

LBD11198-01-5

1 director, but not to exceed three hundred, taking into consideration
2 factors which include, but are not limited to, federal small business
3 administration standards pursuant to 13 CFR part 121 and any amendments
4 thereto; and

5 (f) certified by the office of general services.

6 2. "Commissioner" shall mean the commissioner of the office of general
7 services.

8 3. "Director" shall mean the director of the division of [service-dis-
9 abled] veterans' business development.

10 4. "Division" shall mean the division of [service-disabled] veterans'
11 business development in the office of general services.

12 5. ["Service-disabled veteran" shall mean (a) in the case of the
13 United States army, navy, air force, marines, coast guard, army national
14 guard or air national guard and/or reserves thereof, a veteran who
15 received a compensation rating of ten percent or greater from the United
16 States department of veterans affairs or from the United States depart-
17 ment of defense because of a service-connected disability incurred in
18 the line of duty, and (b) in the case of the New York guard or the New
19 York naval militia and/or reserves thereof, a veteran who certifies,
20 pursuant to the rules and regulations promulgated by the director, to
21 having incurred an injury equivalent to a compensation rating of ten
22 percent or greater from the United States department of veterans affairs
23 or from the United States department of defense because of a service-
24 connected disability incurred in the line of duty.

25 6.] "State agency" shall mean: (a)(i) any state department; or (ii)
26 any division, board, commission or bureau of any state department; or
27 (iii) the state university of New York and the city university of New
28 York, including all their constituent units except community colleges
29 and the independent institutions operating statutory or contract
30 colleges on behalf of the state; or (iv) a board, a majority of whose
31 members are appointed by the governor or who serve by virtue of being
32 state officers or employees as defined in subparagraph (i), (ii) or
33 (iii) of paragraph (i) of subdivision one of section seventy-three of
34 the public officers law.

35 (b) a "state authority," as defined in subdivision one of section two
36 of the public authorities law, and the following:

37 Albany County Airport Authority;
38 Albany Port District Commission;
39 Alfred, Almond, Hornellsville Sewer Authority;
40 Battery Park City Authority;
41 Cayuga County Water and Sewer Authority;
42 (Nelson A. Rockefeller) Empire State Plaza Performing Arts Center
43 Corporation;
44 Industrial Exhibit Authority;
45 Livingston County Water and Sewer Authority;
46 Long Island Power Authority;
47 Long Island Rail Road;
48 Long Island Market Authority;
49 Manhattan and Bronx Surface Transit Operating Authority;
50 Metro-North Commuter Railroad;
51 Metropolitan Suburban Bus Authority;
52 Metropolitan Transportation Authority;
53 Natural Heritage Trust;
54 New York City Transit Authority;
55 New York Convention Center Operating Corporation;
56 New York State Bridge Authority;

1 New York State Olympic Regional Development Authority;
2 New York State Thruway Authority;
3 Niagara Falls Public Water Authority;
4 Niagara Falls Water Board;
5 Port of Oswego Authority;
6 Power Authority of the State of New York;
7 Roosevelt Island Operating Corporation;
8 Schenectady Metroplex Development Authority;
9 State Insurance Fund;
10 Staten Island Rapid Transit Operating Authority;
11 State University Construction Fund;
12 Syracuse Regional Airport Authority;
13 Triborough Bridge and Tunnel Authority;
14 Upper Mohawk valley regional water board;
15 Upper Mohawk valley regional water finance authority;
16 Upper Mohawk valley memorial auditorium authority;
17 Urban Development Corporation and its subsidiary corporations.

18 (c) the following only to the extent of state contracts entered into
19 for its own account or for the benefit of a state agency as defined in
20 paragraph (a) or (b) of this subdivision:

21 Dormitory Authority of the State of New York;
22 Facilities Development Corporation;
23 New York State Energy Research and Development Authority;
24 New York State Science and Technology Foundation.

25 (d) "state contract" shall mean: (i) a written agreement or purchase
26 order instrument, providing for a total expenditure in excess of twenty-five thousand dollars, whereby a contracting agency is committed to
27 expend or does expend funds in return for labor, services including but
28 not limited to legal, financial and other professional services,
29 supplies, equipment, materials or any combination of the foregoing, to
30 be performed for, or rendered or furnished to the contracting agency;
31 (ii) a written agreement in excess of one hundred thousand dollars
32 whereby a contracting agency is committed to expend or does expend funds
33 for the acquisition, construction, demolition, replacement, major repair
34 or renovation of real property and improvements thereon; and (iii) a
35 written agreement in excess of one hundred thousand dollars whereby the
36 owner of a state assisted housing project is committed to expend or does
37 expend funds for the acquisition, construction, demolition, replacement,
38 major repair or renovation of real property and improvements thereon for
39 such project.

40 [7.] 6. "Veteran" shall mean a person who served in and who has
41 received an honorable or general discharge from, the United States army,
42 navy, air force, marines, coast guard, and/or reserves thereof, and/or
43 in the army national guard, air national guard, New York guard and/or
44 the New York naval militia.

45 S 3. Section 369-i of the executive law, as added by chapter 22 of the
46 laws of 2014, is amended to read as follows:

47 S 369-i. Division of [service-disabled] veterans' business develop-
48 ment. 1. The head of the division of [service-disabled] veterans' busi-
49 ness development shall be the director who shall be appointed by the
50 governor and who shall hold office at the pleasure of the commissioner.

51 2. The director may appoint such deputies, assistants, and other
52 employees as may be needed for the performance of the duties prescribed
53 herein subject to the provisions of the civil service law and the rules
54 and regulations of the civil service commission. The director may
55 request and shall receive from any (i) department, division, board,

bureau, or executive commission of the state or (ii) state agency, such assistance as may be necessary to carry out the provisions of this article.

3. The director shall have the following powers and duties:

(a) Develop, collect, summarize and disseminate information that will be helpful to persons and organizations throughout the state in undertaking or promoting the establishment and successful operation of a [service-disabled] veteran-owned business.

(b) Develop and make available to state agencies a directory of certified [service-disabled] veteran-owned business enterprises which shall, wherever practicable, be divided into categories of labor, services, supplies, equipment, materials and recognized construction trades and which shall indicate areas or locations of the state where such enterprises are available to perform services. Such directory shall be posted on the office of general services website.

(c) Assist state agencies in the development of programs to foster and promote the use of [service-disabled] veteran-owned business enterprises on state contracts.

(d) Coordinate the plans, programs and operations of the state government which affect or may contribute to the establishment, preservation and development of [service-disabled] veteran-owned business enterprises.

(e) To appoint independent hearing officers who by contract or terms of employment shall preside over adjudicatory hearings pursuant to this section for the office and who are assigned no other work by the office.

(f) In conjunction with the commissioner, develop a comprehensive statewide plan and operational guidelines to promote [service-disabled] veteran-owned business enterprises and to assist them in obtaining opportunities to participate in the procurement of goods and services by the state, including identification of barriers to [service-disabled] veterans' business development and investigation and evaluation of their impact on achieving the objectives of this article.

4. The commissioner shall:

(a) Coordinate training of all procurement personnel of state agencies, emphasizing increased sensitivity and responsiveness to the unique needs and requirements of [service-disabled] veteran-owned business enterprises.

(b) Conduct a coordinated review of all existing and proposed state training and technical assistance activities in direct support of the [service-disabled] veterans' business development program to assure consistency with the objectives of this article.

(c) Evaluate and assess availability of firms for the purpose of increasing participation of such firms in state contracting in consultation with relevant state entities including, but not limited to, the New York state division of veterans' affairs.

(d) Provide advice and technical assistance to promote [service-disabled] veteran-owned business enterprises' understanding of state procurement laws, practices and procedures to facilitate and increase the participation of [service-disabled] veteran-owned business enterprises in state procurement.

(e) Establish regular performance reporting systems regarding implementation of the programs designed to increase [service-disabled] veteran-owned business participation in procurement contracts by state agencies.

(f) Submit a report by the thirty-first of December each year, with the first report due by the thirty-first of December in the calendar

1 year next succeeding the calendar year in which this article shall have
2 become a law, to the governor, the temporary president of the senate,
3 and the speaker of the assembly. Such report shall include information
4 including, but not limited to, the number of contracts entered into
5 pursuant to this article, the average amount of such contracts, the
6 number of [service-disabled] veteran-owned business enterprises certi-
7 fied, the number of applications for certification as a [service-disa-
8 bled] veteran-owned business enterprise, the number of denials for such
9 certification, the number of appeals of such denials, and the outcome of
10 such appeals and the average time that is required for such certifi-
11 cation to be completed.

12 5. Certification. (a) The director, or in the absence of the director,
13 the commissioner, within ninety days of the effective date of this arti-
14 cle, shall promulgate rules and regulations providing for the establish-
15 ment of a statewide certification program including rules and regu-
16 lations governing the approval, denial, or revocation of any such
17 certification. Such rules and regulations shall include, but not be
18 limited to, such matters as may be required to ensure that the estab-
19 lished procedures thereunder shall at least be in compliance with the
20 code of fair procedure set forth in section seventy-three of the civil
21 rights law.

22 (b) The division of [service-disabled] veterans' business development
23 shall be responsible for verifying businesses as being owned, operated,
24 and controlled by a [service-disabled] veteran and for certifying such
25 verified businesses. Status as a [service-disabled] veteran pursuant to
26 paragraph (a) of this subdivision shall be documented by a copy of the
27 veteran's certificate of release or discharge from active duty, includ-
28 ing but not limited to, a DD-214 form or an honorable service
29 certificate/report of causality from the department of defense, a letter
30 of certification by the United States department of veterans affairs or
31 the United States department of defense and any additional information
32 that may be required by the division of [service-disabled] veterans'
33 business development. In the case of the New York guard or the New York
34 naval militia and/or reserves thereof, status as a [service-disabled]
35 veteran pursuant to this paragraph shall be documented pursuant to rules
36 and regulations promulgated by the director, or in the absence of the
37 director, the commissioner.

38 (c) Following application for certification pursuant to this section,
39 the director shall provide the applicant with written notice of the
40 status of the application, including notice of any outstanding deficien-
41 cies, within thirty days. Within sixty days of submission of a final
42 completed application, the director shall provide the applicant with
43 written notice of a determination by the director approving or denying
44 such certification and, in the event of a denial, a statement setting
45 forth the reasons for such denial. Upon a determination denying or
46 revoking certification, the business enterprise for which certification
47 has been so denied or revoked shall, upon written request made within
48 thirty days from receipt of notice of such determination, be entitled to
49 a hearing before an independent hearing officer designated for such
50 purpose by the director. In the event that a request for a hearing is
51 not made within such thirty day period, such determination shall be
52 deemed to be final. The independent hearing officer shall conduct a
53 hearing and upon the conclusion of such hearing, issue a written recom-
54 mendation to the director to affirm, reverse, or modify such determi-
55 nation of the director. Such written recommendation shall be issued to
56 the parties. The director, within thirty days, by order, must accept,

1 reject or modify such recommendation of the hearing officer and set
2 forth in writing the reason therefor. The director shall serve a copy of
3 such order and reasons therefor upon the business enterprise by personal
4 service or by certified mail return receipt requested. The order of the
5 director shall be subject to review pursuant to article seventy-eight of
6 the civil practice law and rules.

7 (d) All certifications shall be valid for a period of five years.

8 S 4. Section 369-j of the executive law, as added by chapter 22 of the
9 laws of 2014, is amended to read as follows:

10 S 369-j. Opportunities for certified [service-disabled] veteran-owned
11 business enterprises. 1. The director, or in the absence of the direc-
12 tor, the commissioner, within ninety days of the effective date of this
13 article shall promulgate rules and regulations for the following
14 purposes:

15 (a) provide measures and procedures to ensure that certified
16 [service-disabled] veteran-owned business enterprises are afforded the
17 opportunity for meaningful participation in the performance of state
18 contracts and to assist in state agencies' identification of those state
19 contracts for which certified [service-disabled] veteran-owned business
20 enterprises may best perform;

21 (b) provide for measures and procedures that assist state agencies in
22 the identification of state contracts where [service-disabled] veteran
23 contract goals are practical, feasible and appropriate for the purpose
24 of increasing the utilization of [service-disabled] veteran-owned busi-
25 ness enterprise participation on state contracts;

26 (c) achieve a statewide goal for participation on state contracts by
27 [service-disabled] veteran-owned business enterprises of six percent;

28 (d) provide for procedures relating to submission and receipt of
29 applications by [service-disabled] veteran-owned business enterprises
30 for certification;

31 (e) provide for the monitoring and compliance of state contracts by
32 state agencies with respect to the provisions of this article;

33 (f) provide for the requirement that state agencies submit regular
34 reports, as determined by the director, with respect to their [service-
35 disabled] veteran-owned business enterprise program activity, including
36 but not limited to, utilization reporting and state contract monitoring
37 and compliance;

38 (g) notwithstanding any provision of the state finance law, the public
39 buildings law, the highway law, the transportation law or the public
40 authorities law to the contrary, provide for the reservation or set-a-
41 side of certain procurements by state agencies in order to achieve the
42 objectives of this article; provided, however, that such procurements
43 shall remain subject to (i) priority of preferred sources pursuant to
44 sections one hundred sixty-two and one hundred sixty-three of the state
45 finance law; (ii) the approval of the comptroller of the state of New
46 York pursuant to section one hundred twelve and section one hundred
47 sixty-three of the state finance law and section twenty-eight hundred
48 seventy-nine-a of the public authorities law; and (iii) the procurement
49 record requirements pursuant to paragraph g of subdivision nine of
50 section one hundred sixty-three of the state finance law; and

51 (h) provide for any other purposes to effectuate this article.

52 2. State agencies shall administer the rules and regulations promul-
53 gated by the director for the implementation of this article.

54 S 5. This act shall take effect immediately; provided, however that
55 the amendments to the article heading, sections 369-h, 369-i and 369-j
56 of the executive law made by sections one, two, three and four of this

1 act shall not affect the repeal of such heading and sections and shall
2 be deemed repealed therewith.