

STATE OF NEW YORK

3807

2017-2018 Regular Sessions

IN SENATE

January 27, 2017

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

AN ACT to amend the executive law and the state finance law, in relation to minority and women-owned business enterprises post completion certification, duties of the director and creating the minority and women-owned business enterprise fund

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

1 Section 1. The executive law is amended by adding a new section 314-a
2 to read as follows:

3 § 314-a. Post completion certification. The director, in collaboration
4 with the division of minority and women's business development and the
5 department of small business services, shall develop the following
6 standardized certification forms that must be completed under penalty of
7 perjury prior to the prime contractor being paid:

8 1. certification from a representative of the prime contractor that
9 the minority or women-owned business enterprise in fact performed the
10 services or provided the materials that they were contracted to perform
11 or provide; and

12 2. certification from a representative of the minority or women-owned
13 business enterprise that they in fact performed the services or provided
14 the materials that they were contracted to perform or provide.

15 § 2. Paragraphs (f), (h) and (i) of subdivision 3 of section 311 of
16 the executive law, paragraph (f) as added by chapter 261 of the laws of
17 1988, paragraph (h) as amended and paragraph (i) as added by section 1
18 of part BB of chapter 59 of the laws of 2006, are amended and three new
19 paragraphs (j), (k) and (l) are added to read as follows:

20 (f) to prepare and update periodically a directory of certified minor-
21 ity and women-owned business enterprises which shall, wherever practica-
22 ble, be divided into categories of labor, services, supplies, equipment,
23 materials and recognized construction trades and which shall indicate

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

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1 areas or locations of the state where such enterprises are available to
2 perform services, and to use this information to create an internet
3 based, searchable, centralized state registry detailing certifications,
4 denials, waivers and all documents submitted during the life of the
5 contract;

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

13 (i) to streamline the state certification process to accept federal
14 and municipal corporation certifications~~[-]~~;

15 (j) to perform inspections of minority or women-owned business's place
16 of business, warehouse or storage facility to confirm the existence of a
17 workforce, equipment and supplies;

18 (k) to perform inspections of financial records of minority or women-
19 owned business enterprises to ensure such enterprises are in compliance
20 with applicable laws; and

21 (l) to ensure the protection of individuals who report suspected
22 violations of this article and applicable laws related to minority and
23 women-owned business enterprises.

24 § 3. Subdivision 1 of section 314 of the executive law, as added by
25 chapter 261 of the laws of 1988, is amended to read as follows:

26 1. The director shall promulgate rules and regulations providing for
27 the establishment of a statewide certification program including rules
28 and regulations governing the approval, denial or revocation of any such
29 certification, including revocations for felony convictions for fraudu-
30 lently misrepresenting the status of minority or women-owned business
31 enterprises. Such rules and regulations shall include, but not be
32 limited to, such matters as may be required to ensure that the estab-
33 lished procedures thereunder shall at least be in compliance with the
34 code of fair procedure set forth in section seventy-three of the civil
35 rights law, and consistent with the provisions of article twenty-three-A
36 of the correction law.

37 § 4. Section 316 of the executive law, as amended by chapter 175 of
38 the laws of 2010, is amended to read as follows:

39 § 316. Enforcement. 1. Upon receipt by the director of a complaint by
40 a contracting agency that a contractor has violated the provisions of a
41 state contract which have been included to comply with the provisions of
42 this article or of a contractor that a contracting agency has violated
43 such provisions or has failed or refused to issue a waiver where one has
44 been applied for pursuant to subdivision six of section three hundred
45 thirteen of this article or has denied such application, the director
46 shall attempt to resolve the matter giving rise to such complaint. If
47 efforts to resolve such matter to the satisfaction of all parties are
48 unsuccessful, the director shall refer the matter, within thirty days of
49 the receipt of the complaint, to the division's hearing officers. Upon
50 conclusion of the administrative hearing, the hearing officer shall
51 submit to the director his or her decision regarding the alleged
52 violation of the contract and recommendations regarding the imposition
53 of sanctions, fines or penalties. The director, within ten days of
54 receipt of the decision, shall file a determination of such matter and
55 shall cause a copy of such determination along with a copy of this arti-
56 cle to be served upon the contractor by personal service or by certified

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

25 2. Any fines, or portion thereof, imposed pursuant to the foregoing
26 subdivision, or imposed by a court of competent jurisdiction related to
27 convictions involving fraud related to this article or otherwise involv-
28 ing a minority or women-owned business enterprise, may be required by
29 the entity imposing such fines to be paid to the minority and women-
30 owned business enterprise fund established pursuant to section ninety-
31 seven-j of the state finance law.

32 § 5. The state finance law is amended by adding a new section 97-j to
33 read as follows:

34 § 97-j. Minority and women-owned business enterprise fund. 1. There is
35 hereby established in the joint custody of the state comptroller and the
36 commissioner of taxation and finance a special fund to be known as the
37 "minority and women-owned business enterprise fund".

38 2. Such funds shall consist of all moneys appropriated for the purpose
39 of such fund, all moneys transferred or paid to such fund pursuant to
40 law, including pursuant to section three hundred sixteen of the execu-
41 tive law, and contributions consisting of grants, including grants or
42 other financial assistance from any agency of government and all moneys
43 required by the provisions of this section or any other law to be paid
44 into or credited to this fund.

45 3. Monies of the fund, following appropriation by the legislature,
46 shall be expended to acquire software, employ personnel to audit, inves-
47 tigate and prosecute minority and women-owned business enterprise fraud
48 and to underwrite minority and women-owned business enterprise programs
49 to assist minority and women business enterprise owners to develop
50 sustainable businesses.

51 § 6. This act shall take effect immediately, provided, however, that
52 the amendments to article 15-A of the executive law made by sections
53 one, two, three, and four of this act shall not affect the expiration of
54 such article and shall be deemed to expire therewith.