

# STATE OF NEW YORK

8425

## IN SENATE

May 7, 2018

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

AN ACT to amend the state finance law and the executive law, in relation to the comprehensive diversity in procurement and employment act of 2018

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

1 Section 1. Subdivisions 1 and 9 of section 162 of the state finance  
2 law, as added by chapter 83 of the laws of 1995, are amended to read as  
3 follows:

4 1. Purpose. To advance special social and economic goals, selected  
5 providers shall have preferred source status for the purposes of  
6 procurement in accordance with the provisions of this section. Procure-  
7 ment from these providers shall be exempted from the competitive  
8 procurement provisions of section one hundred sixty-three of this arti-  
9 cle and other competitive procurement statutes. Such exemption shall  
10 apply to commodities produced, manufactured or assembled, including  
11 those repackaged to meet the form, function and utility required by  
12 state agencies, public authorities, commissions, public benefit corpo-  
13 rations, political subdivisions, or municipal corporations in New York  
14 state and, where so designated, services provided by those sources in  
15 accordance with this section.

16 9. Payments to agencies for the blind, other severely disabled and  
17 veterans' workshops. The required payment date shall be fifteen calendar  
18 days, excluding legal holidays, after receipt of an invoice for the  
19 amount of the contract payment due; except when:

20 a. the state comptroller in the course of his or her audit determines  
21 that there is reasonable cause to believe that payment may not properly  
22 be due, in whole or in part;

23 b. in accordance with specific statutory or contractual provisions,  
24 payment must be preceded by an inspection period or by an audit to  
25 determine the resources applied or used by a contractor in fulfilling  
26 the terms of the contract;

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

LBD15728-01-8

1 c. the necessary state government appropriation required to authorize  
2 payment has yet to be enacted;

3 d. the cash balance of the fund or sub-fund from which the payment is  
4 to be made is insufficient to finance the payment;

5 e. a proper invoice must be examined by the federal government prior  
6 to payment; or

7 f. the goods or property have not been delivered or the services have  
8 not been rendered by the contractor in compliance with the terms or  
9 conditions of the contract.

10 The required payment date shall be fifteen calendar days, excluding  
11 legal holidays, after such conditions described in paragraphs (a)  
12 through (f) of this subdivision have been satisfied or rectified, and  
13 provided further that all reasonable and practicable efforts shall be  
14 taken to satisfy or rectify such conditions as soon as possible.

15 10. The provisions of this section shall supersede inconsistent  
16 provisions of any general, special or local law, or the provisions of  
17 any charter.

18 § 2. Subdivisions 2 and 3 of section 179-f of the state finance law,  
19 subdivision 2 as amended by chapter 36 of the laws of 2016, subdivision  
20 3 as amended by chapter 568 of the laws of 2015, are amended, and three  
21 new subdivisions 7, 8 and 9 are added to read as follows:

22 2. The required payment date shall be thirty calendar days, excluding  
23 legal holidays, provided, however, that for a small business, preferred  
24 source, service disabled veteran-owned business, or minority and women-  
25 owned business enterprise the required payment date shall be fifteen  
26 calendar days, excluding legal holidays, absent a showing by the  
27 contracting agency of circumstances beyond its control, provided that  
28 the small business submits its invoice electronically, in conformance  
29 with the policies and procedures of the accounting and financial manage-  
30 ment system of state government and identifies that it is seeking expe-  
31 dited payment as a small business, or in the case of final payments on  
32 highway construction contracts seventy-five calendar days, excluding  
33 legal holidays, after receipt of an invoice for the amount of the  
34 contract payment due; except when:

35 (a) the state comptroller in the course of his or her audit determines  
36 that there is reasonable cause to believe that payment may not properly  
37 be due, in whole or in part;

38 (b) in accordance with specific statutory or contractual provisions,  
39 payment must be preceded by an inspection period or by an audit to  
40 determine the resources applied or used by a contractor in fulfilling  
41 the terms of the contract;

42 (c) the necessary state government appropriation required to authorize  
43 payment has yet to be enacted;

44 (d) [~~a proper invoice must be examined by the federal government prior~~  
45 ~~to payment,~~

46 ~~(e)]~~ the goods or property have not been delivered or the services  
47 have not been rendered by the contractor in compliance with the terms or  
48 conditions of the contract;

49 [~~(f)]~~ (e) the required payment date is modified in accordance with  
50 subdivision three of this section; or

51 [~~(g)]~~ (f) in the case of final payments on highway construction  
52 contracts the commissioner of transportation determines that the  
53 contractor has failed to properly submit the necessary documents and  
54 other submissions prescribed by the contract specifications and require-  
55 ments, by the provisions of subdivision eight of section thirty-eight of  
56 the highway law, and by all other applicable state and federal laws in

1 order to enable the department of transportation to process the final  
2 payment properly and expeditiously.

3 Any time taken to satisfy or rectify any of the types of conditions  
4 described in paragraphs (a) through [~~(e)~~] (d) or [~~(g)~~] (f) of this  
5 subdivision shall extend the required payment date by an equal period of  
6 time, provided, however, that for small businesses, preferred sources,  
7 service disabled veteran-owned businesses, or minority and women-owned  
8 business enterprises, the required payment date shall be fifteen calen-  
9 dar days, excluding legal holidays, after such conditions have been  
10 satisfied or rectified, and provided further that all reasonable and  
11 practicable efforts shall be taken to satisfy or rectify such conditions  
12 as soon as possible.

13 3. Each state agency shall have fifteen calendar days after receipt of  
14 an invoice by the state agency at its designated payment office, or in  
15 the case of an invoice received from a small business, preferred source,  
16 service disabled veteran-owned business, or minority and women-owned  
17 business enterprise, seven calendar days, to notify the contractor of  
18 (a) defects in the delivered goods, property, or services, (b) defects  
19 in the invoice, or (c) suspected improprieties of any kind; and the  
20 existence of such defects or improprieties shall prevent the commence-  
21 ment of the time period specified in subdivision two of this section.  
22 When a state agency fails to notify a contractor of such defects or  
23 suspected improprieties within fifteen calendar days, or seven calendar  
24 days if such contractor is a small business, preferred source, service  
25 disabled veteran-owned business, or minority and women-owned business  
26 enterprise, of receiving the invoice, the number of days allowed for  
27 payment of the corrected proper invoice will be reduced by the number of  
28 days between the fifteenth day, or seventh day if payment of such proper  
29 invoice is for a small business, preferred source, service disabled  
30 veteran-owned business, or minority and women-owned business enterprise,  
31 and the day that notification was transmitted to the contractor. If the  
32 state agency, in such situations, fails to provide reasonable grounds  
33 for its contention that a defect or impropriety exists, the required  
34 payment date shall be calculated from the date of receipt of an invoice.

35 7. As used in this section, "preferred source" shall mean a qualified  
36 charitable not-for-profit agency for the blind approved for such  
37 purposes by the commissioner of the office of children and family  
38 services, any special employment program serving mentally ill persons  
39 which is operated by facilities within the office of mental health and  
40 is approved for such purposes by the commissioner of mental health, a  
41 qualified charitable not-for-profit agency for other severely disabled  
42 persons approved for such purposes by the commissioner of education or  
43 incorporated under the laws of this state and approved for such purposes  
44 by the commissioner of education, or a qualified charitable not-for-pro-  
45 fit workshop for veterans approved for such purposes by the commissioner  
46 of education or incorporated under the laws of this state and approved  
47 for such purposes by the commissioner of education.

48 8. As used in this section, "certified service disabled veteran-owned  
49 business enterprise" shall have the same meaning as set forth in article  
50 seventeen-B of the executive law.

51 9. As used in this section, "minority and women-owned business enter-  
52 prise" shall have the same meaning as set forth in article fifteen-A of  
53 the executive law.

54 § 3. Section 4-a of the executive law, as added by chapter 175 of the  
55 laws of 2010, is amended to read as follows:

§ 4-a. Chief diversity officer. A chief diversity officer for the state shall be appointed by the governor and shall receive a salary to be fixed by the governor within the amount appropriated therefor. The chief diversity officer's responsibilities shall include the following:

1. Advise and assist the governor in formulating policies relating to workforce diversity including the use of preferred sources, service disabled veteran-owned business enterprises and minority and ~~women's~~ women-owned business enterprises;

2. Work with the director of the division of minority and women's business development and the division service disabled veteran's business development to prepare an annual plan for ensuring full compliance with ~~[article fifteen-a]~~ articles fifteen-A and seventeen-B of ~~[the executive law]~~ this chapter and article eleven of the state finance law by state agencies and the use of diversity practices and preferred sources by such agencies and public authorities;

3. Work with the commissioner of the office of children and family services to prepare an annual plan for ensuring full compliance with section one hundred sixty-two of the state finance law by state agencies;

4. Work with the director of the office of general services and the division of service disabled veterans' business development to prepare an annual plan for ensuring full compliance with the service-disabled veteran-owned business act by state agencies;

5. Advise the governor and the agencies regarding any measures necessary to ensure full compliance with ~~[article fifteen-a]~~ articles fifteen-A and seventeen-B of this chapter and article eleven of the state finance law in connection with the use of diversity and service disabled veterans practices and preferred source plans by such agencies and by state public authorities;

~~[4.]~~ 6. Serve as a member of the state procurement council established under section one hundred sixty-one of the state finance law;

~~[5.]~~ 7. Serve as the governor's liaison with organizations representing minority and women-owned business enterprises, preferred sources and service disabled veteran-owned business enterprises and other organizations related to diversity in the state workforce and in state contracting;

~~[6.]~~ 8. Serve as the governor's liaison to the small business advisory council for issues related to the creation of a diverse workforce and state procurement practices relating to minority and women-owned business enterprises, preferred sources and service disabled veteran-owned business enterprises;

~~[7.]~~ 9. Review and consult with the director of minority and women's business development ~~[regarding policies]~~, the director of the division of service disabled veterans' business development and the commissioner of the office of children and family services relating to minority and women-owned business ~~[enterprise]~~ enterprises, service disabled veteran-owned business enterprises and preferred sources contract specialists at state agencies; and

~~[8.]~~ 10. Engage in other actions assigned to him or her by the governor relating to diversity in hiring or promotion of the state workforce and in encouraging diversity practices and compliance with ~~[article fifteen-a]~~ articles fifteen-A and seventeen-B of this chapter and article eleven of the state finance law in procurement.

§ 4. This act shall take effect immediately.