

STATE OF NEW YORK

4118

2019-2020 Regular Sessions

IN ASSEMBLY

February 1, 2019

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

AN ACT to amend the executive law, in relation to a statewide disparity study regarding the participation of minority and women-owned business enterprises in state contracts

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

1 Section 1. Section 312-a of the executive law is amended by adding a
2 new subdivision 3 to read as follows:

3 3. The director shall develop a procedure to obtain direct feedback
4 from applicants on any problems and burdens they encountered during the
5 application process or throughout the program and examine how the issues
6 can be addressed to eliminate future program limitations.

7 § 2. Subdivision 6 of section 313 of the executive law, as amended by
8 chapter 175 of the laws of 2010, is amended to read as follows:

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

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

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1 the project, it shall issue a waiver of compliance to the contractor. In
2 making such determination, the contracting agency shall first consider
3 the availability of other business enterprises located in the region and
4 shall thereafter consider the financial ability of minority and women-
5 owned businesses located outside the region in which the contract is to
6 be performed to perform the state contract.

7 (b) The commissioner is authorized to grant a partial or total waiver
8 of such good faith efforts to contracts within such a county, upon
9 request of the presiding officer of such county and upon a finding that
10 there is such a scarcity of minority and women-owned business enter-
11 prises within that county as to effectively preclude participation of
12 such enterprises in such contracts, and where no reasonable means of
13 accomplishing the provisions of this section exist. The commissioner
14 shall promulgate rules and regulations necessary to implement these
15 provisions.

16 § 3. Subdivision 1 and 3 of section 314 of the executive law, as added
17 by chapter 261 of the laws of 1988, are amended and a new subdivision
18 1-a is added, to read as follows:

19 1. The director shall promulgate rules and regulations providing for
20 the establishment of a statewide certification program including rules
21 and regulations governing the approval, denial or revocation of any such
22 certification. Such rules and regulations shall include, but not be
23 limited to, such matters as may be required to ensure that the estab-
24 lished procedures thereunder shall at least be in compliance with the
25 code of fair procedure set forth in section seventy-three of the civil
26 rights law. Applications shall be made available online and in print
27 and specifically list out all information and documents required by an
28 applicant to apply for the program in clear language.

29 1-a. The director shall promulgate rules and regulations to establish
30 an online help source. This source shall provide real time business
31 support for new and existing certified businesses.

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

1 personal service or by certified mail return receipt requested. The
2 order of the director shall be subject to review pursuant to article
3 seventy-eight of the civil practice law and rules.
4 § 4. This act shall take effect immediately; provided however, that
5 the amendments to article 15-A of the executive law made by this act
6 shall not affect the expiration of such article and shall be deemed to
7 expire therewith.