

# STATE OF NEW YORK

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7688

## IN SENATE

February 8, 2018

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Introduced by Sen. MURPHY -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the executive law, in relation to the publication of information regarding waivers of compliance with state contract provisions concerning minority and women-owned business enterprise participation requirements

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

1 Section 1. Subdivision 6 of section 313 of the executive law, as  
2 amended by chapter 175 of the laws of 2010, is amended to read as  
3 follows:

4 6. (a) Where it appears that a contractor cannot, after a good faith  
5 effort, comply with the minority and women-owned business enterprise  
6 participation requirements set forth in a particular state contract, a  
7 contractor may file a written application with the contracting agency  
8 requesting a partial or total waiver of such requirements setting forth  
9 the reasons for such contractor's inability to meet any or all of the  
10 participation requirements together with an explanation of the efforts  
11 undertaken by the contractor to obtain the required minority and women-  
12 owned business enterprise participation. In implementing the provisions  
13 of this section, the contracting agency shall consider the number and  
14 types of minority and women-owned business enterprises located in the  
15 region in which the state contract is to be performed, the total dollar  
16 value of the state contract, the scope of work to be performed and the  
17 project size and term. If, based on such considerations, the contracting  
18 agency determines there is not a reasonable availability of contractors  
19 on the list of certified business to furnish services for the project,  
20 it shall issue a waiver of compliance to the contractor. In making such  
21 determination, the contracting agency shall first consider the avail-  
22 ability of other business enterprises located in the region and shall  
23 thereafter consider the financial ability of minority and women-owned  
24 businesses located outside the region in which the contract is to be  
25 performed to perform the state contract.

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

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1 (b) Within thirty days of the issuance of a partial or total waiver of  
2 compliance as provided in paragraph (a) of this subdivision, the  
3 contracting agency shall:

4 (i) report the issuance of the waiver to the director; and

5 (ii) publish on the contracting agency's website: (A) information  
6 identifying the contract, including the value of the contract; (B) the  
7 name of the contractor receiving the waiver; (C) the date of the waiver;  
8 (D) whether the waiver was a total or partial waiver; and (E) the  
9 specific contract provisions to which the waiver applies.

10 § 2. Paragraphs (h) and (i) of subdivision 3 of section 311 of the  
11 executive law, paragraph (h) as amended and paragraph (i) as added by  
12 section 1 of part BB of chapter 59 of the laws of 2006, are amended and  
13 a new paragraph (j) is added to read as follows:

14 (h) notwithstanding the provisions of section two hundred ninety-six  
15 of this chapter, to file a complaint pursuant to the provisions of  
16 section two hundred ninety-seven of this chapter where the director has  
17 knowledge that a contractor may have violated the provisions of para-  
18 graph (a), (b) or (c) of subdivision one of section two hundred ninety-  
19 six of this chapter where such violation is unrelated, separate or  
20 distinct from the state contract as expressed by its terms; ~~and~~

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

23 (j) to keep a record of partial and total waivers of compliance  
24 reported pursuant to paragraph (b) of subdivision six of section three  
25 hundred thirteen of this article and to make such record publicly avail-  
26 able on the division's website. The record shall provide, at a minimum:  
27 (A) information identifying the contract, including the value of the  
28 contract; (B) information identifying the contracting agency; (C) the  
29 name of the contractor receiving the waiver; and (D) the date of the  
30 waiver.

31 § 3. This act shall take effect on the sixtieth day after it shall  
32 have become a law; provided, however, that:

33 a. the amendments made to subdivision 6 of section 313 of the execu-  
34 tive law by section one of this act shall not affect the expiration of  
35 such article and shall be deemed expired therewith;

36 b. the amendments made to subdivision 3 of section 311 of the execu-  
37 tive law by section two of this act shall not affect the expiration of  
38 such article and shall be deemed expired therewith; and

39 c. the director of the division of minority and women's business  
40 development may immediately promulgate rules and regulations and take  
41 all other necessary actions to implement the provisions of this act on  
42 or before such effective date.