relocating approves of such relocation; or where
54 such shift in operations is from a business incubator facility operated
55 by a municipality or by a public or private not-for-profit entity which
56 provides space and business support services to newly established firms;

1 and (iv) the decertification by the commissioner, upon the recommenda-
2 tion of the commissioner of labor, so as to revoke the certification of
3 business enterprises for benefits referred to in section nine hundred
4 sixty-six of this article with respect to an empire zone or zone equiv-
5 alent area upon a finding that the business enterprise has committed
6 substantial violations of laws for the protection of workers including
7 all federal, state and local labor laws, rules or regulations; and (v)
8 the decertification by the commissioner so as to revoke the certifi-
9 cation of business enterprises for benefits referred to in section nine
10 hundred sixty-six of this article with respect to an empire zone or zone
11 equivalent area upon a finding of any one of the following: (1) the
12 business enterprise made material misrepresentations of fact on its
13 application for certification or in any of its business annual reports,
14 or the business enterprise failed to disclose facts in its application
15 for certification that would constitute grounds for not issuing a
16 certification; (2) the business enterprise has failed to construct,
17 expand, rehabilitate or operate or invest in its facility substantially
18 in accordance with the representations contained in its application for
19 certification; (3) the business enterprise has failed to create new
20 employment or prevent a loss of employment in the empire zone or zone
21 equivalent area; (4) where applicable, the business enterprise has
22 failed to submit an annual report after it has applied for zone tax
23 benefits or program assistance based on new hires or investments or
24 failed to submit other information when due; (5) the business enter-
25 prise, if first certified pursuant to this article prior to the first
26 day of August, two thousand two, caused individuals to transfer from
27 existing employment with another business enterprise with similar owner-
28 ship and located in New York state to similar employment with the certi-
29 fied business enterprise or if the enterprise acquired, purchased,
30 leased, or had transferred to it real property previously owned by an
31 entity with similar ownership, regardless of form of incorporation or
32 organization; (6) the business enterprise has failed to provide economic
33 returns to the state in the form of total remuneration to its employees
34 (i.e. wages and benefits) and investments in its facility greater in
35 value to the tax benefits the business enterprise used and had refunded
36 to it; or (7) the business enterprise has changed ownership or moved its
37 operations out of the empire zone; said regulations shall provide that
38 whenever any business enterprise is decertified with respect to an
39 empire zone: (A) the date determined to be the earliest event constitut-
40 ing grounds for revoking certification shall be the effective date of
41 decertification; (B) its certified single enterprise, if any, may also
42 be decertified; and (C) the commissioner shall notify the commissioner
43 of taxation and finance that such decertification has occurred, and such
44 notification should include the effective date of such decertification
45 and the zone or zone equivalent area to which such decertification
46 applies; with respect to any business enterprise whose certification has
47 been revoked pursuant to subparagraph five or six of this paragraph,
48 that revocation (I) will be effective for a taxable year beginning on or
49 after January first, two thousand eight and before January first, two
50 thousand nine and for subsequent taxable years, unless the business
51 enterprise is subsequently re-certified pursuant to part 11 of title 5
52 of the New York state codes, rules and regulations for a business enter-
53 prise for which a review is required to be conducted pursuant to subdi-
54 vision (w) of this section in calendar year two thousand nine, and (II)
55 thereafter will be effective for the taxable year during which the
56 commissioner makes his or her determination (prior to any appeal) to

1 revoke the certification of a business enterprise and for subsequent
2 taxable years;

3 (g) Coordinate, with the local empire zone administrative board and
4 state agencies and authorities, the provision of business development
5 programs and services for each empire zone in order to stimulate the
6 creation and development of new small businesses, including new small
7 minority-owned [and], women-owned AND VETERAN-OWNED business enter-
8 prises, and may request and shall receive from any department, division,
9 board, bureau, commission, agency or public authority of the state such
10 assistance as may be necessary;

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

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

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

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

1 opment within the zones shall be distributed by the commissioner pursu-
2 ant to a competitive proposal solicitation process.

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

7 (c) Each empire zone capital corporation shall, to the maximum extent
8 feasible, undertake measures and procedures to ensure meaningful partic-
9 ipation by minority-owned [and], women-owned AND VETERAN-OWNED business
10 enterprises in the activities and investments of such corporation. Each
11 such corporation shall additionally, to the maximum extent feasible,
12 undertake measures and procedures to ensure meaningful participation by
13 locally owned business enterprises in the activities and investments of
14 such corporation.

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

18 (7) the financial commitments the applicant will make to the brown-
19 field opportunity area for activities including, but not limited to,
20 marketing of the area for business development, human resource services
21 for residents and businesses in the brownfield opportunity area, and
22 services for small [and], minority [and women-owned], WOMEN AND VETER-
23 AN-OWNED businesses.

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

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

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

40 The empire state new market corporation, a community development enti-
41 ty certified by the United States Department of the Treasury Community
42 Development Financial Institutions Fund and a corporate subsidiary of
43 the corporation, by resolution, may direct any of its directors, offi-
44 cers, or employees to form limited liability companies pursuant to
45 section 203 of the limited liability company law for the sole purpose of
46 certifying and performing as community development entities that would
47 be eligible to receive an allocation of tax credits under the new
48 markets tax credit program. No limited liability company formed pursu-
49 ant to this section shall merge or consolidate. Each limited liability
50 company shall act solely in relation to projects selected by the corpo-
51 ration, or a corporate subsidiary of the corporation. Each limited
52 liability company shall be empowered to receive an allocation of tax
53 credits from a federal allocation to the corporation, or a corporate
54 subsidiary of the corporation, under the new markets tax credit program
55 and to do any other act or things incidental to or connected with the
56 foregoing purposes or in advancement thereof. The corporation, or a

1 corporate subsidiary of the corporation, shall be the managing member of
2 each limited liability company created by the corporation. In determin-
3 ing which projects to allocate tax credits to under the new markets tax
4 credit program, the corporation shall prioritize projects demonstrating
5 one or more of the following goals or benefits: (a) creating or retain-
6 ing jobs in low income communities; (b) increasing the provision of
7 goods and services for low income community residents which would other-
8 wise not be available at the same price or quality; (c) supporting
9 minority [and women-owned], WOMEN AND VETERAN-OWNED or controlled busi-
10 nesses; (d) expanding housing opportunities for low income community
11 persons; (e) supporting environmentally sustainable outcomes; and (f)
12 supporting efforts that otherwise benefit low income community residents
13 by leveraging further investment in their communities. Provided
14 further, such projects shall be limited to projects that would be
15 authorized under this act and shall be subject to approval by the board
16 of the urban development corporation. The corporation shall publish
17 information regarding the process used to select projects to receive the
18 new markets tax credits and provide a copy to the temporary president of
19 the senate, the speaker of the assembly, the minority leader of the
20 senate and the minority leader of the assembly. The corporation shall
21 strive for regional diversity in the allocation of tax credits under the
22 new markets tax credit program. The corporation shall include in the
23 information required to be submitted annually in accordance with the
24 provisions of subdivision 1 of section 2800 of the public authorities
25 law information regarding assistance provided by it or its subsidiary
26 under the new markets tax credit program, and shall provide financial
27 information with respect to any subsidiary administering the program in
28 the corporation's financial reports, including its certified audited
29 financial statements.

30 S 42. Paragraph (c) of subdivision 9 of section 16-a of section 1 of
31 chapter 174 of the laws of 1968, constituting the New York state urban
32 development corporation act, as amended by chapter 477 of the laws of
33 2002, is amended to read as follows:

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

37 S 43. Section 16-c of section 1 of chapter 174 of the laws of 1968,
38 constituting the New York state urban development corporation act, as
39 added by chapter 169 of the laws of 1994, subdivision 1 as amended by
40 section 1 of part AA of chapter 55 of the laws of 2014, and subpara-
41 graphs (i) and (ii) of paragraph (a) of subdivision 2 as further amended
42 by section 15 of part GG of chapter 63 of the laws of 2000, is amended
43 to read as follows:

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

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

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

54 (i) "minority-owned business enterprise" or "minority-owned business"
55 shall mean the same as "minority business enterprise" as defined in

1 subdivision three of section two hundred ten of the economic development
2 law.

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

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

10 (IV) "incubator" shall mean a facility providing low-cost space, tech-
11 nical assistance and support services, including, but not limited to,
12 central services shared by tenants of the facility, to minority- [and
13 women-owned], WOMEN- AND VETERAN-OWNED business enterprises.

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

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

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

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

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

23 (v) hospitals or residential health care facilities;

24 (vi) overnight lodging facilities;

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

27 (d) The corporation is authorized to:

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

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

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

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

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

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

48 (vii) establish a comprehensive technical assistance program in coop-
49 eration with the department of economic development to assist minority-
50 [and women-owned], WOMEN- AND VETERAN-OWNED businesses and potential
51 [minority and women-entrepreneurs] MINORITY-, WOMEN- AND VETERAN-ENTRE-
52 PRENEURS; and

53 (viii) notwithstanding any provision of law to the contrary, establish
54 a minority- [and women-owned], WOMEN- AND VETERAN-OWNED business invest-
55 ment fund to provide critical financial support to foster the develop-
56 ment of new and emerging ideas and products of minority- [and women-

1 owned], WOMEN- AND VETERAN-OWNED business enterprises as well as to
2 promote the long-term financial performance and success of early stage
3 enterprises that are minority- [and women-owned], WOMEN- AND
4 VETERAN-OWNED start-ups. The selection of an eligible applicant and
5 beneficiary companies for the minority- [and women-owned], WOMEN- AND
6 VETERAN-OWNED business investment fund shall be selected by the process
7 established pursuant to subdivisions two through four of section
8 sixteen-u of this act. Minority- [or women-owned], WOMEN- AND
9 VETERAN-OWNED business enterprises who participate in such minority-
10 [and women-owned], WOMEN- AND VETERAN-OWNED business investment fund
11 under this subdivision shall not be precluded from qualifying for any
12 other assistance, grant or loan made available from the state.

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

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

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

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

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

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

54 (c) Any entity selected to administer a minority [and], women AND
55 VETERAN revolving loan trust fund account shall be eligible to draw
56 funds from the account as needed to provide the following types of

1 financial assistance to minority- [and women-owned], WOMEN- AND VETER-
2 AN-OWNED businesses upon certification to and acceptance by the corpo-
3 ration that such assistance complies with rules and regulations promul-
4 gated by the corporation: (i) working capital loans, provided that the
5 amount of the loan does not exceed thirty-five thousand dollars and the
6 term of the loan does not exceed five years; and (ii) loans for the
7 acquisition and/or improvement of real property and for the acquisition
8 of machinery and equipment provided that the amount of the loan does not
9 exceed fifty thousand dollars and the term of the loan does not exceed
10 the useful life of the equipment or property.

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

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

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

25 (A) all income earned from the moneys on deposit in the corresponding
26 minority [and], women AND VETERAN revolving loan trust fund account
27 during the first year of the entity's administration of said account;
28 and

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

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

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

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

45 (e) Any entity selected to administer a minority [and], women AND
46 VETERAN revolving loan trust fund account shall pay to the corporation
47 for deposit any repayments received in connection with financial assist-
48 ance provided from its account. Payments consisting of the repayment of
49 the principal amount of a loan shall be deposited by the corporation
50 into the minority [and], women AND VETERAN revolving loan trust fund
51 account from which the loan was made. The interest earned by the corpo-
52 ration from the investment of moneys in each minority [and], women AND
53 VETERAN revolving loan trust fund account during and after the second
54 year of a selected entity's administration of said account shall be
55 deposited by the corporation into the corresponding minority [and],
56 women AND VETERAN revolving loan trust fund account and used to provide

1 the financial assistance to minority- [and women-owned], WOMEN- AND
2 VETERAN-OWNED businesses as authorized pursuant to this section.

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

13 (g) The corporation may provide funds from an appropriation for the
14 minority- [and women-owned], WOMEN- AND VETERAN-OWNED business develop-
15 ment and lending program to any entity selected to administer a minority
16 [and], women AND VETERAN revolving loan trust fund for the purposes of
17 recapitalizing such account and the entity's corresponding administra-
18 tive expenses trust fund account following an evaluation by the corpo-
19 ration of the entity's administration and use of such accounts.

20 (h) Notwithstanding any provision of law to the contrary, the corpo-
21 ration shall establish a minority [and], women AND VETERAN revolving
22 loan trust fund to pay into such fund any moneys made available to the
23 corporation for such fund from any source, including moneys appropriated
24 by the state and any income earned by, or increment to, the account due
25 to the investment thereof, or any repayment of moneys advanced from the
26 fund. The corporation shall not commingle the moneys of such fund with
27 any moneys held in trust by the corporation, except for investment
28 purposes.

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

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

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

50 (4) Minority [and], women AND VETERAN contracting program. For the
51 purpose of establishing a comprehensive program to assist minority
52 [and], women AND VETERAN contractors, the corporation may provide loans,
53 loan guarantees, technical assistance and bonding assistance, the corpo-
54 ration may enter into cooperative agreements with cities, counties,
55 municipalities, authorities, agencies, federally and state chartered

1 credit unions in New York state and federally insured banking organiza-
2 tions and financial institutions for such purposes.

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

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

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

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

24 (ii) The corporation shall either establish criteria for the bonding
25 guarantee program and for any required escrow funds which shall include
26 detailed provisions for eligibility; or if the corporation is providing
27 assistance to a program other than one established by the corporation,
28 review and approve the criteria established for such other program.

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

34 (a) Business development loans and loan guarantees pursuant to subdi-
35 vision six of this section to eligible enterprises for the acquisition
36 or improvement of real property, machinery, equipment or working capi-
37 tal, provided that to be eligible for a business development loan, the
38 borrowers must have been in business for at least three years and
39 provided that the loans must be in an amount equal to or in excess of
40 fifty thousand dollars;

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

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

51 (6) Deposits and loan guarantees. For the purpose of encouraging
52 private financial institutions to make loans to eligible enterprises
53 pursuant to this section for any of the eligible projects pursuant to
54 subdivisions four and five of this section, the corporation is author-
55 ized to:

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

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

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

23 (b) Under this subdivision the corporation is authorized to provide
24 low-interest loans and grants for construction financing and permanent
25 financing of up to seventy-five percent of project costs up to a maximum
26 of six hundred fifty thousand dollars per project, provided that the
27 total amount of grant assistance provided pursuant to this paragraph
28 shall not exceed twenty percent of an appropriation provided for the
29 purposes of this section.

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

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

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

47 (i) public or private support and involvement sufficient to complete
48 the renovation of existing facilities or the construction of new facili-
49 ties and the acquisition of equipment;

50 (ii) significant community support for the project;

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

52 (iv) demand for such incubator space, which may include evidence of
53 the unavailability of suitable space for prospective tenants at appro-
54 priate rental or lease costs in the community in which such prospective
55 tenants are located; and

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

3 (f) The corporation shall establish criteria for eligibility for fund-
4 ing for incubator projects, including but not limited to the following:

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

8 (ii) the project sponsors must provide a management plan and a busi-
9 ness plan for operating the incubator satisfactory to the corporation;
10 and

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

16 (8) Minority- [and women-owned], WOMEN- AND VETERAN-OWNED business
17 technical assistance program. (a) The corporation shall establish a
18 comprehensive technical assistance program within the minority [and],
19 women AND VETERAN business development office, in cooperation with the
20 department of economic development's division of minority- [and women-
21 business], WOMEN- AND VETERAN-BUSINESS development established pursuant
22 to article four-A of the economic development law, to provide technical
23 assistance to minority- [and women-owned], WOMEN- AND VETERAN-OWNED
24 business enterprises and to prospective minority- [and women-business],
25 WOMEN- AND VETERAN-BUSINESS entrepreneurs through third party service
26 providers, which assistance shall include, but not be limited to: (i)
27 technical assistance in development and execution of business plans,
28 including the formation of, acquisition of, management of, or diversifi-
29 cation of a minority- [or women-owned], WOMEN- OR VETERAN-OWNED business
30 enterprise; (ii) technical assistance with applications for obtaining
31 funds from public and private financing sources; (iii) technical assist-
32 ance in the development of a working capital budget; (iv) referrals to
33 other providers of technical assistance to minority- [and women-owned],
34 WOMEN- AND VETERAN-OWNED businesses and minority [and], women AND VETER-
35 AN entrepreneurs, where appropriate, including the entrepreneurial
36 assistance program established pursuant to article nine of the economic
37 development law; and (v) technical assistance through education programs
38 directed primarily at women , VETERAN and minority entrepreneurs.

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

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

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

51 (11) Rules and regulations. The corporation shall, assisted by the
52 commissioner of economic development and in consultation with the
53 department of economic development, promulgate rules and regulations in
54 accordance with the state administrative procedure act. Such rules and
55 regulations shall be consistent with the program plan required by subdi-
56 vision nineteen of section one hundred of the economic development law.

1 No funds shall be disbursed under this program until such rules and
2 regulations have been reviewed and approved by the corporation. All
3 assistance and projects funded under this program shall be funded in
4 accordance with the rules and regulations in effect on the date the
5 completed application for such assistance shall be received by the
6 corporation.

7 (12) Minority [and], women AND VETERAN business development and lend-
8 ing account. Notwithstanding any provision of law to the contrary, the
9 corporation shall establish within the treasury of the corporation a
10 minority [and], women AND VETERAN business development and lending
11 account, and shall pay into such account any moneys which may be made
12 available to the corporation for this purpose from any source including,
13 but not limited to, moneys appropriated by the state and any repayment
14 of principal and interest on loans made by the corporation pursuant to
15 the minority- [and women-owned], WOMEN- AND VETERAN-OWNED business
16 development and lending program. Funds in the minority [and], women AND
17 VETERAN business development and lending account, including funds from
18 the repayment of principal and interest on loans made by the corpo-
19 ration, may be used for any form of assistance authorized hereunder. The
20 amounts deposited in the minority [and], women AND VETERAN business
21 development and lending account may not be interchanged with any other
22 account, but may be commingled with any other account for investment
23 purposes. All loans disbursed by the corporation shall be repaid into
24 the account. The corporation shall enter into a written agreement with
25 the director of the budget for repayment, to the state comptroller to
26 the credit of the capital projects fund, of all moneys in the account
27 after a period of time to be determined by the corporation and the
28 director of the budget. The corporation shall transfer to the minority
29 [and], women AND VETERAN business development and lending account: all
30 moneys appropriated or reappropriated by New York state for the minority
31 [and], women AND VETERAN revolving loan trust fund that have not been
32 committed prior to the effective date of the appropriation for the
33 program in the current fiscal year, or become uncommitted subsequent to
34 the effective date of the program's appropriation for the current fiscal
35 year; and all repayments of principal and interest on loans made by the
36 corporation which are currently on deposit in, or payable to, the minor-
37 ity [and], women AND VETERAN business development and lending account.

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

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

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

55 (16) Reports. The chairman of the corporation shall submit to the
56 director of the budget, the speaker of the assembly and the temporary

1 president of the senate an evaluation of the effectiveness of the
2 program prepared by an entity independent of the corporation. The corpo-
3 ration shall select the program evaluator through a request for proposal
4 process. Such evaluation shall determine whether the assistance provided
5 has enhanced the economic condition of assisted companies or communi-
6 ties, and shall make recommendation for improvements which would make
7 the program more effective. Such evaluation shall be submitted by
8 September first, nineteen hundred ninety-five and September first every
9 two years thereafter.

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

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

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

27 S 45. Subparagraph (ii) of paragraph (h) of subdivision 7 of section
28 16-d of section 1 of chapter 174 of the laws of 1968, constituting the
29 New York state urban development corporation act, as added by chapter
30 169 of the laws of 1994, is amended to read as follows:

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

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

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

45 S 47. Paragraph (b) of subdivision 14 of section 16-d of section 1 of
46 chapter 174 of the laws of 1968, constituting the New York state urban
47 development corporation act, as added by chapter 169 of the laws of
48 1994, is amended to read as follows:

49 (b) Submit to the director of the budget, the speaker of the assembly
50 and the temporary president of the senate an evaluation of the effec-
51 tiveness of the urban and community development program prepared by an
52 entity independent of the corporation. The corporation shall select the
53 program evaluator through a request for proposal process. Such evalu-
54 ation shall discuss the variety and types of programs supported by the
55 corporation under this program; and, as appropriate, the extent to which
56 the program has served to create and maintain jobs; the extent to which

1 the program has helped to increase the vitality of local communities;
2 the extent to which the program is coordinated with other related state
3 and local assistance programs; the extent to which the program serves
4 minorities [and], women AND VETERANS; the extent to which the program
5 serves urban and rural areas; the extent to which the program serves
6 economically distressed and highly distressed areas; the extent to which
7 the program has helped to increase the capacity of local governments and
8 organizations to undertake economic development activities; and such
9 other components as the commissioner of economic development shall deem
10 appropriate; and shall make recommendations for improvements which would
11 make the program more effective. Such evaluation shall be submitted by
12 September first, nineteen hundred ninety-five and by September first
13 every two years thereafter.

14 S 48. Paragraph (h) of subdivision 1 of section 16-e of section 1 of
15 chapter 174 of the laws of 1968, constituting the New York state urban
16 development corporation act, as added by chapter 169 of the laws of
17 1994, is amended to read as follows:

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

25 S 49. Subparagraph (i) of paragraph (c) of subdivision 5 of section
26 16-e of section 1 of chapter 174 of the laws of 1968, constituting the
27 New York state urban development corporation act, as added by chapter
28 169 of the laws of 1994, is amended to read as follows:

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

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

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

37 (ix) assistance to expand the capacity of existing entities adminis-
38 tering minority [and], women AND VETERAN revolving loan funds to deliver
39 services;

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

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

53 S 52. Paragraph (d) of subdivision 18 of section 16-e of section 1 of
54 chapter 174 of the laws of 1968, constituting the New York state urban
55 development corporation act, as added by chapter 169 of the laws of
56 1994, is amended to read as follows:

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

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

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

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

25 (b) Provide technical assistance in completing bonding applications
26 for small businesses and minority-owned [or], women-owned OR
27 VETERAN-OWNED business enterprises seeking to become eligible for bond-
28 ing in preparation for bidding on construction projects, including
29 transportation related projects. The corporation shall provide and may
30 refer such businesses to the department of economic development for
31 technical assistance as such businesses may need, including but not
32 limited to:

33 (i) a review of the applicants' market and business competitive strat-
34 egy;

35 (ii) consultation and review of the development and planned implemen-
36 tation of a working capital budget;

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

40 (iv) assistance from the regional offices of the department of econom-
41 ic development, pursuant to article eleven of the economic development
42 law, and the entrepreneurial assistance program, pursuant to article
43 nine of such law, and any other such program receiving state funds from
44 this act or the department of economic development or any other state
45 agency that is intended to provide technical assistance to small busi-
46 nesses and minority-owned [and], women-owned AND VETERAN-OWNED small
47 business enterprises.

48 S 54. Paragraph (g) of subdivision 1 of section 16-i of section 1 of
49 chapter 174 of the laws of 1968, constituting the New York state urban
50 development corporation act, as amended by chapter 471 of the laws of
51 2001, is amended to read as follows:

52 (g) Assistance to local or regional organizations to facilitate
53 financing for small- and medium-sized business, including minority-
54 [and], women-owned AND VETERAN-OWNED business enterprises through flexi-
55 ble financing programs, including, but not limited to, loan loss reserve
56 and revolving loan programs, working capital loans, working capital loan

1 guarantees, or other flexible financing programs that leverage tradi-
2 tional financing;

3 S 55. Subparagraph (i) of paragraph (c) of subdivision 2 of section
4 16-k of section 1 of chapter 174 of the laws of 1968, constituting the
5 New York state urban development corporation act, as amended by chapter
6 103 of the laws of 2011, is amended to read as follows:

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

12 S 56. Subparagraph (i) of paragraph (e) of subdivision 2 of section
13 16-l of section 1 of chapter 174 of the laws of 1968, constituting the
14 New York state urban development corporation act, as added by chapter
15 471 of the laws of 2001, is amended to read as follows:

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

27 S 57. Paragraph (g) of subdivision 1 of section 16-m of section 1 of
28 chapter 174 of the laws of 1968, constituting the New York state urban
29 development corporation act, as added by section 1 of part N of chapter
30 84 of the laws of 2002, is amended to read as follows:

31 (g) Assistance to local or regional organizations to facilitate
32 financing for small- and medium-sized business, including minority-
33 [and], women-owned AND VETERAN-OWNED business enterprises through flexi-
34 ble financing programs, including, but not limited to, loan loss reserve
35 and revolving loan programs, working capital loans, working capital loan
36 guarantees, or other flexible financing programs that leverage tradi-
37 tional financing;

38 S 58. Subparagraph (i) of paragraph (e) of subdivision 7 of section
39 16-o of section 1 of chapter 174 of the laws of 1968, constituting the
40 New York state urban development corporation act, as added by chapter
41 186 of the laws of 2007, is amended to read as follows:

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

44 S 59. Paragraph (b) of subdivision 1 of section 16-q of section 1 of
45 chapter 174 of the laws of 1968, constituting the New York state urban
46 development corporation act, as added by section 2 of part QQ of chapter
47 57 of the laws of 2008, is amended to read as follows:

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

53 S 60. Subdivisions 3 and 11 of section 16-t of section 1 of chapter
54 174 of the laws of 1968, constituting the New York state urban develop-
55 ment corporation act, as amended by section 1 of part II of chapter 59
56 of the laws of 2013, are amended to read as follows:

1 3. Program loans to small businesses shall be targeted and marketed to
2 [minority and women-owned] MINORITY-, WOMEN- AND VETERAN-OWNED enter-
3 prises and other small businesses that are having difficulty accessing
4 traditional credit markets. Program loans to small businesses shall be
5 used for the creation and retention of jobs, as defined by the corpo-
6 ration, including: (a) working capital; (b) the acquisition and/or
7 improvement of real property; (c) the acquisition of machinery and
8 equipment, property or improvement; or (d) the refinancing of debt obli-
9 gations. There shall be two categories of loans to small businesses: a
10 micro loan that shall have a principal amount that is less than twenty-
11 five thousand dollars and a regular loan that shall have a principal
12 amount not less than twenty-five thousand dollars. Prior to receiving
13 program funds, the lending organization must certify to the corporation
14 that such loan complies with this section and rules and regulations
15 promulgated for the program and that the lending organization has
16 performed its obligations pursuant to and is in compliance with this
17 section, the program rules and regulations and all agreements entered
18 into between the corporation and the lending organization. The program
19 funds amount used by the lending organization to fund a program appli-
20 cant loan shall not be more than fifty percent of the principal amount
21 of such loan. The program funds amount used by the lending organization
22 to fund a program applicant loan shall not be greater than one hundred
23 and twenty-five thousand dollars. Minority- [and women-owned], WOMEN-
24 AND VETERAN-OWNED business enterprises and other small businesses who
25 access such program loans under this subdivision shall not be precluded
26 from accessing such short-term financing loans provided under subdivi-
27 sion eleven of this section.

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

47 S 61. Subparagraph (xvi) of paragraph (b) of subdivision 2 of section
48 16-v of section 1 of chapter 174 of the laws of 1968, constituting the
49 New York state urban development corporation act, as added by section 1
50 of part C of chapter 59 of the laws of 2013, is amended to read as
51 follows:

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

55 S 62. Paragraph 1 of subdivision (c) of section 30 of section 1 of
56 chapter 174 of the laws of 1968, constituting the New York state urban

1 development corporation act, as amended by chapter 732 of the laws of
2 1990, is amended to read as follows:

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

11 S 63. Paragraph 2 of subdivision (e) of section 30-a of section 1 of
12 chapter 174 of the laws of 1968, constituting the New York state urban
13 development corporation act, as added by section 2 of part M1 of chapter
14 62 of the laws of 2003, is amended to read as follows:

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

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

24 S 38. Small business and minority-owned [and], women-owned AND VETER-
25 AN-OWNED business enterprises transportation capital assistance and
26 guaranteed loan program. 1. To provide financial assistance to small
27 business and minority-owned [and], women-owned AND VETERAN-OWNED busi-
28 ness enterprises engaged in government sponsored, transportation related
29 construction projects, the corporation shall establish a small business
30 and minority-owned [and], women-owned AND VETERAN-OWNED business enter-
31 prise transportation capital assistance revolving loan fund which shall
32 provide loans or loan guarantees to small business and minority-owned
33 [and], women-owned AND VETERAN-OWNED business enterprises. For purposes
34 of this section: (a) the term small business shall have the same meaning
35 as defined in section one hundred thirty-one of the economic development
36 law and (b) the term project shall mean a project of state agency or
37 authority that sponsors transportation related construction projects and
38 participates in this program and any definition of project contained
39 elsewhere in this act shall not apply.

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

53 3. (a) To be eligible for such loans or loan guarantees (i) a minori-
54 ty-owned [or], women-owned OR VETERAN-OWNED business enterprise must be
55 certified as a minority-owned [or], women-owned OR VETERAN-OWNED busi-
56 ness enterprise pursuant to article 15-A of the executive law; and (ii)

1 a small business or a minority-owned [or], women-owned OR VETERAN-OWNED
2 business enterprise shall have a contract or sub-contract to provide
3 goods or services related to a government sponsored, transportation
4 related construction project.

5 (b) Only such business enterprises referred to the corporation by a
6 written application of a state agency or authority that sponsors trans-
7 portation related construction projects shall be eligible for program
8 assistance. Such assistance shall be provided to such an enterprise only
9 in connection with its performance as a contractor or sub-contractor on
10 a specific transportation related project of the referring agency or
11 authority. In order for such an agency or authority to refer such enter-
12 prises to the corporation, such agency or authority shall enter into a
13 master agreement with the corporation covering procedures and require-
14 ments for providing program assistance. The corporation shall determine
15 whether or not to approve such an agency's or authority's written appli-
16 cation for program assistance to such a business within twenty business
17 days of the corporation's receipt of such application. If it approves
18 the application, the corporation will provide assistance pursuant to the
19 applicable master agreement.

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

25 5. Notwithstanding any inconsistent provision of law, general, special
26 or local, including pursuant to capital projects budget appropriations
27 or reappropriations, where applicable, the corporation is hereby author-
28 ized to enter into such agreements as may be necessary for the operation
29 and administration of a small business and minority-owned [and], women-
30 owned AND VETERAN-OWNED business enterprises transportation capital
31 assistance and guaranteed loan program.

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

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

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

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

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

55 S 9-b. Minority [and women-owned], WOMEN AND VETERAN-OWNED business
56 enterprise program. 1. (a) Minority [and women-owned], WOMEN AND VETER-

1 AN-OWNED business enterprises shall be given the opportunity for mean-
2 ingful participation in all contracts executed by the corporation pursu-
3 ant to the provisions of this act other than contracts the cost of which
4 is borne solely by a municipality or municipalities. The corporation
5 shall establish measures and procedures to secure meaningful partic-
6 ipation and identify those contracts and items of work for which minori-
7 ty [and women-owned], WOMEN AND VETERAN-OWNED business enterprises may
8 best bid to actively and affirmatively promote and assist their partic-
9 ipation in the projects, so as to facilitate the award of a fair share
10 of contracts to such enterprises; provided, however, that nothing in
11 this act shall be construed to limit the ability of the corporation to
12 assure that qualified minority [and women-owned], WOMEN AND
13 VETERAN-OWNED business enterprises may participate in the program. For
14 purposes hereof, minority business enterprise shall mean any business
15 enterprise which is at least fifty-one per centum owned by, or in the
16 case of a publicly owned business, at least fifty-one per centum of the
17 stock of which is owned by citizens or permanent resident aliens who are
18 Black, Hispanic, Asian or American Indian, Pacific Islander or Alaskan
19 natives and such ownership interest is real, substantial and continuing
20 and have the authority to independently control the day to day business
21 decisions of the entity for at least one year; and women-owned business
22 enterprise shall mean any business enterprise which is at least fifty-
23 one per centum owned by, or in the case of a publicly owned business, at
24 least fifty-one per centum of the stock of which is owned by citizens or
25 permanent resident aliens who are women, and such ownership interest is
26 real, substantial and continuing and have the authority to independently
27 control the day to day business decisions of the entity for at least one
28 year; AND VETERAN-OWNED BUSINESS ENTERPRISE SHALL MEAN ANY BUSINESS
29 ENTERPRISE WHICH IS AT LEAST FIFTY-ONE PER CENTUM OWNED BY, OR IN THE
30 CASE OF A PUBLICLY OWNED BUSINESS, AT LEAST FIFTY-ONE PER CENTUM OF THE
31 STOCK OF WHICH IS OWNED BY CITIZENS OR PERMANENT RESIDENT ALIENS WHO ARE
32 VETERANS, AND SUCH OWNERSHIP INTEREST IS REAL, SUBSTANTIAL AND CONTINU-
33 ING AND HAVE THE AUTHORITY TO INDEPENDENTLY CONTROL THE DAY TO DAY BUSI-
34 NESS DECISIONS OF THE ENTITY FOR AT LEAST ONE YEAR.

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

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

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

52 2. In order to implement the requirements and objectives of this
53 section, the corporation shall establish procedures to monitor the
54 contractors' compliance with provisions hereof, provide assistance in
55 obtaining competing qualified minority [and women-owned], WOMEN AND
56 VETERAN-OWNED business enterprises to perform contracts proposed to be

1 awarded, and take other appropriate measures to improve the access of
2 minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises
3 to these contracts.

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

8 a. The contractor will not discriminate against employees or appli-
9 cants for employment because of race, creed, color, national origin,
10 sex, age, disability, or marital status, and will undertake or continue
11 existing programs of affirmative action to ensure that minority group
12 persons [and], women AND VETERANS are afforded equal opportunity without
13 discrimination. Such programs shall include, but not be limited to,
14 recruitment, employment, job assignment, promotion, upgrading, demotion,
15 transfer, layoff, termination, rates of pay or other forms of compen-
16 sation, and selections for training or retraining, including apprentice-
17 ship and on-the-job training.

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

22 S 16-b. Minority [and women-owned], WOMEN AND VETERAN-OWNED business
23 enterprise program. 1. a. In the performance of projects pursuant to
24 this act minority [and women-owned], WOMEN AND VETERAN-OWNED business
25 enterprises shall be given the opportunity for meaningful participation.
26 The agency shall establish measures and procedures to secure meaningful
27 participation and identify those contracts and items of work for which
28 minority [and women-owned], WOMEN AND VETERAN-OWNED business enterprises
29 may best bid to actively and affirmatively promote and assist their
30 participation in the projects, so as to facilitate the award of a fair
31 share of contracts to such enterprises; provided, however, that nothing
32 in this act shall be construed to limit the ability of the agency to
33 assure that qualified minority [and women-owned], WOMEN AND
34 VETERAN-OWNED business enterprises may participate in the program. For
35 purposes hereof, minority business enterprise shall mean any business
36 enterprise which is at least fifty-one per centum owned by, or in the
37 case of a publicly owned business, at least fifty-one per centum of the
38 stock of which is owned by citizens or permanent resident aliens who are
39 Black, Hispanic, Asian or American Indian, Pacific Islander or Alaskan
40 natives and such ownership interest is real, substantial and continuing
41 and have the authority to independently control the day to day business
42 decisions of the entity for at least one year; and women-owned business
43 enterprise shall mean any business enterprise which is at least fifty-
44 one per centum owned by, or in the case of a publicly owned business, at
45 least fifty-one per centum of the stock of which is owned by citizens or
46 permanent resident aliens who are women, and such ownership interest is
47 real, substantial and continuing and have the authority to independently
48 control the day to day business decisions of the entity for at least one
49 year; AND VETERAN-OWNED BUSINESS ENTERPRISE SHALL MEAN ANY BUSINESS
50 ENTERPRISE WHICH IS AT LEAST FIFTY-ONE PER CENTUM OWNED BY, OR IN THE
51 CASE OF A PUBLICLY OWNED BUSINESS, AT LEAST FIFTY-ONE PER CENTUM OF THE
52 STOCK OF WHICH IS OWNED BY CITIZENS OR PERMANENT RESIDENT ALIENS WHO ARE
53 VETERANS AND SUCH OWNERSHIP INTEREST IS REAL, SUBSTANTIAL AND CONTINUING
54 AND HAVE THE AUTHORITY TO INDEPENDENTLY CONTROL THE DAY TO DAY BUSINESS
55 DECISIONS OF THE ENTITY FOR AT LEAST ONE YEAR.

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

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

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

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

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

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

32 b. the amendments to the second undesignated paragraph of subdivision
33 1 of section 12 of section 1 of chapter 174 of the laws of 1968, consti-
34 tuting the New York state urban development corporation act, made by
35 section forty-one of this act shall not affect the expiration and repeal
36 of such paragraph and shall be deemed to expire and be repealed there-
37 with;

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