STATE OF NEW YORK

240

2017-2018 Regular Sessions

IN ASSEMBLY

January 5, 2017

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

AN ACT to amend the state finance law, in relation to requiring utilization of minority and women-owned business enterprises as subcontractors as a condition when awarding sole source procurement contracts; to amend the executive law, in relation to the issuance of waivers of the obligation to comply with the minority and women-owned business enterprise participation requirements of a contract if such contract is a single source or sole source procurement contract; to amend the general municipal law, in relation to requiring municipalities to require contract award recipients to utilize the services of minority and women-owned business enterprises; to amend the executive law, in relation to making conforming changes; and providing for the repeal of certain provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph b of subdivision 10 of section 163 of the state finance law is amended by adding a new subparagraph (iii) to read as follows:

(iii) All single source or sole source procurement contracts made pursuant to the provisions of this paragraph shall require that the award recipient comply with the provisions of article fifteen-A of the executive law relating to minority and women-owned business enterprise participation when contracting with subcontractors.

§ 2. Subdivision 6 of section 313 of the executive law, as amended by chapter 175 of the laws of 2010, is amended to read as follows:

6. **(a)** Where it appears that a contractor cannot, after a good faith effort, comply with the minority and women-owned business enterprise participation requirements set forth in a particular state contract, a contractor may file a written application with the contracting agency requesting a partial or total waiver of such requirements setting forth

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

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

(b) A contracting agency shall not issue a total waiver of the obligation to comply with the minority and women-owned business enterprise participation requirements of a contract if such contract is a single source or sole source procurement contract as described in section one hundred sixty-three of the state finance law; provided, however, that if the contracting agency determines there is not a reasonable availability of contractors on the list of certified business to furnish services for the project, the contracting agency may issue a partial waiver of compliance to the contractor.

§ 3. Section 103 of the general municipal law is amended by adding a new subdivision 17 to read as follows:

17. All contracts awarded pursuant to the provisions of this section, including single source or sole source procurement contracts, shall require the contract recipient to comply with the provisions of section three hundred thirteen of the executive law, to the extent that such provisions apply; provided, however, that a contract recipient granted a waiver of compliance as provided in section three hundred thirteen of the executive law shall be deemed to be in compliance with such provisions.

§ 4. Subdivisions 2, 3 and 13 of section 310 of the executive law, subdivisions 2 and 3 as added by chapter 261 of the laws of 1988 and subdivision 13 as amended by chapter 506 of the laws of 2009, are amended to read as follows:

2. "Contracting agency" shall mean; (a) a state agency which is a party or a proposed party to a state contract or, in the case of a state contract described in paragraph (c) of subdivision thirteen of this section, shall mean the New York state housing finance agency, housing trust fund corporation or affordable housing corporation, whichever has made or proposes to make the grant or loan for the state assisted housing project**; and (b) a municipality which is a party or a proposed party to a municipal contract**.

3. "Contractor" shall mean an individual, a business enterprise, including a sole proprietorship, a partnership, a corporation, a not-for-profit corporation, or any other party to a state **or municipal** contract, or a bidder in conjunction with the award of a state **or municipal** contract or a proposed party to a state **or municipal** contract.

13. "State contract" shall mean: (a) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars, whereby a contracting agency is committed to

expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; (b) a written agreement in excess of one hundred thousand dollars whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; and (c) a written agreement in excess of one hundred thousand dollars whereby the owner of a state assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project. **For the purposes of this article, "state contract" shall include municipal contracts as described in subdivision twenty-four of this section.**

§ 5. Section 310 of the executive law is amended by adding a new subdivision 24 to read as follows:

24. "Municipal contract" shall mean: (a) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars, whereby a municipal contracting agency is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the municipal contracting agency; (b) a written agreement in excess of one hundred thousand dollars whereby a municipal contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; and (c) a written agreement in excess of one hundred thousand dollars whereby the owner of a municipal assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project.

§ 6. This act shall take effect immediately; provided, however, that section three of this act shall expire on the same date and in the same manner as article 15-A of the executive law pursuant to subdivision (h) of section 121 of chapter 261 of the laws of 1988, as amended; provided, however, that the amendments to sections 310 and 313 of the executive law made by sections two, four and five of this act shall not affect the expiration of such sections and shall be deemed expired therewith; provided, further that the amendments to paragraph b of subdivision 10 of section 163 of the state finance law made by section one of this act shall not affect the repeal of such section and shall be deemed repealed therewith or shall be deemed repealed upon the expiration of article 15-A of the executive law, whichever shall occur first.