

STATE OF NEW YORK

2165

2017-2018 Regular Sessions

IN ASSEMBLY

January 17, 2017

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

AN ACT to amend the executive law, in relation to participation by LGBT, disability and veteran-owned businesses in state contracts; and providing for the repeal of such provisions upon expiration thereof

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

1 Section 1. Short title. This act shall be known as "The New York State
2 Supplier Diversity Act."

3 § 2. The executive law is amended by adding a new article 17-C to read
4 as follows:

ARTICLE 17-C

SUPPLIER DIVERSITY IN STATE CONTRACTING OPPORTUNITIES

Section 369-m. Definitions.

369-n. Division of supplier diversity.

369-o. Opportunities for certified LGBT, disability and veteran-owned business enterprises.

369-p. Severability.

12 § 369-m. Definitions. As used in this article, the following terms
13 shall have the following meanings:

14 1. "Certified LGBT, disability, or veteran-owned business enterprise"
15 shall mean a business enterprise, including a sole proprietorship, part-
16 nership, limited liability company or corporation that is:

17 (a) at least fifty-one percent owned by one or more LGBT individuals,
18 disabled individuals or veterans;

19 (b) an enterprise in which such LGBT, disability or veteran ownership
20 is real, substantial, and continuing;

21 (c) an enterprise in which such LGBT, disability or veteran ownership
22 has and exercises the authority to control independently the day-to-day
23 business decisions of the enterprise;

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

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1 (d) an enterprise authorized to do business in this state and which is
2 independently owned and operated;

3 (e) an enterprise that is a small business which has a significant
4 business presence in the state, not dominant in its field and employs,
5 based on its industry, a certain number of persons as determined by the
6 director, but not to exceed three hundred, taking into consideration
7 factors which include, but are not limited to, federal small business
8 administration standards pursuant to 13 CFR part 121 and any amendments
9 thereto; and

10 (f) certified by the office of general services, or an approved third-
11 party agency pursuant to subdivision five of section three hundred
12 sixty-nine-n of this article.

13 2. "Commissioner" shall mean the commissioner of the office of general
14 services.

15 3. "Director" shall mean the director of the division of supplier
16 diversity.

17 4. "Disabled individual" shall mean a person who has physical, mental
18 or medical impairment from anatomical, physiological or neurological
19 conditions which prevents the exercise of a normal bodily function or is
20 demonstrable by medically accepted clinical or laboratory diagnostic
21 techniques.

22 5. "Division" shall mean the division of supplier diversity in the
23 office of general services.

24 6. "LGBT individual" shall mean a person who identifies as lesbian,
25 gay, bisexual or transgender.

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

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

38 Albany County Airport Authority;

39 Albany Port District Commission;

40 Alfred, Almond, Hornellsville Sewer Authority;

41 Battery Park City Authority;

42 Cayuga County Water and Sewer Authority;

43 (Nelson A. Rockefeller) Empire State Plaza Performing Arts Center
44 Corporation;

45 Industrial Exhibit Authority;

46 Livingston County Water and Sewer Authority;

47 Long Island Power Authority;

48 Long Island Rail Road;

49 Long Island Market Authority;

50 Manhattan and Bronx Surface Transit Operating Authority;

51 Metro-North Commuter Railroad;

52 Metropolitan Suburban Bus Authority;

53 Metropolitan Transportation Authority;

54 Natural Heritage Trust;

55 New York City Transit Authority;

56 New York Convention Center Operating Corporation;

New York State Bridge Authority;
New York State Olympic Regional Development Authority;
New York State Thruway Authority;
Niagara Falls Public Water Authority;
Niagara Falls Water Board;
Port of Oswego Authority;
Power Authority of the State of New York;
Roosevelt Island Operating Corporation;
Schenectady Metroplex Development Authority;
State Insurance Fund;
Staten Island Rapid Transit Operating Authority;
State University Construction Fund;
Syracuse Regional Airport Authority;
Triborough Bridge and Tunnel Authority;
Upper Mohawk valley regional water board;
Upper Mohawk valley regional water finance authority;
Upper Mohawk valley memorial auditorium authority;
Urban Development Corporation and its subsidiary corporations.

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

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

(d) "state contract" shall mean: (i) 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; (ii) 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 (iii) 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.

8. "Veteran" shall mean a person who served in and who has received an honorable or general discharge from the United States army, navy, air force, marines, coast guard, and/or reserves thereof, and/or the army national guard, air national guard, New York guard and/or the New York naval militia.

§ 369-n. Division of supplier diversity. 1. The head of the division of supplier diversity shall be the director who shall be appointed by the governor and who shall hold office at the pleasure of the commissioner.

2. The director may appoint such deputies, assistants, and other employees as may be needed for the performance of the duties prescribed herein subject to the provisions of the civil service law and the rules and regulations of the civil service commission. The director may request and shall receive from any (a) department, division, board, bureau, or executive commission of the state or (b) state agency, such

1 assistance as may be necessary to carry out the provisions of this arti-
2 cle.

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

4 (a) Develop, collect, summarize and disseminate information that will
5 be helpful to persons and organizations throughout the state in under-
6 taking or promoting the establishment and successful operation of an
7 LGBT, disability or veteran-owned business.

8 (b) Develop and make available to state agencies a directory of certi-
9 fied LGBT, disability and veteran-owned business enterprises which
10 shall, wherever practicable, be divided into categories of labor,
11 services, supplies, equipment, materials and recognized construction
12 trades and which shall indicate areas or locations of the state where
13 such enterprises are available to perform services. Such directory shall
14 be posted on the office of general services website.

15 (c) Assist state agencies in the development of programs to foster and
16 promote the use of LGBT, disability and veteran-owned business enter-
17 prises on state contracts.

18 (d) Coordinate the plans, programs and operations of the state govern-
19 ment which affect or may contribute to the establishment, preservation
20 and development of LGBT, disability and veteran-owned business enter-
21 prises.

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

26 (f) In conjunction with the commissioner, develop a comprehensive
27 statewide plan and operational guidelines to promote LGBT, disability
28 and veteran-owned business enterprises and to assist them in obtaining
29 opportunities to participate in the procurement of goods and services by
30 the state, including identification of barriers to business development
31 and investigation and evaluation of their impact on achieving the objec-
32 tives of this article.

33 4. The commissioner shall:

34 (a) Coordinate training of all procurement personnel of state agen-
35 cies, emphasizing increased sensitivity and responsiveness to the unique
36 needs and requirements of LGBT, disability and veteran-owned business
37 enterprises.

38 (b) Conduct a coordinated review of all existing and proposed state
39 training and technical assistance activities in direct support of the
40 supplier diversity program to assure consistency with the objectives of
41 this article.

42 (c) Evaluate and assess availability of firms for the purpose of
43 increasing participation of such firms in state contracting in consulta-
44 tion with relevant state entities.

45 (d) Provide advice and technical assistance to promote LGBT, disabili-
46 ty and veteran-owned business enterprises' understanding of state
47 procurement laws, practices and procedures to facilitate and increase
48 the participation of LGBT, disability and veteran-owned business enter-
49 prises in state procurement.

50 (e) Establish regular performance reporting systems regarding imple-
51 mentation of the programs designed to increase LGBT, disability and
52 veteran-owned business participation in procurement contracts by state
53 agencies.

54 (f) Submit a report by the thirty-first of December each year, with
55 the first report due by the thirty-first of December in the calendar
56 year next succeeding the calendar year in which this article shall have

1 become a law, to the governor, the temporary president of the senate,
2 and the speaker of the assembly. Such report shall include information
3 including, but not limited to, the number of contracts entered into
4 pursuant to this article, the average amount of such contracts, the
5 percentage of contracts awarded to LGBT, disability and veteran-owned
6 business enterprises by each state agency, the number of LGBT, disabili-
7 ty and veteran-owned business enterprises certified, the number of
8 applications for certification as an LGBT, disability or veteran-owned
9 business enterprise, the number of denials for such certification, the
10 number of appeals of such denials, and the outcome of such appeals and
11 the average time that is required for such certification to be
12 completed. The report shall be posted on a public website maintained by
13 the office of general services.

14 5. Certification. (a) The director, or in the absence of the director,
15 the commissioner, within ninety days of the effective date of this arti-
16 cle, shall promulgate rules and regulations providing for the establish-
17 ment of a statewide certification program including rules and regu-
18 lations governing the approval, denial, or revocation of any such
19 certification. Such rules and regulations shall include, but not be
20 limited to, such matters as may be required to ensure that the estab-
21 lished procedures thereunder shall at least be in compliance with the
22 code of fair procedure set forth in section seventy-three of the civil
23 rights law. In addition to a statewide certification program, the direc-
24 tor, or in the absence of the director, the commissioner, shall approve
25 third-party agencies to perform verification of LGBT, disability and/or
26 veteran-owned business enterprises. The division shall accept certif-
27 ications by approved third-party agencies, and is authorized to develop
28 and implement a streamlined verification process for any LGBT, disabili-
29 ty or veteran-owned business enterprise that has a certification through
30 an approved third-party agency. Approved third-party agencies shall
31 include the National Gay and Lesbian Chamber of Commerce for the certif-
32 ication of LGBT-owned business enterprises and the United States Busi-
33 ness Leadership Network for the certification of disability-owned enter-
34 prises.

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

1 service or by certified mail return receipt requested. The order of the
2 director shall be subject to review pursuant to article seventy-eight of
3 the civil practice law and rules.

4 (c) All certifications shall be valid for a period of two years.

5 § 369-o. Opportunities for certified LGBT, disability and veteran-
6 owned business enterprises. 1. The director, or in the absence of the
7 director, the commissioner, within ninety days of the effective date of
8 this article shall promulgate rules and regulations for the following
9 purposes:

10 (a) provide measures and procedures to ensure that certified LGBT,
11 disability and veteran-owned business enterprises are afforded the
12 opportunity for meaningful participation in the performance of state
13 contracts and to assist in state agencies' identification of those state
14 contracts for which certified LGBT, disability and/or veteran-owned
15 business enterprises may best perform;

16 (b) provide for measures and procedures that assist state agencies in
17 the identification of state contracts where LGBT, disability and veteran
18 contract goals are practical, feasible and appropriate for the purpose
19 of increasing the utilization of LGBT, disability and veteran-owned
20 business enterprise participation on state contracts;

21 (c) achieve a statewide goal for participation on state contracts by
22 LGBT, disability and veteran-owned business enterprises at a percentage
23 to be determined by the commissioner;

24 (d) provide for procedures relating to submission and receipt of
25 applications by LGBT, disability or veteran-owned business enterprises
26 for certification;

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

29 (f) provide for the requirement that state agencies submit regular
30 reports, as determined by the director, with respect to their supplier
31 diversity program activity, including but not limited to, utilization
32 reporting and state contract monitoring and compliance; and

33 (g) provide for any other purposes to effectuate this article.

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

36 § 369-p. Severability. If any clause, sentence, paragraph, section or
37 part of this article shall be adjudged by any court of competent juris-
38 isdiction to be invalid, the judgment shall not affect, impair or invali-
39 date the remainder thereof, but shall be confined in its operation to
40 the clause, sentence, paragraph, section or part of this article direct-
41 ly involved in the controversy in which the judgment shall have been
42 rendered.

43 § 3. The commissioner of the office of general services shall conduct
44 a study to determine a statewide goal for participation on state
45 contracts by LGBT, disability and veteran-owned business enterprises and
46 to determine whether providing for the reservation or set-aside of
47 certain procurements by state agencies should be required in order to
48 achieve the objectives of article 17-C of the executive law.

49 § 4. No later than one year after this act shall have become a law,
50 the commissioner of the office of general services shall complete the
51 study pursuant to section three of this act.

52 § 5. This act shall take effect immediately and shall expire and be
53 deemed repealed five years after such effective date.