

STATE OF NEW YORK

2420

2019-2020 Regular Sessions

IN SENATE

January 24, 2019

Introduced by Sen. KAPLAN -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

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

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

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

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

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

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1 businesses located outside the region in which the contract is to be
2 performed to perform the state contract.

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

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

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

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

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

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

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

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

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

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

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