

STATE OF NEW YORK

7814

2019-2020 Regular Sessions

IN ASSEMBLY

May 23, 2019

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

AN ACT to amend the executive law, the state finance law, and the public authorities law, in relation to the reauthorization of the minority and women-owned business enterprise program, to create the minority and women-owned business enterprise fund, and to establish the workforce diversity program; to amend chapter 261 of the laws of 1988, amending the state finance law and other laws relating to the New York state infrastructure fund, in relation to the effectiveness of certain provisions thereof; and providing for the repeal of certain provisions upon expiration thereof

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

1 Section 1. Subdivisions 2, 7, 8, 13, 15, 16, 19, 20, 21 and 22 of
2 section 310 of the executive law, subdivisions 2 and 8 as added by chap-
3 ter 261 of the laws of 1988, subdivisions 7 and 15 as amended by chapter
4 22 of the laws of 2014, subdivision 13 as amended by chapter 506 of the
5 laws of 2009, subdivision 16 as amended by section 3 of part BB of chap-
6 ter 59 of the laws of 2006, subdivisions 19, 20, 21 and 22 as added by
7 chapter 175 of the laws of 2010, are amended and a new subdivision 24 is
8 added to read as follows:

9 2. "Contracting agency" shall mean a state agency or state-funded
10 entity which is a party or a proposed party to a state contract or, in
11 the case of a state contract described in paragraph (c) of subdivision
12 thirteen of this section, shall mean the New York state housing finance
13 agency, housing trust fund corporation or affordable housing corpo-
14 ration, whichever has made or proposes to make the grant or loan for the
15 state assisted housing project.

16 7. "Minority-owned business enterprise" shall mean a business enter-
17 prise, including a sole proprietorship, partnership, limited liability
18 company or corporation that is:

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

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1 (a) at least fifty-one percent owned by one or more minority group
2 members;

3 (b) an enterprise in which such minority ownership is real, substan-
4 tial and continuing;

5 (c) an enterprise in which such minority ownership has and exercises
6 the authority to control independently the day-to-day business decisions
7 of the enterprise;

8 (d) an enterprise authorized to do business in this state and inde-
9 pendently owned and operated would not qualify if it exceeds sixty
10 million dollars in contracts over three consecutive years or exceeds the
11 threshold of the federal small business administration standards of what
12 constitutes a small business; and

13 ~~(e) [an enterprise owned by an individual or individuals, whose owner-~~
14 ~~ship, control and operation are relied upon for certification, with a~~
15 ~~personal net worth that does not exceed three million five hundred thou-~~
16 ~~sand dollars, as adjusted annually on the first of January for inflation~~
17 ~~according to the consumer price index of the previous year, and~~

18 ~~(f)]~~ an enterprise that is a small business pursuant to subdivision
19 twenty of this section.

20 8. "Minority group member" shall mean a United States citizen or
21 permanent resident alien who is and can demonstrate membership in one of
22 the following groups:

23 (a) Black persons having origins in any of the Black African racial
24 groups;

25 (b) ~~[Hispanic]~~ Hispanic/Latino persons of Mexican, Puerto Rican,
26 Dominican, Cuban, Central or South American of either Indian or Hispanic
27 origin, regardless of race;

28 (c) Native American or Alaskan native persons having origins in any of
29 the original peoples of North America.

30 (d) Asian and Pacific Islander persons having origins in any of the
31 Far East countries, South East Asia, the Indian subcontinent or the
32 Pacific Islands.

33 13. "State contract" shall mean: (a) a written agreement or purchase
34 order instrument, providing for a total expenditure in excess of twen-
35 ty-five thousand dollars, whereby a contracting agency is committed to
36 expend or does expend funds in return for labor, services including but
37 not limited to legal, financial and other professional services,
38 supplies, equipment, materials or any combination of the foregoing, to
39 be performed for, or rendered or furnished to the contracting agency;

40 (b) a written agreement in excess of one hundred thousand dollars where-
41 by a contracting agency is committed to expend or does expend funds for
42 the acquisition, construction, demolition, replacement, major repair or
43 renovation of real property and improvements thereon; ~~[and]~~ (c) a writ-

44 ten agreement in excess of one hundred thousand dollars whereby the
45 owner of a state assisted housing project is committed to expend or does
46 expend funds for the acquisition, construction, demolition, replacement,
47 major repair or renovation of real property and improvements thereon for
48 such project; and (d) a written agreement or purchase order instrument,
49 providing for a total expenditure in excess of one hundred thousand
50 dollars, whereby the majority of the funds a state-funded entity is
51 committed to expend or does expend are paid to the state-funded entity
52 by the state of New York, including those paid to the state-funded enti-
53 ty pursuant to an appropriation, for any product or service. The state
54 utilization goal shall not apply to municipalities that currently have a
55 minority and women-owned business enterprise program. The state shall

provide technical assistance to municipalities regarding minority and women-owned business enterprise programs subject to appropriations.

15. "Women-owned business enterprise" shall mean a business enterprise, including a sole proprietorship, partnership, limited liability company or corporation that is:

(a) at least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are women;

(b) an enterprise in which the ownership interest of such women is real, substantial and continuing;

(c) an enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise;

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

~~(e) [an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year, and~~

~~(f)]~~ an enterprise that is a small business pursuant to subdivision twenty of this section.

A firm owned by a minority group member who is also a woman may be certified as a minority-owned business enterprise, a women-owned business enterprise, or both, and may be counted towards either a minority-owned business enterprise goal or a women-owned business enterprise goal, in regard to any contract or any goal, set by an agency or authority, but such participation may not be counted towards both such goals. Such an enterprise's participation in a contract may not be divided between the minority-owned business enterprise goal and the women-owned business enterprise goal.

16. "Statewide advocate" shall mean the person appointed by the ~~commissioner~~ director to serve in the capacity of the minority and women-owned business enterprise statewide advocate.

~~19. "Personal net worth" shall mean the aggregate adjusted net value of the assets of an individual remaining after total liabilities are deducted. Personal net worth includes the individual's share of assets held jointly with said individual's spouse and does not include the individual's ownership interest in the certified minority and women-owned business enterprise, the individual's equity in his or her primary residence, or up to five hundred thousand dollars of the present cash value of any qualified retirement savings plan or individual retirement account held by the individual less any penalties for early withdrawal.]~~

20. "Small business" as used in this section, unless otherwise indicated, shall mean a business which has a significant business presence in the state, is independently owned and operated, not dominant in its field and employs, based on its industry, a certain number of persons as determined by the director~~[, but not to exceed three hundred]~~, taking into consideration factors which include, but are not limited to, federal small business administration standards pursuant to 13 CFR part 121 and any amendments thereto. The director may issue regulations on the construction of the terms in this definition.

21. "The [2010] disparity study" shall refer to the most recent disparity study commissioned by the ~~empire state development corporation~~ department of economic development, pursuant to section three hundred twelve-a of this article, and published on ~~[April twenty-nine, two thousand ten]~~ June thirtieth, two thousand seventeen.

22. "Diversity practices" shall mean the contractor's practices and policies with respect to:

(a) utilizing or mentoring certified minority and women-owned business enterprises in contracts awarded by a state agency or other public corporation, as subcontractors and suppliers; and

(b) entering into partnerships, joint ventures or other similar arrangements with certified minority and women-owned business enterprises as defined in this article or other applicable statute or regulation governing an entity's utilization of minority or women-owned business enterprises.

24. "State-funded entity" shall mean any unit of local government, including, but not limited to, a county, city, town, village, or school district that is paid pursuant to an appropriation in any state fiscal year provided, however, a state-funded entity shall not include any unit of local government that, pursuant to local law, has a minority and women-owned business enterprise program.

§ 1-a. Paragraphs (h) and (i) of subdivision 3 of section 311 of the executive law, paragraph (h) as amended and paragraph (i) as added by section 1 of part BB of chapter 59 of the laws of 2006, are amended to read as follows:

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

(i) to streamline the state certification process to accept federal and municipal corporation certifications; and

(j) to keep a record of partial and total waivers of compliance reported pursuant to paragraph (b) of subdivision six of section three hundred thirteen of this article and to make such record publicly available on the division's website. The record shall provide, at a minimum: (i) information identifying the contract, including the value of the contract; (ii) information identifying the contracting agency; (iii) the name of the contractor receiving the waiver; and (iv) the date of the waiver.

§ 2. Subdivision 4 of section 311 of the executive law, as amended by chapter 361 of the laws of 2009, is amended to read as follows:

4. The director ~~may~~ shall provide assistance to, and facilitate access to programs serving ~~certified businesses as well as applicants~~ minority and women-owned business enterprises to ensure that such businesses benefit, as needed, from technical, managerial and financial, and general business assistance; training; marketing; organization and personnel skill development; project management assistance; technology assistance; bond and insurance education assistance; and other business development assistance. In addition, the director may, either independently or in conjunction with other state agencies:

(a) develop a clearinghouse of information on programs and services provided by entities that may assist such businesses;

(b) review bonding and paperwork requirements imposed by contracting agencies that may unnecessarily impede the ability of such businesses to compete; and

(c) seek to maximize utilization by minority and women-owned business enterprises of available federal resources including but not limited to federal grants, loans, loan guarantees, surety bonding guarantees, tech-

1 nical assistance, and programs and services of the federal small busi-
2 ness administration.

3 § 3. Subdivisions 1 and 2 of section 311-a of the executive law, as
4 added by section 4 of part BB of chapter 59 of the laws of 2006, are
5 amended to read as follows:

6 1. There is hereby established within the [~~department of economic~~
7 division of minority and women's business development [~~an office of the~~
8 ~~minority and women-owned business enterprise~~] a statewide advocate. The
9 statewide advocate shall be appointed by the commissioner with the
10 advice of the small business advisory board as established in section
11 one hundred thirty-three of the economic development law and shall serve
12 in the unclassified service of the director. [~~The statewide advocate~~
13 ~~shall be located in the Albany empire state development office.~~]

14 2. The advocate shall act as a liaison for minority and women-owned
15 business enterprises (MWBEs) to assist them in obtaining technical,
16 managerial, financial and other business assistance for certified busi-
17 nesses and applicants. The advocate shall receive and investigate
18 complaints brought by or on behalf of MWBEs concerning certification
19 delays and instances of violations of [~~law~~] the requirements of this
20 article by contractors and state agencies. The statewide advocate shall
21 assist certified businesses and applicants in the certification process.
22 Other functions of the statewide advocate shall be directed by the
23 commissioner. The advocate may request and the director may appoint
24 staff and employees of the division of minority and women business
25 development to support the administration of the office of the statewide
26 advocate.

27 § 4. Section 312-a of the executive law, as amended by section 1 of
28 part Q of chapter 58 of the laws of 2015, is amended to read as follows:

29 § 312-a. Study of minority and women-owned business [~~enterprise~~
30 ~~programs~~] enterprises. 1. The director of the division of minority and
31 [~~women-owned~~] women's business development [~~in the department of econom-~~
32 ~~ie development~~] is authorized and directed to recommission a statewide
33 disparity study regarding the participation of minority and women-owned
34 business enterprises in state contracts since the amendment of this
35 article to be delivered to the governor and legislature no later than
36 August fifteenth, [~~two thousand sixteen~~] two thousand twenty-three. The
37 study shall be prepared by an entity independent of the department and
38 selected through a request for proposal process. The purpose of such
39 study is:

40 (a) to determine whether there is a disparity between the number of
41 qualified minority and women-owned businesses ready, willing and able to
42 perform state contracts for commodities, services and construction, and
43 the number of such contractors actually engaged to perform such
44 contracts, and to determine what changes, if any, should be made to
45 state policies affecting minority and women-owned business enterprises;
46 and (b) to determine whether there is a disparity between the number of
47 qualified minorities and women ready, willing and able, with respect to
48 labor markets, qualifications and other relevant factors, to participate
49 in contractor employment, management level bodies, including boards of
50 directors, and as senior executive officers within contracting entities
51 and the number of such group members actually employed or affiliated
52 with state contractors in the aforementioned capacities, and to deter-
53 mine what changes, if any, should be made to state policies affecting
54 minority and women group populations with regard to state contractors'
55 employment and appointment practices relative to diverse group members.
56 Such study shall include, but not be limited to, an analysis of the

1 history of minority and women-owned business enterprise programs and
2 their effectiveness as a means of securing and ensuring participation by
3 minorities and women, and a disparity analysis by market area and region
4 of the state. Such study shall distinguish between minority males,
5 minority females and non-minority females in the statistical analysis.

6 2. The director of the division of minority and ~~[women-owned]~~ women's
7 business development is directed to transmit the disparity study to the
8 governor and the legislature ~~[not later than August fifteenth, two thou-~~
9 ~~sand sixteen]~~, and to post the study on the website of the department of
10 economic development.

11 § 5. Section 313 of the executive law, as amended by chapter 175 of
12 the laws of 2010, is amended to read as follows:

13 § 313. Opportunities for minority and women-owned business enter-
14 prises. 1. Goals and requirements for agencies and contractors. Each
15 agency shall structure procurement procedures for contracts made direct-
16 ly or indirectly to minority and women-owned business enterprises, in
17 accordance with the findings of the ~~[two thousand ten]~~ disparity study,
18 consistent with the purposes of this article, to attempt to achieve ~~[the~~
19 ~~following]~~ the recommended results with regard to ~~[total]~~ annual state-
20 wide procurement for each of the following:

21 (a) construction industry for certified minority-owned business enter-
22 prises~~[+ fourteen and thirty four hundredths percent]~~;

23 (b) construction industry for certified women-owned business enter-
24 prises~~[+ eight and forty one hundredths percent]~~;

25 (c) construction related professional services industry for certified
26 minority-owned business enterprises~~[+ thirteen and twenty one hundredths~~
27 ~~percent]~~;

28 (d) construction related professional services industry for certified
29 women-owned business enterprises~~[+ eleven and thirty two hundredths~~
30 ~~percent]~~;

31 (e) non-construction related services industry for certified minori-
32 ty-owned business enterprises~~[+ nineteen and sixty hundredths percent]~~;

33 (f) non-construction related services industry for certified women-
34 owned business enterprises~~[+ seventeen and forty four hundredths~~
35 ~~percent]~~;

36 (g) commodities industry for certified minority-owned business enter-
37 prises~~[+ sixteen and eleven hundredths percent]~~;

38 (h) commodities industry for certified women-owned business enter-
39 prises~~[+ ten and ninety three hundredths percent]~~;

40 (i) overall agency total dollar value of procurement for certified
41 minority-owned business enterprises~~[+ sixteen and fifty three hundredths~~
42 ~~percent]~~;

43 (j) overall agency total dollar value of procurement for certified
44 women-owned business enterprises~~[+ twelve and thirty nine hundredths~~
45 ~~percent]~~; and

46 (k) overall agency total dollar value of procurement for certified
47 minority, women-owned business enterprises~~[+ twenty eight and ninety two~~
48 ~~hundredths percent]~~.

49 1-a. The director shall ensure that each state agency has been
50 provided with a copy of the ~~[two thousand ten]~~ most recent disparity
51 study.

52 1-b. Each agency shall develop and adopt agency-specific goals based
53 on the findings of the ~~[two thousand ten]~~ most recent disparity study.

54 1-c. The goals set pursuant to subdivision one of this section shall
55 be consistent with the findings of the most recent disparity study.

1 Every division of a contract shall attempt to meet a goal of thirty
2 percent.

3 2. The director shall promulgate rules and regulations pursuant to the
4 goals established in subdivision one of this section that provide meas-
5 ures and procedures to ensure that certified minority and women-owned
6 businesses shall be given the opportunity for maximum feasible partic-
7 ipation in the performance of state contracts and to assist in the agen-
8 cy's identification of those state contracts for which minority and
9 women-owned certified businesses may best bid to actively and affirma-
10 tively promote and assist their participation in the performance of
11 state contracts so as to facilitate the agency's achievement of the
12 maximum feasible portion of the goals for state contracts to such busi-
13 nesses.

14 2-a. The director shall promulgate rules and regulations that will
15 accomplish the following:

16 (a) provide for the certification and decertification of minority and
17 women-owned business enterprises for all agencies through a single proc-
18 ess that meets applicable requirements;

19 (b) require that each contract solicitation document accompanying each
20 solicitation set forth the expected degree of minority and women-owned
21 business enterprise participation based, in part, on:

22 (i) the potential subcontract opportunities available in the prime
23 procurement contract; ~~and~~

24 (ii) the availability, as contained within the study, of certified
25 minority and women-owned business enterprises to respond competitively
26 to the potential subcontract opportunities, as reflected in the divi-
27 sion's directory of certified minority and women-owned business enter-
28 prises; and

29 (iii) the findings of the disparity study.

30 (c) require that each agency provide a current list of certified
31 minority business enterprises to each prospective contractor;

32 (d) allow a contractor that is a certified minority-owned or women-
33 owned business enterprise to use the work it performs to meet require-
34 ments for use of certified minority-owned or women-owned business enter-
35 prises as subcontractors;

36 (e) provide for joint ventures, which a bidder may count toward meet-
37 ing its minority and women-owned business enterprise participation;

38 (f) consistent with subdivision six of this section, provide for
39 circumstances under which an agency or state-funded entity may waive
40 obligations of the contractor relating to minority and women-owned busi-
41 ness enterprise participation;

42 (g) require that an agency or state-funded entity verify that minority
43 and women-owned business enterprises listed in a successful bid are
44 actually participating to the extent listed in the project for which the
45 bid was submitted;

46 (h) provide for the collection of statistical data by each agency
47 concerning actual minority and women-owned business enterprise partic-
48 ipation; ~~and~~

49 (i) require each agency to consult the most current disparity study
50 when calculating ~~[agency-wide and contract-specific]~~ contract-specific
51 participation goals pursuant to this article; ~~and~~

52 (j) provide for the periodic collection of reports from state-funded
53 entities in such form and at such time as the director shall require.

54 3. Solely for the purpose of providing the opportunity for meaningful
55 participation by certified businesses in the performance of state
56 contracts as provided in this section, state contracts shall include

leases of real property by a state agency to a lessee where: the terms of such leases provide for the construction, demolition, replacement, major repair or renovation of real property and improvements thereon by such lessee; and the cost of such construction, demolition, replacement, major repair or renovation of real property and improvements thereon shall exceed the sum of one hundred thousand dollars. Reports to the director pursuant to section three hundred fifteen of this article shall include activities with respect to all such state contracts. Contracting agencies shall include or require to be included with respect to state contracts for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon, such provisions as may be necessary to effectuate the provisions of this section in every bid specification and state contract, including, but not limited to: (a) provisions requiring contractors to make a good faith effort to solicit active participation by enterprises identified in the directory of certified businesses provided to the contracting agency by the office; (b) requiring the parties to agree as a condition of entering into such contract, to be bound by the provisions of section three hundred sixteen of this article; and (c) requiring the contractor to include the provisions set forth in paragraphs (a) and (b) of this subdivision in every subcontract in a manner that the provisions will be binding upon each subcontractor as to work in connection with such contract. Provided, however, that no such provisions shall be binding upon contractors or subcontractors in the performance of work or the provision of services that are unrelated, separate or distinct from the state contract as expressed by its terms, and nothing in this section shall authorize the director or any contracting agency to impose any requirement on a contractor or subcontractor except with respect to a state contract.

4. In the implementation of this section, the contracting agency shall (a) consult the findings contained within the disparity study evidencing relevant industry specific availability of certified businesses and disparities in the utilization of minority and women-owned businesses relative to their availability;

(b) implement a program that will enable the agency to evaluate each contract to determine the ~~[appropriateness of the]~~ appropriate goal pursuant to subdivision one of this section for participation by minority-owned business enterprises and women-owned business enterprises;

(c) consider where practicable, the severability of construction projects and other bundled contracts; and

(d) consider compliance with the requirements of any federal law concerning opportunities for minority and women-owned business enterprises which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of any such law duplicate or conflict with the provisions hereof and if such duplication or conflict exists, the contracting agency shall waive the applicability of this section to the extent of such duplication or conflict.

5. (a) Contracting agencies shall administer the rules and regulations promulgated by the director in a good faith effort to ~~[meet]~~ achieve the maximum feasible portion of the agency's goals adopted pursuant to this article and the regulations of the director. Such rules and regulations: shall require a contractor to submit a utilization plan after bids are opened, when bids are required, but prior to the award of a state contract; shall require the contracting agency to review the utilization plan submitted by the contractor and to post the utilization plan and

1 any waivers of compliance issued pursuant to subdivision six of this
2 section on the website of the contracting agency within a reasonable
3 period of time as established by the director; shall require the
4 contracting agency to notify the contractor in writing within a period
5 of time specified by the director as to any deficiencies contained in
6 the contractor's utilization plan; shall require remedy thereof within a
7 period of time specified by the director; shall require the contractor
8 to submit periodic compliance reports relating to the operation and
9 implementation of any utilization plan; shall not allow any automatic
10 waivers but shall allow a contractor to apply for a partial or total
11 waiver of the minority and women-owned business enterprise participation
12 requirements pursuant to subdivisions six and seven of this section;
13 shall allow a contractor to file a complaint with the director pursuant
14 to subdivision eight of this section in the event a contracting agency
15 has failed or refused to issue a waiver of the minority and women-owned
16 business enterprise participation requirements or has denied such
17 request for a waiver; and shall allow a contracting agency to file a
18 complaint with the director pursuant to subdivision nine of this section
19 in the event a contractor is failing or has failed to comply with the
20 minority and women-owned business enterprise participation requirements
21 set forth in the state contract where no waiver has been granted.

22 (b) The rules and regulations promulgated pursuant to this subdivision
23 regarding a utilization plan shall provide that where enterprises have
24 been identified within a utilization plan, a contractor shall attempt,
25 in good faith, to utilize such enterprise at least to the extent indi-
26 cated. A contracting agency may require a contractor to indicate, within
27 a utilization plan, what measures and procedures he or she intends to
28 take to comply with the provisions of this article, but may not require,
29 as a condition of award of, or compliance with, a contract that a
30 contractor utilize a particular enterprise in performance of the
31 contract.

32 (c) Without limiting other grounds for the disqualification of bids or
33 proposals on the basis of non-responsibility, a contracting agency may
34 disqualify the bid or proposal of a contractor as being non-responsible
35 for failure to remedy notified deficiencies contained in the contrac-
36 tor's utilization plan within a period of time specified in regulations
37 promulgated by the director after receiving notification of such defi-
38 ciencies from the contracting agency. Where failure to remedy any noti-
39 fied deficiency in the utilization plan is a ground for disqualifica-
40 tion, that issue and all other grounds for disqualification shall be
41 stated in writing by the contracting agency. Where the contracting agen-
42 cy states that a failure to remedy any notified deficiency in the utili-
43 zation plan is a ground for disqualification the contractor shall be
44 entitled to an administrative hearing, on a record, involving all
45 grounds stated by the contracting agency. Such hearing shall be
46 conducted by the appropriate authority of the contracting agency to
47 review the determination of disqualification. A final administrative
48 determination made following such hearing shall be reviewable in a
49 proceeding commenced under article seventy-eight of the civil practice
50 law and rules, provided that such proceeding is commenced within thirty
51 days of the notice given by certified mail return receipt requested
52 rendering such final administrative determination. Such proceeding shall
53 be commenced in the supreme court, appellate division, third department
54 and such proceeding shall be preferred over all other civil causes
55 except election causes, and shall be heard and determined in preference
56 to all other civil business pending therein, except election matters,

1 irrespective of position on the calendar. Appeals taken to the court of
2 appeals of the state of New York shall be subject to the same prefer-
3 ence.

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~~ avail-
15 able to provide goods or services required under the contract in the
16 region in which the state contract is to be performed, the total dollar
17 value of the state contract, the scope of work to be performed and the
18 project size and term. If, based on such considerations, the contracting
19 agency determines there is not a reasonable availability of contractors
20 on the list of certified business to furnish services for the project,
21 it shall issue a waiver of compliance to the contractor. In making such
22 determination, the contracting agency shall first consider the avail-
23 ability of other business enterprises located in the region and shall
24 thereafter consider the financial ability of minority and women-owned
25 businesses located outside the region in which the contract is to be
26 performed to perform the state contract.

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

30 (i) report the issuance of the waiver to the director; and
31 (ii) publish on the contracting agency's website: (A) information
32 identifying the contract, including the value of the contract; (B) the
33 name of the contractor receiving the waiver; (C) the date of the waiver;
34 (D) whether the waiver was a total or partial waiver; and (E) the
35 specific contract provisions to which the waiver applies.

36 7. For purposes of determining a contractor's good faith effort to
37 comply with the requirements of this section or to be entitled to a
38 waiver therefrom the contracting agency shall consider:

39 (a) whether the contractor has advertised in general circulation
40 media, trade association publications, and minority-focus and women-fo-
41 cus media and, in such event, (i) whether or not certified minority or
42 women-owned businesses which have been solicited by the contractor
43 exhibited interest in submitting proposals for a particular project by
44 attending or having attended a pre-bid conference, if any, scheduled by
45 the state agency awarding the state contract with certified minority and
46 women-owned business enterprises; and

47 (ii) whether certified businesses which have been solicited by the
48 contractor have responded in a timely fashion to the contractor's solici-
49 tations for timely competitive bid quotations prior to the contracting
50 agency's bid date; and

51 (b) whether there has been written notification to appropriate certi-
52 fied businesses that appear in the directory of certified businesses
53 prepared pursuant to paragraph (f) of subdivision three of section three
54 hundred eleven of this article; and

1 (c) whether the contractor can reasonably structure the amount of work
2 to be performed under subcontracts in order to increase the likelihood
3 of participation by certified businesses.

4 8. In the event that a contracting agency fails or refuses to issue a
5 waiver to a contractor as requested within twenty days after having made
6 application therefor pursuant to subdivision six of this section or if
7 the contracting agency denies such application, in whole or in part, the
8 contractor may file a complaint with the director pursuant to section
9 three hundred sixteen of this article setting forth the facts and
10 circumstances giving rise to the contractor's complaint together with a
11 demand for relief. The contractor shall serve a copy of such complaint
12 upon the contracting agency by personal service or by certified mail,
13 return receipt requested. The contracting agency shall be afforded an
14 opportunity to respond to such complaint in writing.

15 9. If, after the review of a contractor's minority and women owned
16 business utilization plan or review of a periodic compliance report and
17 after such contractor has been afforded an opportunity to respond to a
18 notice of deficiency issued by the contracting agency in connection
19 therewith, it appears that a contractor is failing or refusing to comply
20 with the minority and women-owned business participation requirements as
21 set forth in the state contract and where no waiver from such require-
22 ments has been granted, the contracting agency may file a written
23 complaint with the director pursuant to section three hundred sixteen of
24 this article setting forth the facts and circumstances giving rise to
25 the contracting agency's complaint together with a demand for relief.
26 The contracting agency shall serve a copy of such complaint upon the
27 contractor by personal service or by certified mail, return receipt
28 requested. The contractor shall be afforded an opportunity to respond to
29 such complaint in writing.

30 § 6. Section 314 of the executive law, as added by chapter 261 of the
31 laws of 1988, subdivision 2-a as amended by chapter 175 of the laws of
32 2010, subdivision 2-b as added by chapter 409 of the laws of 2018,
33 subdivision 4 as amended and subdivision 5 as added by chapter 399 of
34 the laws of 2014, is amended to read as follows:

35 § 314. Statewide certification program. 1. The director shall promul-
36 gate rules and regulations providing for the establishment of a state-
37 wide certification program including rules and regulations governing the
38 approval, denial or revocation of any such certification. Such rules
39 and regulations shall include, but not be limited to, such matters as
40 may be required to ensure that the established procedures thereunder
41 shall at least be in compliance with the code of fair procedure set
42 forth in section seventy-three of the civil rights law.

43 2. For the purposes of this article, the office shall be responsible
44 for verifying businesses as being owned, operated, and controlled by
45 minority group members or women and for certifying such verified busi-
46 nesses. The director shall prepare a directory of certified businesses
47 for use by contracting agencies and contractors in carrying out the
48 provisions of this article. The director shall periodically update the
49 directory.

50 2-a. (a) The director shall establish a procedure enabling the office
51 to accept New York municipal corporation certification verification for
52 minority and women-owned business enterprise applicants in lieu of
53 requiring the applicant to complete the state certification process. The
54 director shall promulgate rules and regulations to set forth criteria
55 for the acceptance of municipal corporation certification. All eligible

1 municipal corporation certifications shall require business enterprises
2 seeking certification to meet the following standards:

3 (i) have at least fifty-one percent ownership by a minority or a
4 women-owned enterprise and be owned by United States citizens or perma-
5 nent resident aliens;

6 (ii) be an enterprise in which the minority and/or women-ownership
7 interest is real, substantial and continuing;

8 (iii) be an enterprise in which the minority and/or women-ownership
9 has and exercises the authority to control independently the day-to-day
10 business decisions of the enterprise;

11 (iv) be an enterprise authorized to do business in this state;

12 (v) be subject to a physical site inspection to verify the fifty-one
13 percent ownership requirement; **and**

14 ~~(vi) [be owned by an individual or individuals, whose ownership,~~
15 ~~control and operation are relied upon for certification, with a personal~~
16 ~~net worth that does not exceed three million five hundred thousand~~
17 ~~dollars, as adjusted annually for inflation according to the consumer~~
18 ~~price index; and~~

19 ~~(vii)]~~ be an enterprise that is a small business pursuant to subdivi-
20 sion twenty of section three hundred ten of this article.

21 (b) The director shall work with all municipal corporations that have
22 a municipal minority and women-owned business enterprise program to
23 develop standards to accept state certification to meet the municipal
24 corporation minority and women-owned business enterprise certification
25 standards.

26 (c) The director shall establish a procedure enabling the division to
27 accept federal certification verification for minority and women-owned
28 business enterprise applicants, provided said standards comport with
29 those required by the state minority and women-owned business program,
30 in lieu of requiring the applicant to complete the state certification
31 process. The director shall promulgate rules and regulations to set
32 forth criteria for the acceptance of federal certification.

33 2-b. The director shall establish a procedure enabling an applicant
34 who was a military service member to prove his or her race or ethnicity,
35 date of birth, place of birth and verification of address for purposes
36 of certification of the applicant's business as a minority-owned busi-
37 ness by submission of the DD Form 214 issued to the applicant by the
38 United States department of defense upon such applicant's retirement,
39 separation, or discharge from active duty in the armed forces of the
40 United States, provided the DD Form 214 contains such information, in
41 lieu of requiring the applicant to otherwise prove his or her race or
42 ethnicity. The director shall promulgate rules and regulations to set
43 forth criteria for the acceptance of the DD Form 214 by the office.

44 3. Following application for certification pursuant to this section,
45 the director shall provide the applicant with written notice of the
46 status of the application, including notice of any outstanding deficien-
47 cies, within ~~[thirty]~~ **fifteen** days. Within ~~[sixty]~~ **thirty** days of
48 submission of a final completed application, the director shall provide
49 the applicant with written notice of a determination by the office
50 approving or denying such certification and, in the event of a denial a
51 statement setting forth the reasons for such denial. Upon a determi-
52 nation denying or revoking certification, the business enterprise for
53 which certification has been so denied or revoked shall, upon written
54 request made within thirty days from receipt of notice of such determi-
55 nation, be entitled to a hearing before an independent hearing officer
56 designated for such purpose by the director. In the event that a request

1 for a hearing is not made within such thirty day period, such determi-
2 nation shall be deemed to be final. The independent hearing officer
3 shall conduct a hearing and upon the conclusion of such hearing, issue a
4 written recommendation to the director to affirm, reverse or modify such
5 determination of the director. Such written recommendation shall be
6 issued to the parties. The director, within thirty days, by order, must
7 accept, reject or modify such recommendation of the hearing officer and
8 set forth in writing the reasons therefor. The director shall serve a
9 copy of such order and reasons therefor upon the business enterprise by
10 personal service or by certified mail return receipt requested. The
11 order of the director shall be subject to review pursuant to article
12 seventy-eight of the civil practice law and rules.

13 4. The director may, after performing an availability analysis and
14 upon a finding that industry-specific factors coupled with personal net
15 worth or small business eligibility requirements pursuant to [~~subdivi-~~
16 ~~sions nineteen and~~] subdivision twenty of section three hundred ten of
17 this article, respectively, have led to the significant exclusion of
18 businesses owned by minority group members or women in that industry,
19 grant provisional MWBE certification status to applicants from that
20 designated industry, provided, however, that all other eligibility
21 requirements pursuant to subdivision seven or fifteen of section three
22 hundred ten of this article, as applicable, are satisfied. Any indus-
23 try-based determination made under this section by the director shall be
24 made widely available to the public and posted on the division's
25 website.

26 5. With the exception of provisional MWBE certification, as provided
27 for in subdivision twenty-three of section three hundred ten of this
28 article, all minority and women-owned business enterprise certifications
29 shall be valid for a period of [~~three~~] five years. The division shall
30 publish online a clear timeline of process with the number of days
31 expected to pass until certification. However, firms must recertify if
32 they buy out another firm. The online certification platform shall be
33 designed so that the certification timeline does not begin until all
34 documents are submitted.

35 § 7. Subdivisions 4, 5 and 7 of section 315 of the executive law, as
36 added by chapter 175 of the laws of 2010, are amended to read as
37 follows:

38 4. The division of minority and women's business development shall
39 issue an annual report which: (a) summarizes the report submitted by
40 each contracting agency pursuant to subdivision three of this section;
41 (b) contains such comparative or other information as the director deems
42 appropriate, including but not limited to goals compared to actual
43 participation of minority and women-owned business enterprises in state
44 contracting, to evaluate the effectiveness of the activities undertaken
45 by each such contracting agency to promote increased participation by
46 certified minority or women-owned businesses with respect to state
47 contracts and subcontracts; (c) contains a summary of all waivers of the
48 requirements of subdivisions six and seven of section three hundred
49 thirteen of this article allowed by each contracting agency during the
50 period covered by the report, including a description of the basis of
51 the waiver request and the contracting agency's rationale for granting
52 any such waiver; (d) describes any efforts to create a database or other
53 information storage and retrieval system containing information relevant
54 to contracting with minority and women-owned business enterprises; [~~and~~]
55 (e) contains a summary of: (i) all determinations of violations of this
56 article by a contractor or a contracting agency made during the period

covered by the annual report pursuant to section three hundred sixteen-a of this article; and (ii) the penalties or sanctions, if any, assessed in connection with such determinations and the rationale for such penalties or sanctions. Copies of the annual report shall be provided to the commissioner, the governor, the comptroller, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate, the minority leader of the assembly and shall also be made widely available to the public via, among other things, publication on a website maintained by the division of minority and women's business development.

5. Each agency shall include in its annual report to the governor and legislature pursuant to section one hundred sixty-four of [~~the executive law~~] this chapter its annual goals for contracts with minority-owned and women-owned business enterprises, the number of actual contracts issued to minority-owned and women-owned business enterprises; and a summary of all waivers of the requirements of subdivisions six and seven of section three hundred thirteen of this article allowed by the reporting agency during the preceding year, including a description of the basis of the waiver request and the rationale for granting such waiver. Each agency shall also include in such annual report whether or not it has been required to prepare a remedial plan, and, if so, the plan and the extent to which the agency has complied with each element of the plan.

7. If it is determined by the director that any agency has failed to act in good faith to implement the remedial action plan, pursuant to subdivision six of this section within one year, the director shall provide written notice of such a finding, which shall be publicly available, and direct implementation of remedial actions to:

(a) assure that sufficient and effective solicitation efforts to women and minority-owned business enterprises are being made by said agency;

(b) divide contract requirements, when economically feasible, into quantities that will expand the participation of women and minority-owned business enterprises;

(c) eliminate extended experience or capitalization requirements, when programmatically and economically feasible, that will expand participation by women and minority-owned business enterprises;

(d) identify specific proposed contracts as particularly attractive or appropriate for participation by women and minority-owned business enterprises with such identification to result from and be coupled with the efforts of paragraphs (a), (b), and (c) of this subdivision; and

(e) upon a finding by the director that an agency has failed to take affirmative measures to implement the remedial plan and to follow any of the remedial actions set forth by the director, and in the absence of any objective progress towards the agency's goals, require some or all of the agency's procurement, for a specified period of time, be placed under the direction and control of another agency or agencies, unless such agency is a state funded entity.

§ 8. Section 316-a of the executive law, as added by chapter 175 of the laws of 2010, is amended to read as follows:

§ 316-a. Prohibitions in contracts; violations. Every contracting agency shall include a provision in its state contracts expressly providing that any contractor who willfully and intentionally fails to comply with the minority and women-owned participation requirements of this article as set forth in such state contract shall be liable to the contracting agency for liquidated or other appropriate damages and shall provide for other appropriate remedies on account of such breach. A contracting agency that elects to proceed against a contractor for

breach of contract as provided in this section shall be precluded from seeking enforcement pursuant to section three hundred sixteen of this article; provided however, that the contracting agency shall include a summary of all enforcement actions undertaken pursuant to this section in its annual report submitted pursuant to ~~[subdivision three of]~~ section three hundred fifteen of this article.

§ 9. Subdivision 6 of section 163 of the state finance law, as amended by chapter 569 of the laws of 2015, is amended to read as follows:

6. Discretionary buying thresholds. Pursuant to guidelines established by the state procurement council: the commissioner may purchase services and commodities in an amount not exceeding eighty-five thousand dollars without a formal competitive process; state agencies may purchase services and commodities in an amount not exceeding fifty thousand dollars without a formal competitive process; and state agencies may purchase commodities or services from small business concerns or those certified pursuant to articles fifteen-A and seventeen-B of the executive law, or commodities or technology that are recycled or remanufactured, or commodities that are food, including milk and milk products, grown, produced or harvested in New York state in an amount not exceeding ~~[two]~~ four hundred thousand dollars without a formal competitive process.

§ 10. Subparagraph (i) of paragraph (b) of subdivision 3 of section 2879 of the public authorities law, as amended by chapter 174 of the laws of 2010, is amended to read as follows:

(i) for the selection of such contractors on a competitive basis, and provisions relating to the circumstances under which the board may by resolution waive competition, including, notwithstanding any other provision of law requiring competition, the purchase of goods or services from small business concerns or those certified as minority or women-owned business enterprises, or goods or technology that are recycled or remanufactured, in an amount not to exceed ~~[two hundred thousand]~~ one million dollars without a formal competitive process;

§ 11. The opening paragraph of subdivision (h) of section 121 of chapter 261 of the laws of 1988, amending the state finance law and other laws relating to the New York state infrastructure trust fund, as amended by section 1 of part 000 of chapter 59 of the laws of 2018, is amended to read as follows:

The provisions of sections sixty-two through sixty-six of this act shall expire and be deemed repealed on December thirty-first, two thousand ~~[nineteen]~~ twenty-four, except that:

§ 12. The executive law is amended by adding a new article 28 to read as follows:

ARTICLE 28

WORKFORCE DIVERSITY PROGRAM

Section 821. Definitions.

822. Workforce participation goals.

823. Reporting.

824. Enforcement.

825. Powers and responsibilities of the division.

826. Severability.

§ 821. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Contractor" shall mean an individual, a business enterprise, including a sole proprietorship, a partnership, a corporation, a not-for-profit corporation, or any other party to a state contract, or a

1 bidder in conjunction with the award of a state contract or a proposed
2 party to a state contract.

3 2. "Department" shall mean the department of labor.

4 3. "Director" shall mean the director of the division of minority and
5 women's business development.

6 4. "Disparity study" shall mean the most recent study of disparities
7 between the utilization of minority group members and women in the
8 performance of state contracts and the availability of minority group
9 members and women to perform such work by the director pursuant to arti-
10 cle fifteen-A of this chapter.

11 5. "Division" shall mean the department of economic development's
12 division of minority and women's business development.

13 6. "List of non-compliant contractors" shall mean a list of contrac-
14 tors and subcontractors, maintained by the division and published on the
15 website of the division, that are ineligible to participate as contrac-
16 tors or subcontractors in the performance of state contracts for a term
17 determined by the director.

18 7. "Minority group member" shall mean a United States citizen or
19 permanent resident alien who is and can demonstrate membership in one of
20 the following groups:

21 (a) Black persons having origins in any of the Black African racial
22 groups;

23 (b) Hispanic/Latino persons of Mexican, Puerto Rican, Dominican,
24 Cuban, Central or South American of either Indian or Hispanic origin,
25 regardless of race;

26 (c) Native American or Alaskan native persons having origins in any of
27 the original peoples of North America;

28 (d) Asian and Pacific Islander persons having origins in any of the
29 Far East countries, South East Asia, the Indian subcontinent or the
30 Pacific Islands.

31 8. "Non-compliant contractor" shall mean a contractor or subcontractor
32 that has failed to make a good faith effort to meet the workforce
33 participation goal established by a state agency on a state contract,
34 and has been listed by the division on its list of non-compliant
35 contractors.

36 9. "State agency" shall mean (a)(i) any state department, or (ii) any
37 division, board, commission or bureau of any state department, or (iii)
38 the state university of New York and the city university of New York,
39 including all their constituent units except community colleges and the
40 independent institutions operating statutory or contract colleges on
41 behalf of the state, or (iv) a board, a majority of whose members are
42 appointed by the governor or who serve by virtue of being state officers
43 or employees as defined in subparagraph (i), (ii) or (iii) of paragraph
44 (i) of subdivision one of section seventy-three of the public officers
45 law.

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

48 Albany County Airport Authority;

49 Albany Port District Commission;

50 Alfred, Almond, Hornellsville Sewer Authority;

51 Battery Park City Authority;

52 Cayuga County Water and Sewer Authority;

53 (Nelson A. Rockefeller) Empire State Plaza Performing Arts Center
54 Corporation;

55 Industrial Exhibit Authority;

56 Livingston County Water and Sewer Authority;

Long Island Power Authority;
Long Island Rail Road;
Long Island Market Authority;
Manhattan and Bronx Surface Transit Operating Authority;
Metro-North Commuter Railroad;
Metropolitan Suburban Bus Authority;
Metropolitan Transportation Authority;
Natural Heritage Trust;
New York City Transit Authority;
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.

10. "State contract" shall mean: (a) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars, whereby a state agency is committed to expend or does expend or grant 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 on behalf of, for, or rendered or furnished to the state agency; (b) a written agreement in excess of one hundred thousand dollars whereby a state agency is committed to expend or does expend or grant funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; and (c) 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.

11. "Subcontractor" shall mean any individual or business enterprise that provides goods or services to any individual or business for use in the performance of a state contract, whether or not such goods or services are provided to a party to a state contract.

1 § 822. Workforce participation goals. 1. The director, in consulta-
2 tion with the department, shall develop aspirational goals for the
3 utilization of minority group members and women in construction trade,
4 profession, and occupation. The minimum for each goal shall be thirty
5 percent.

6 (a) Aspirational goals for the utilization of minority group members
7 and women must set forth the expected participation of minority group
8 members and women in each construction trade, profession, and occupa-
9 tion, and shall be expressed as a percentage of the total hours of work
10 to be performed by each trade, profession, and occupation based on the
11 availability of minority group members and women within each trade,
12 profession, and occupation.

13 (i) The aspirational goals shall set forth separate levels of expected
14 participation by men and women for each minority group, and for Cauca-
15 sian women, in each construction trade, profession, and occupation.

16 (ii) Aspirational goals for the expected participation of minority
17 group members and women shall be established for each county of the
18 state. The director may establish aspirational goals for the expected
19 participation of minority group members and women for municipalities
20 where the director deems feasible and appropriate.

21 (iii) The director shall, in establishing the aspirational goals,
22 consider the findings of the most recent disparity study and any rele-
23 vant data published by the United States Census Bureau.

24 (b) The director shall update the aspirational goals on a periodic
25 basis, no less than annually.

26 2. State agencies shall, for each invitation for bids, request for
27 proposals, or other solicitation that will result in the award of a
28 state contract, set forth the expected degree of workforce participation
29 by minority group members and women.

30 (a) Each workforce participation goal established by a state agency
31 shall set forth the expected level of participation by minority group
32 members and women in the performance of each trade, profession, and
33 occupation required in the performance of the contract.

34 (b) Goals for the participation of minority group members and women
35 shall set forth separate goals for each of the following groups in each
36 trade, profession, and occupation:

37 (i) Black men;

38 (ii) Black women;

39 (iii) Hispanic/Latino men;

40 (iv) Hispanic/Latino women;

41 (v) Native American men;

42 (vi) Native American women;

43 (vii) Asian men;

44 (viii) Asian women;

45 (ix) Caucasian women.

46 (c) In establishing workforce participation goals, state agencies
47 shall consider factors including, but not limited to:

48 (i) the findings of the most recent disparity study;

49 (ii) any relevant data published by the United States Census Bureau;
50 and

51 (iii) if applicable, any aspirational goal established by the divi-
52 sion.

53 (d) In any case where a state agency establishes a workforce partic-
54 ipation goal on an invitation for bids, request for proposals, or other
55 solicitation that will result in the award of a state contract for
56 construction that deviates from the aspirational goal for construction

1 work in the county or municipality in which the work will be performed,
2 the state agency shall document numerical evidence demonstrating that
3 the application of the aspirational goal would not be practical, feasi-
4 ble, or appropriate.

5 3. Every contractor responding to an invitation for bids, request for
6 proposals, or other solicitation that will result in the award of a
7 state contract subject to workforce participation goals pursuant to this
8 section shall agree to make a good faith effort to achieve such work-
9 force participation goal or request a waiver of such goal.

10 (a) A contractor that certifies that it will make a good faith effort
11 to achieve a workforce participation goal shall provide with its
12 response to the applicable invitation for bids, request for proposals,
13 or other solicitation:

14 (i) A certification stating that the contractor will make a good faith
15 effort to achieve the applicable workforce participation goal and will
16 contractually require any subcontractors to the contractor to make a
17 good faith effort to achieve the applicable workforce participation goal
18 in any subcontracted work, which certification shall acknowledge that
19 failure by the contractor or any of its subcontractors to make a good
20 faith effort to achieve the applicable workforce participation goal may
21 result in a determination by the contracting state agency that the
22 contractor or its subcontractor is a non-compliant contractor;

23 (ii) The level of anticipated participation by minority group members
24 and women as employees to the contractor, or, if the state agency has
25 specifically indicated that such documentation is not required as part
26 of the response to the invitation for bids, request for proposals, or
27 other solicitation, a date certain for the submission of such documenta-
28 tion after the award of the state contract;

29 (iii) A list of all subcontractors anticipated to perform work on the
30 state contract and the level of anticipated participation by minority
31 group members and women as employees to each subcontractor, or, if the
32 state agency has specifically indicated that such documentation is not
33 required as part of the response to the invitation for bids, request for
34 proposals, or other solicitation, a date certain for the submission of
35 such documentation after the award of the state contract; and

36 (iv) Such other information as the contracting state agency shall
37 require.

38 (b) A contractor that requests a waiver of a workforce participation
39 goal shall provide with its response to the applicable invitation for
40 bids, request for proposals, or other solicitation:

41 (i) Numerical evidence setting forth why the achievement of the work-
42 force participation goal is not practical, feasible, or appropriate in
43 light of the trades, professions, and occupations required to perform
44 the work of the state contract;

45 (ii) Documentation of the contractor's efforts, and any efforts by
46 subcontractors to the contractor, to promote the inclusion of minority
47 group members and women in trades, professions, and occupations required
48 in the performance of the state contract;

49 (iii) The maximum feasible level of participation by minority group
50 members and women in each of the trades, professions, and occupations
51 required in the performance of the work of the state contract;

52 (iv) The level of anticipated participation by minority group members
53 and women as employees to the contractor;

54 (v) A list of all subcontractors anticipated to perform work on the
55 state contract and the level of anticipated participation by minority
56 group members and women as employees to each subcontractor; and

1 (vi) Any other relevant information evidencing that the contractor's
2 achievement of the workforce participation goal would not be practical,
3 feasible, or appropriate.

4 4. A state agency shall not award a state contract to a contractor
5 unless the contractor has (i) certified that it will make a good faith
6 effort to achieve the applicable workforce participation goal and
7 provided documentation of the workforce anticipated to perform the work
8 of the state contract or (ii) submitted a waiver request which the state
9 agency deems to reflect the maximum feasible participation of minority
10 group members and women in each of the trades, professions, and occupa-
11 tions required in performance of the work of the state contract.

12 (a) In the event that a contractor submits a certification or waiver
13 request that is accepted by the state agency, the state agency shall
14 establish in the state contract the expected level of participation by
15 minority group members and women in each of the trades, professions, and
16 occupations required in performance of the work of the state contract,
17 require that the contractor make good faith efforts to achieve such
18 workforce participation goals, require that the contractor require any
19 subcontractors to make a good faith effort to achieve the applicable
20 workforce participation goal in any subcontracted work, and indicate
21 that the failure of the contractor or any of its subcontractors to make
22 a good faith effort to achieve the workforce participation goal may
23 result in the contractor or subcontractor being deemed a non-compliant
24 contractor.

25 (b) In the event that a contractor fails to submit a certification,
26 waiver request, or any other information required by the state agency,
27 or the state agency determines that a contractor's waiver request does
28 not demonstrate that the applicable workforce participation goal is
29 impractical, unfeasible, or inappropriate, the state agency shall notify
30 the contractor of the deficiency in writing and provide the contractor
31 ten business days to remedy the noticed deficiency. A state agency shall
32 reject any bid or proposal of a contractor that fails to timely respond
33 to a notice of deficiency or to provide documentation remedying the
34 deficiency to the satisfaction of the state agency.

35 (i) Where failure to remedy any notified deficiency in the workforce
36 utilization plan is a ground for disqualification, that issue and all
37 other grounds for disqualification shall be stated in writing by the
38 contracting state agency. The contractor shall be entitled to an admin-
39 istrative hearing, on a record, involving all grounds stated by the
40 contracting state agency in its notice of the contractor's disqualifica-
41 tion. Such hearing shall be conducted by the division to review the
42 determination of disqualification. Contractors required to submit to
43 such hearing shall have an opportunity to be heard. A final administra-
44 tive determination made following such hearing shall be reviewable in a
45 proceeding commenced under article seventy-eight of the civil practice
46 law and rules, provided that such proceeding is commenced within one
47 hundred twenty days of the notice given by certified mail return receipt
48 requested rendering such final administrative determination. Such
49 proceeding shall be commenced in the supreme court and such proceeding
50 shall be preferred over all other civil causes except election causes,
51 and shall be heard and determined in preference to all other civil busi-
52 ness pending therein, except election matters, irrespective of position
53 on the calendar. Appeals taken to the court of appeals of the state of
54 New York shall be subject to the same preference.

55 § 823. Reporting. 1. State contracts shall require contractors to
56 submit, and to require any subcontractors to submit, to the contracting

1 state agency reports documenting the hours worked by employees of the
2 contractor and any subcontractors in the performance of the work of the
3 state contract. Such reports shall be submitted no less frequently than
4 monthly for state contracts for construction and quarterly for all other
5 state contracts. Such reports shall identify the race, ethnicity,
6 gender, and trade, profession, and occupation of each employee perform-
7 ing work on a state contract.

8 2. State agencies shall submit periodic reports to the director, or
9 the designee of the director, concerning the participation of minority
10 group members and women in state contracts let by such agencies and such
11 state agencies' compliance with this article. Such reports shall be
12 submitted at such time, and include such information, as the director
13 shall require in regulations. State agencies shall make available their
14 facilities, books, and records for inspection, upon reasonable notice,
15 by the director or the director's designee.

16 3. The department shall provide such assistance as the director shall
17 require in carrying out the requirements of this section.

18 § 824. Enforcement. 1. Where it appears that a contractor cannot,
19 after a good faith effort, meet the workforce participation goals set
20 forth in a particular state contract, a contractor may file a written
21 application with the contracting state agency requesting a partial or
22 total waiver of such requirements. Such request shall set forth the
23 reasons for such contractor's inability to meet the workforce partic-
24 ipation goal, specifically describe the reasons for any deviations from
25 the anticipated workforce participation set forth in the contractor's
26 bid or proposal leading to the award of the state contract, and describe
27 the efforts by the contractor and any subcontractors to achieve the
28 maximum feasible participation of minority group members and women in
29 the performance of the work of the state contract. Where the contrac-
30 tor's inability to achieve the workforce participation goal on a state
31 contract is attributable to the failure of one or more subcontractors to
32 make good faith efforts to achieve the maximum feasible participation of
33 minority group members and women in the performance of the work of the
34 state contract, the contractor shall identify such subcontractor or
35 subcontractors to the contracting state agency.

36 2. A state agency shall grant a request for a waiver of workforce
37 participation goals on a state contract where:

38 (a) The contractor demonstrates that the contractor and its subcon-
39 tractors made good faith efforts to achieve the workforce participation
40 goal on the state contract, and that insufficient minority group members
41 or women were available in the trades, professions, and occupations
42 required to perform the work of the state contract; or,

43 (b) The contractor contractually required each of its subcontractors
44 to make a good faith effort to achieve the maximum feasible partic-
45 ipation of minority group members and women in the performance of the
46 subcontracted work, periodically monitored such subcontractors' deploy-
47 ment of minority group members and women in the performance of the
48 subcontracted work, provided notice to such subcontractors of any defi-
49 ciencies in their deployment of minority group members and women in the
50 performance of such subcontracted work, and could not achieve the work-
51 force participation goal for one or more trades, professions, or occupa-
52 tions without the good faith efforts of such subcontractors.

53 3. Where a state agency denies a contractor's request for a waiver of
54 workforce participation goals pursuant to this section, the state agency
55 may recommend to the director and the department that the contractor be
56 deemed a non-compliant contractor.

1 4. Where a state agency grants a request for a waiver of workforce
2 participation goals pursuant to this section based on one or more
3 subcontractors' failure to make good faith efforts to achieve the maxi-
4 mum feasible participation of minority group members and women in the
5 performance of the subcontracted work, the state agency may recommend to
6 the director and the department that the subcontractor be deemed a non-
7 compliant contractor.

8 5. Upon receipt of a recommendation from a state agency that a
9 contractor or subcontractor should be deemed a non-compliant contractor,
10 the director shall, with the assistance of the department, review the
11 facts and circumstances forming the basis of the recommendation and
12 issue a determination as to whether or not the contractor or subcontrac-
13 tor should be deemed a non-compliant contractor and, if so, the duration
14 of such status as a non-compliant contractor. Such status shall last for
15 a maximum of four years in duration. In determining the duration of a
16 contractor's or subcontractor's status as a non-compliant contractor,
17 the director shall consider:

18 (i) whether the contractor or subcontractor has previously been deemed
19 a non-compliant contractor;

20 (ii) the number of hours of expected participation by minority group
21 members and women lost as a result of the contractor's or subcontrac-
22 tor's failure to make good faith efforts to include minority group
23 members or women in the performance of one or more state contracts; and

24 (iii) whether the contractor or subcontractor has offered to provide
25 employment opportunities, training, or other remedial benefits to minor-
26 ity group members or women in relevant trades, professions, or occupa-
27 tions.

28 6. A contractor or subcontractor deemed a non-compliant contractor by
29 the director may request an administrative hearing before an independent
30 hearing officer to appeal the determination of the director. The deci-
31 sion of the hearing officer shall be final and may only be vacated or
32 modified as provided in article seventy-eight of the civil practice law
33 and rules upon an application made within the time provided by such
34 article.

35 7. Upon a final determination that a contractor or subcontractor is a
36 non-compliant contractor, the director shall list the contractor or
37 subcontractor as such on its website and indicate the term of such
38 contractor's or subcontractor's status as a non-compliant contractor. A
39 non-compliant contractor shall be ineligible to participate as a
40 contractor or subcontractor on any state contract.

41 § 825. Powers and responsibilities of the division. 1. The director
42 shall post to the website of the division on or before April first of
43 each year the aspirational goals for the utilization of minority group
44 members and women in construction required pursuant to section eight
45 hundred twenty-two of this article.

46 2. The director shall promulgate rules and regulations for the imple-
47 mentation of this article, including, but not limited to, procedures for
48 the submission of certifications and workforce utilization plans by
49 contractors, criteria for granting waivers of workforce participation
50 goals, and the contents of reports by state agencies concerning their
51 implementation of the requirements of this article.

52 3. The division shall, from time to time, review the facilities,
53 books, and records of state agencies to ascertain the accuracy of their
54 reports and their compliance with the requirements of this article. The
55 department shall provide such assistance as the director shall require
56 in carrying out the requirements of this section.

1 § 826. Severability. If any clause, sentence, paragraph, section or
2 part of this article shall be adjudged by any court of competent juris-
3 isdiction to be invalid, the judgment shall not affect, impair or invali-
4 date the remainder thereof, but shall be confined in its operation to
5 the clause, sentence, paragraph, section or part of this article direct-
6 ly involved in the controversy in which the judgment shall have been
7 rendered.

8 § 13. The executive law is amended by adding a new section 312-b to
9 read as follows:

10 § 312-b. Study of the feasibility of a minority and women-owned busi-
11 ness enterprise capacity mentorship program. 1. The empire state devel-
12 opment corporation shall conduct a study to explore the feasibility of a
13 minority and women-owned business enterprise capacity mentorship
14 program. The study should focus on which agencies and industries would
15 benefit most from such program, the utilization of any existing minority
16 and women-owned business enterprise mentorship programs, and any fiscal
17 implications. The study shall specifically focus on:

18 (a) which state agencies would benefit most from such program concen-
19 trating in construction;

20 (b) which state agencies would benefit most from such program concen-
21 trating in professional services;

22 (c) which state agencies would benefit most from such program concen-
23 trating in non-professional services;

24 (d) which state agencies would benefit most from such program concen-
25 trating in purchases of commodities;

26 (e) the duration of time minority and women-owned business enterprises
27 should participate in each program concentration described in paragraphs
28 (a) through (d) of this subdivision;

29 (f) the feasibility that such successful completion of such program
30 could be used as a factor for prequalifying participating minority and
31 women-owned business enterprises; and

32 (g) how such program can be tailored to better prepare minority and
33 women-owned business enterprises for bidding on contracts with such
34 agencies upon successful completion of the program.

35 2. Within twelve months of the effective date of this section, the
36 empire state development corporation shall issue a report of its find-
37 ings and recommendations to the governor, the temporary president of the
38 senate and the speaker of the assembly. Such report shall include, but
39 not be limited to, the following:

40 (a) actions that can be implemented to establish such capacity mentor-
41 ship program, a plan of action for such implementation, and the esti-
42 imated cost of the program including any additional division personnel
43 that may be required;

44 (b) any regulatory actions required by any agency in order to imple-
45 ment such program, a plan of action for implementing such actions, and
46 the estimated cost of such implementation;

47 (c) actions that require statutory changes in order to be implemented
48 and the estimated cost of such implementation; and

49 (d) the extent to which any existing minority and women-owned business
50 enterprise mentorship program, including pursuant to section one hundred
51 forty-seven of the state finance law, has been implemented, and the
52 relative success of such programs.

53 3. Within twenty-four months of the effective date of this section,
54 the empire state development corporation shall issue a report detailing
55 the actions taken to implement the recommendations of such study to the
56 governor, the temporary president of the senate and the speaker of the

1 assembly. Such report shall include a full examination of all aspects
2 of a minority and women-owned business enterprise capacity mentorship
3 program, the benefits of such program, a proposed plan of action for the
4 permanent establishment of such program and the estimated cost of such
5 program.

6 § 14. The executive law is amended by adding a new section 312-c to
7 read as follows:

8 § 312-c. Minority and women-owned business enterprise mentorship
9 program. The empire state development corporation shall establish minori-
10 ty and women-owned business enterprise capacity mentorship program,
11 funding subject to appropriations. The program shall be tailored to
12 better prepare minority and women-owned business enterprises for bidding
13 on contracts with such agencies upon successful completion of the
14 program, ensure that mentor and mentee are connected based on a commer-
15 cially useful function, and allow mentees to borrow under the program.

16 § 15. The empire state development corporation shall establish minori-
17 ty and women-owned business enterprise regional councils as divisions of
18 regional economic development councils.

19 § 16. The division of minority and women's business development shall
20 allow the option for minority and women-owned business enterprise firms
21 to submit invoices online. Allow the vendor and the public to track the
22 invoice process. Subject to appropriations.

23 § 17. This act shall take effect July 1, 2019; provided, however,
24 that:

25 (a) the amendments to article 15-A of the executive law, made by
26 sections one, one-a, two, three, four, five, six, seven, eight, thirteen
27 and fourteen of this act, shall not affect the expiration and repeal of
28 such article and shall expire and be deemed repealed therewith;

29 (b) the amendments to section 163 of the state finance law, made by
30 section nine of this act, shall not affect the expiration and repeal of
31 such section, and shall expire and be deemed repealed therewith; and

32 (c) section twelve of this act shall expire and be deemed repealed
33 December 31, 2024.