

# STATE OF NEW YORK

1541

2019-2020 Regular Sessions

## IN ASSEMBLY

January 15, 2019

Introduced by M. of A. BICHOTTE, MOSLEY, HYNDMAN, WALKER, SEAWRIGHT, SOLAGES, GOTTFRIED, JEAN-PIERRE, COOK -- Multi-Sponsored by -- M. of A. ENGLEBRIGHT, SIMON -- read once and referred to the Committee on Governmental 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-

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

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1 ability of other business enterprises located in the region and shall  
2 thereafter consider the financial ability of minority and women-owned  
3 businesses located outside the region in which the contract is to be  
4 performed to perform the state contract.

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

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

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

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

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

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

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

35 § 3. This act shall take effect on the sixtieth day after it shall  
36 have become a law; provided, however, that: a. the amendments made to  
37 subdivision 6 of section 313 of the executive law by section one of this  
38 act shall not affect the expiration of such article and shall be deemed  
39 expired therewith; and b. the amendments made to subdivision 3 of  
40 section 311 of the executive law by section two of this act shall not  
41 affect the expiration of such article and shall be deemed expired there-  
42 with. Effective immediately the addition, amendment and/or repeal of  
43 any rule or regulation necessary for the implementation of this act on  
44 its effective date are authorized to be made on or before such date.