

STATE OF NEW YORK

2179

2019-2020 Regular Sessions

IN SENATE

January 23, 2019

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

AN ACT to amend the executive law and the labor 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 department of labor and
7 to the director of the division of minority and women's business devel-
8 opment in the department of economic development; and

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

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

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

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

28 (j) to keep a record of partial and total waivers of compliance issued
29 pursuant to paragraph (b) of subdivision six of section three hundred
30 thirteen of this article and to make such record publicly available on
31 the division's website in a location easily accessible to the general
32 public. The record shall provide, at a minimum: (A) information identi-
33 fying the contract, including the amount of the contract; (B) informa-
34 tion identifying the contracting agency; (C) the name of the contractor
35 receiving the waiver; and (D) the date of the waiver.

36 § 3. Section 21 of the labor law is amended by adding a new subdivi-
37 sion 16 to read as follows:

38 16. Shall compile and publish, on an annual basis, a list of waivers
39 of compliance with state contract provisions concerning minority and
40 women-owned business enterprise participation requirements, issued
41 pursuant to paragraph (b) of subdivision six of section three hundred
42 thirteen of the executive law. The commissioner or his or her delegate
43 shall make such list publicly available on the department's website in a
44 location easily accessible to the general public. The list shall
45 provide, at a minimum: (A) information identifying the contract, includ-
46 ing the amount of the contract; (B) information identifying the
47 contracting agency; (C) the name of the contractor receiving the waiver;
48 and (D) the date of the waiver.

49 § 4. This act shall take effect on the sixtieth day after it shall
50 have become a law; provided, however, that:

51 a. the amendments to subdivision 6 of section 313 of the executive law
52 made by section one of this act shall not affect the expiration of arti-
53 cle 15-A of such law and shall be deemed to expire therewith;

54 b. the amendments to subdivision 3 of section 311 of the executive law
55 made by section two of this act shall not affect the expiration of arti-
56 cle 15-A of such law and shall be deemed to expire therewith; and

1 c. the director of the division of minority and women's business
2 development and the commissioner of labor shall immediately promulgate
3 rules and regulations and take all other necessary actions to implement
4 the provisions of this act on or before such effective date.