STATE OF NEW YORK

6575

2019-2020 Regular Sessions

IN SENATE

June 16, 2019

Introduced by Sen. SANDERS -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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

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

PART __

Section 1. Paragraph (e) of subdivision 7, paragraph (b) of subdivision 8, subdivision 13, paragraph (e) of subdivision 15, subdivisions 16, 19, 21 and 22 of section 310 of the executive law, paragraph (b) of subdivision 8 as added by chapter 261 of the laws of 1988, paragraph (e) of subdivision 7 and paragraph (e) of subdivision 15 as amended by chapter 22 of the laws of 2014, subdivision 13 as amended by chapter 506 of the laws of 2009, subdivision 16 as added by section 3 of part BB of chapter 59 of the laws of 2006, and subdivisions 19, 21 and 22 as added by chapter 175 of the laws of 2010, are amended to read as follows:

(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~~] **fifteen** million [~~five hundred thousand~~] dollars, **and such other amount as the director shall set forth in regulations,** as adjusted annually on the first of January

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

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for inflation according to the consumer price index of the previous year; and

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

13. "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 contracting agency is committed to expend or does expend 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 for, on behalf of, or rendered or furnished to the contracting agency; (b) a written agreement in excess of one hundred thousand dollars whereby a contracting agency is committed to expend or does expend 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.

(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~~] fifteen million [~~five hundred thousand~~] dollars, and such other amount as the director shall set forth in regulations, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and

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 and procurement ombudsman.

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, ownership interest in a holding company established for the exclusive and sole purpose of leasing machinery, equipment, or vehicles exclusively to the certified minority or women-owned business enterprise that is majority owned by the minority group member or woman relied upon for certification, and the holding company does not own any other assets of any kind, or up to [~~five~~] seven hundred fifty 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.

21. "The [~~2010~~] disparity study" shall refer to the 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~~] June thirtieth, two thousand [~~ten~~] 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.

§ 2. Paragraphs (f) and (i) of subdivision 3 and the opening paragraph of subdivision 4 of section 311 of the executive law, paragraph (f) of subdivision 3 as added by chapter 261 of the laws of 1988, paragraph (i) of subdivision 3 as added by section 1 of part BB of chapter 59 of the laws of 2006 and the opening paragraph of subdivision 4 as amended by chapter 361 of the laws of 2009, are amended and a new paragraph (d-1) is added to subdivision 3 and two new paragraphs (d) and (e) are added to subdivision 4 to read as follows:

(d-1) to require all contracting state agencies to develop a four-year growth plan to determine a means of promoting and increasing participation by minority-owned and women-owned business enterprises with respect to state contracts and subcontracts. Every four years, beginning September fifteenth, two thousand twenty, each contracting state agency shall submit a four-year growth plan as part of its annual report to the governor and legislature pursuant to section one hundred sixty-four of this chapter.

(f) to prepare and update [~~periodically~~]**, no less than annually,** a directory of certified minority and women-owned business enterprises which shall, wherever practicable, be divided into categories of labor, services, supplies, equipment, materials and recognized construction trades and which shall indicate areas or locations of the state where such enterprises are available to perform services;

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

(j) to make publicly available records of all waivers of compliance reported pursuant to paragraph (b) of subdivision six of section three hundred thirteen of this article on the division's website.

The director [~~may~~] **shall** provide assistance to, and facilitate access to programs serving certified businesses as well as applicants 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. **The director shall maintain a toll-free number at the department of economic development to be used to answer questions concerning the MWBE certification process.** In addition, the director may, either independently or in conjunction with other state agencies:

(d) conduct outreach events, training workshops, seminars, and other such educational programs throughout the state, including all regional offices, to state agencies, external stakeholders, and the public, to promote awareness and utilization of minority and women-owned business enterprises; and

(e) identify and establish mentorship opportunities and other business development programs to increase capacity and better prepare MWBEs for bidding on contracts with state agencies upon successful completion of the mentorship opportunity. Such mentorship opportunities shall be

intended to ensure that mentor and mentee are connected based on a commercially useful function.

§ 3. Section 311-a of the executive law, as added by section 4 of part BB of chapter 59 of the laws of 2006, is amended to read as follows:

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

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

3. The statewide advocate [~~shall establish a toll-free number at the department of economic development to be used to answer questions concerning the MWBE certification process~~] shall conduct periodic audits of state contracting agencies' compliance with the requirements of section three hundred fifteen of this article, such audits shall include a review of the books and records of state contracting agencies concerning, among other things, annual agency expenditures, annual participation of minority and women-owned business enterprises as prime contractors and subcontractors in state contracting agencies' state contracts, and documentation of state contracting agencies' good faith efforts to maximize minority and women-owned business enterprise participation in such agencies' contracting.

4. The statewide advocate shall investigate complaints by certified minority-owned business enterprises or women-owned business enterprises concerning a procuring governmental entity's failure to comply with the requirements of section three hundred fifteen of this article.

5. The statewide advocate shall report to the director and commissioner by November fifteenth on an annual basis on all activities related to fulfilling the obligations of the office of the statewide advocate including, but not limited to: (a) the number of complaints investigated; (b) the resolution of complaints, as applicable; and (c) information regarding audits conducted pursuant to this subdivision. The [~~commissioner~~] director shall include the unedited text of the statewide advocate's report within the reports submitted by the department of economic development to the governor and the legislature.

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

§ 312-a. Study of minority and women-owned business [~~enterprise programs~~] enterprises. 1. The director of the division of minority and women-owned business development [~~in the department of economic develop-~~

~~ment~~] is authorized and directed to recommission a statewide disparity study regarding the participation of minority and women-owned business enterprises in state contracts since the amendment of this article to be delivered to the governor and legislature no later than August fifteenth, two thousand [~~sixteen~~] twenty-three. The study shall be prepared by an entity independent of the department and selected through a request for proposal process. The purpose of such study is:

(a) to determine whether there is a disparity between the number of qualified minority and women-owned businesses ready, willing and able to perform state contracts for commodities, services and construction, and the number of such contractors actually engaged to perform such contracts, and to determine what changes, if any, should be made to state policies affecting minority and women-owned business enterprises; [~~and~~]

(b) to determine whether there is a disparity between the number of qualified minorities and women ready, willing and able, with respect to labor markets, qualifications and other relevant factors, to participate in contractor employment, management level bodies, including boards of directors, and as senior executive officers within contracting entities and the number of such group members actually employed or affiliated with state contractors in the aforementioned capacities, and to determine what changes, if any, should be made to state policies affecting minority and women group populations with regard to state contractors' employment and appointment practices relative to diverse group members. Such study shall include, but not be limited to, an analysis of the history of minority and women-owned business enterprise programs and their effectiveness as a means of securing and ensuring participation by minorities and women, and a disparity analysis by market area and region of the state. Such study shall distinguish between minority males, minority females and non-minority females in the statistical analysis; and

(c) such study shall also include an analysis of the utilization on state agency contracts of businesses owned by an Indian nation or tribe, as such term is defined in section two of the Indian law, whether a disparity exists between availability of such businesses to participate on state agency contracts and utilization, and, if so, the feasibility of authorizing an Indian nation or tribe owned businesses to become certified as a participant in the minority and women-owned business enterprise program.

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

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

§ 313. Opportunities for minority and women-owned business enterprises. 1. Goals and requirements for agencies and contractors. Each agency shall structure procurement procedures for contracts made directly or indirectly to minority and women-owned business enterprises, in accordance with the findings of the [~~two thousand ten~~] disparity study, consistent with the purposes of this article, to attempt to achieve the [~~following~~] recommended results with regard to total annual statewide procurement in the following industries:

(a) construction industry for certified minority-owned business enterprises[~~: fourteen and thirty-four hundredths percent~~];

(b) construction industry for certified women-owned business enterprises[~~: eight and forty-one hundredths percent~~];
(c) construction related professional services industry for certified minority-owned business enterprises[~~: thirteen and twenty-one hundredths percent~~];
(d) construction related professional services industry for certified women-owned business enterprises[~~: eleven and thirty-two hundredths percent~~];
(e) non-construction related services industry for certified minority-owned business enterprises[~~: nineteen and sixty hundredths percent~~];
(f) non-construction related services industry for certified women-owned business enterprises[~~: seventeen and forty-four hundredths percent~~];
(g) commodities industry for certified minority-owned business enterprises[~~: sixteen and eleven hundredths percent~~];
(h) commodities industry for certified women-owned business enterprises[~~: ten and ninety-three hundredths percent~~];
(i) overall agency total dollar value of procurement for certified minority-owned business enterprises[~~: sixteen and fifty-three hundredths percent~~];
(j) overall agency total dollar value of procurement for certified women-owned business enterprises[~~: twelve and thirty-nine hundredths percent~~]; and
(k) overall agency total dollar value of procurement for certified minority, women-owned business enterprises[~~: twenty-eight and ninety-two hundredths percent~~].

1-a. The director shall ensure that each state agency has been provided with [~~a~~] an electronic copy of the [~~two thousand ten~~] disparity study.

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

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

2. The director shall promulgate rules and regulations [~~pursuant to the goals established in~~] based on subdivision one of this section and the findings of the disparity study that provide measures and procedures to ensure that certified minority and women-owned businesses shall be given the opportunity for maximum feasible participation in the performance of state contracts and to assist in the agency's identification of those state contracts for which minority and women-owned certified businesses may best bid to actively and affirmatively promote and assist their participation in the performance of state contracts so as to facilitate the agency's achievement of the maximum feasible portion of the goals for state contracts to such businesses.

2-a. The director shall promulgate rules and regulations that will accomplish the following:
(a) provide for the certification and decertification of minority and women-owned business enterprises for all agencies through a single process that meets applicable requirements;
(b) require that each contract solicitation document accompanying each solicitation set forth the expected degree of minority and women-owned business enterprise participation based, in part, on:
(i) the potential subcontract opportunities available in the prime procurement contract; [~~and~~]
(ii) the availability, as contained within the study, of certified minority and women-owned business enterprises to respond competitively

to the potential subcontract opportunities **as reflected in the division's directory of certified minority and women-owned business enterprises; and**

(iii) the findings of the disparity study;

(c) require that each agency provide a current list of certified minority business enterprises to each prospective contractor **or direct them to the division's directory of certified minority and women-owned business enterprises for such purpose**;

(d) allow a contractor that is a certified minority-owned or women-owned business enterprise to use the work it performs to meet requirements for use of certified minority-owned or women-owned business enterprises as subcontractors;

(e) **establish criteria for agencies to credit the participation of minority and women-owned business enterprises towards the achievement of the minority and women-owned business enterprise participation goals on a state contract based on the commercially useful function provided by each minority and women-owned business enterprise on the contract;**

(f) provide for joint ventures, which a bidder may count toward meeting its minority and women-owned business enterprise participation;

[~~(f)~~] **(g)** consistent with subdivision six of this section, provide for circumstances under which an agency may waive obligations of the contractor relating to minority and women-owned business enterprise participation;

[~~(g)~~] **(h)** require that an agency verify that minority and women-owned business enterprises listed in a successful bid are actually participating to the extent listed in the project for which the bid was submitted;

[~~(h)~~] **(i)** provide for the collection of statistical data by each agency concerning actual minority and women-owned business enterprise participation; [~~and~~

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

Such rules shall set forth the maximum personal net worth of a minority group member or woman who may be relied upon to certify a business as a minority-owned business enterprise or women-owned business enterprise, and may establish different maximum levels of personal net worth for minority group members and women on an industry-by-industry basis for such industries as the director shall determine. Such regulations relating to the classification of the industry-by-industry personal net worth thresholds above the fifteen million dollar threshold shall consider the personal net worth of the owners of both certified and non-certified businesses, including but not limited to, prime contractors and subcontractors, as well as any such other factors needed to establish such thresholds. The provisions of the regulations pertaining to personal net worth shall, to the extent practicable, be implemented by June thirtieth, two thousand twenty and shall consider adjustments for inflation annually on January first of the previous year according to the consumer price index.

3. Solely for the purpose of providing the opportunity for meaningful participation by certified businesses in the performance of state 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~~] **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~~] **participation by minority and women owned business enterprises** 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 any waivers of compliance issued pursuant to subdivision six of this section on the website of the contracting agency [~~within a reasonable period of time as established by the director~~]; shall require the

contracting agency to notify the contractor in writing within a period of time specified by the director as to any deficiencies contained in the contractor's utilization plan; shall require remedy thereof within a period of time specified by the director; shall require the contractor to submit periodic compliance reports relating to the operation and implementation of any utilization plan; shall not allow any automatic waivers but shall allow a contractor to apply for a partial or total waiver of the minority and women-owned business enterprise participation requirements pursuant to subdivisions six and seven of this section; shall allow a contractor to file a complaint with the director pursuant to subdivision eight of this section in the event a contracting agency has failed or refused to issue a waiver of the minority and women-owned business enterprise participation requirements or has denied such request for a waiver; and shall allow a contracting agency to file a complaint with the director pursuant to subdivision nine of this section in the event a contractor is failing or has failed to comply with the minority and women-owned business enterprise participation requirements set forth in the state contract where no waiver has been granted.

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

(c) Without limiting other grounds for the disqualification of bids or proposals on the basis of non-responsibility, a contracting agency may disqualify the bid or proposal of a contractor as being non-responsible for failure to remedy notified deficiencies contained in the contractor's utilization plan within a period of time specified in regulations promulgated by the director after receiving notification of such deficiencies from the contracting agency. Where failure to remedy any notified deficiency in the utilization plan is a ground for disqualification, that issue and all other grounds for disqualification shall be stated in writing by the contracting agency. Where the contracting agency states that a failure to remedy any notified deficiency in the utilization plan is a ground for disqualification the contractor shall be entitled to an administrative hearing, on a record, involving all grounds stated by the contracting agency. Such hearing shall be conducted by the appropriate authority of the contracting agency to review the determination of disqualification. A final administrative determination made following such hearing shall be reviewable in a proceeding commenced under article seventy-eight of the civil practice law and rules, provided that such proceeding is commenced within thirty days of the notice given by certified mail return receipt requested rendering such final administrative determination. Such proceeding shall be commenced in the supreme court, appellate division, third department and such proceeding shall be preferred over all other civil causes except election causes, and shall be heard and determined in preference to all other civil business pending therein, except election matters, irrespective of position on the calendar. Appeals taken to the court of appeals of the state of New York shall be subject to the same preference.

6. (a) Where it appears that a contractor cannot, after a good faith effort, comply with the minority and women-owned business enterprise participation requirements set forth in a particular state contract, a contractor may file a written application with the contracting agency requesting a partial or total waiver of such requirements setting forth the reasons for such contractor's inability to meet any or all of the participation requirements together with an explanation of the efforts undertaken by the contractor to obtain the required minority and women-owned business enterprise participation. In implementing the provisions of this section, the contracting agency shall consider the number and types of minority and women-owned business enterprises [~~located~~] available to provide goods or services required under the contract in the region in which the state contract is to be performed, the total dollar value of the state contract, the scope of work to be performed and the project size and term. If, based on such considerations, the contracting agency determines there is not a reasonable availability of contractors on the list of certified business to furnish services for the project, it shall issue a waiver of compliance to the contractor. In making such determination, the contracting agency shall first consider the availability of other business enterprises located in the region and shall thereafter consider the financial ability of minority and women-owned businesses located outside the region in which the contract is to be performed to perform the state contract.

(b) Upon the issuance of all waivers of compliance as provided in paragraph (a) of this subdivision, the contracting agency shall: (i) report the issuance of the waiver to the director; and (ii) publish on the contracting agency's website on a monthly basis, if practicable, but no less than on a quarterly basis: (1) information identifying the contract, including the value of the contract; (2) the name of the contractor receiving the waiver; (3) the date of the waiver; and (4) the specific contract provisions to which the waiver applies.

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

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

(ii) whether certified businesses which have been solicited by the contractor have responded in a timely fashion to the contractor's solicitations for timely competitive bid quotations prior to the contracting agency's bid date; and

(b) whether [~~there has been~~] the contractor provided timely written notification of subcontracting opportunities on the state contract to appropriate certified businesses that appear in the directory of certified businesses prepared pursuant to paragraph (f) of subdivision three of section three hundred eleven of this article; and

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

8. In the event that a contracting agency fails or refuses to issue a waiver to a contractor as requested within twenty days after having made

application therefor pursuant to subdivision six of this section or if the contracting agency denies such application, in whole or in part, the contractor may file a complaint with the director pursuant to section three hundred sixteen of this article setting forth the facts and circumstances giving rise to the contractor's complaint together with a demand for relief. The contractor shall serve a copy of such complaint upon the contracting agency by personal service or by certified mail, return receipt requested. The contracting agency shall be afforded an opportunity to respond to such complaint in writing.

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

§ 6. Section 314 of the executive law, as added by chapter 216 of the laws of 1988, subdivision 2-a as amended by chapter 175 of the laws of 2010, subdivision 2-b as added by chapter 409 of the laws of 2018, subdivision 4 as amended and subdivision 5 as added by chapter 399 of the laws of 2014, is amended to read as follows:

§ 314. Statewide certification program. 1. The director shall promulgate rules and regulations providing for the establishment of a statewide certification program including rules and regulations governing the approval, denial or revocation of any such certification **including revocations for convictions for fraudulently misrepresenting the status of minority or women-owned business enterprises. Such rules shall set forth the maximum personal net worth of a minority group member or woman who may be relied upon to certify a business as a minority-owned business enterprise or women-owned business enterprise with a minimum personal net worth threshold of fifteen million dollars, and may thereafter establish different maximum levels of personal net worth for minority group members and women on an industry-by-industry basis for such industries as the director shall determine**. **Such regulations relating to the classification of the industry-by-industry personal net worth thresholds above the fifteen million dollar threshold shall consider the personal net worth of the owners of both certified and non-certified businesses, including but not limited to, prime contractors and subcontractors, as well as any such other factors needed to establish such thresholds.** Such rules and regulations shall include, but not be limited to, such matters as may be required to ensure that the established procedures thereunder shall at least be in compliance with the code of fair procedure set forth in section seventy-three of the civil rights law.

2. For the purposes of this article, the office shall be responsible for verifying businesses as being owned, operated, and controlled by minority group members or women and for certifying such verified businesses. The director shall prepare a directory of certified businesses for use by contracting agencies and contractors in carrying out the

provisions of this article. The director shall periodically**, but no less than annually,** update the directory.

2-a. (a) The director shall establish a procedure enabling the office to accept New York municipal corporation certification verification for minority and women-owned business enterprise applicants in lieu of requiring the applicant to complete the state certification process. The director shall promulgate rules and regulations to set forth criteria for the acceptance of municipal corporation certification. All eligible municipal corporation certifications shall require business enterprises seeking certification to meet the following standards:

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

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

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

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

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

(vi) be 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~~] **fifteen** million [~~five hundred thousand~~] dollars **and such other amount as the director shall set forth in regulations**, as adjusted annually for inflation according to the consumer price index; and

(vii) be an enterprise that is a small business pursuant to subdivision twenty of section three hundred ten of this article.

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

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

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

2-c. (a) Each business applying for minority or women-owned business enterprise certification pursuant to this section must agree to allow: (i) the department of taxation and finance to share its tax information

with the division; and (ii) the department of labor to share its tax and employer information with the division.

(b) Such information provided pursuant to paragraph (a) of this subdivision shall be kept confidential by the division as such information is kept by the department of taxation and finance or the department of labor and use of such information shall be limited to the certification application process, or other uses approved or consented to by the business enterprise or applicant.

3. Following application for certification pursuant to this section, the director shall provide the applicant with written notice of the status of the application, including notice of any outstanding deficiencies, within [~~thirty~~] twenty-one days. Within [~~sixty~~] forty-five days of submission of a final completed application, the director shall provide the applicant with written notice of a determination by the office approving or denying such certification and, in the event of a denial a statement setting forth the reasons for such denial. Upon a determination denying or revoking certification, the business enterprise for which certification has been so denied or revoked shall, upon written request made within thirty days from receipt of notice of such determination, be entitled to a hearing before an independent hearing officer designated for such purpose by the director. In the event that a request for a hearing is not made within such thirty day period, such determination shall be deemed to be final. The independent hearing officer shall conduct a hearing and upon the conclusion of such hearing, issue a written recommendation to the director to affirm, reverse or modify such determination of the director. Such written recommendation shall be issued to the parties. The director, within thirty days, by order, must accept, reject or modify such recommendation of the hearing officer and set forth in writing the reasons therefor. The director shall serve a copy of such order and reasons therefor upon the business enterprise by personal service or by certified mail return receipt requested. The order of the director shall be subject to review pursuant to article seventy-eight of the civil practice law and rules.

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

5. With the exception of provisional MWBE certification, as provided for in subdivision twenty-three of section three hundred ten of this article, all minority and women-owned business enterprise certifications shall be valid for a period of [~~three~~] five years.

§ 7. Section 315 of the executive law, as added by chapter 261 of the laws of 1988, subdivision 3 as amended and subdivisions 4, 5, 6, and 7 as added by chapter 175 of the laws of 2010, is amended to read as follows:

§ 315. Responsibilities of contracting agencies. 1. Each contracting agency shall be responsible for monitoring state contracts under its jurisdiction, and recommending matters to the office respecting non-com-

pliance with the provisions of this article so that the office may take such action as is appropriate to [~~insure~~] ensure compliance with the provisions of this article, the rules and regulations of the director issued hereunder and the contractual provisions required pursuant to this article. All contracting agencies shall comply with the rules and regulations of the office and are directed to cooperate with the office and to furnish to the office such information and assistance as may be required in the performance of its functions under this article.

2. Each contracting agency shall provide to prospective bidders a current copy of the directory of certified businesses, and a copy of the regulations required pursuant to sections three hundred twelve and three hundred thirteen of this article at the time bids or proposals are solicited.

2-a. To the extent practicable, upon completion of the restrictive period of a procurement, each contracting agency when notifying a contractor of a winning bid award shall also notify any minority or women-owned business enterprise identified in the contractor's submitted utilization plan of such contractor's receipt of the winning bid award.

3. Each contracting agency shall report to the director with respect to activities undertaken to promote employment of minority group members and women and promote and increase participation by certified businesses with respect to state contracts and subcontracts. Such reports shall be submitted [~~periodically, but not less frequently than annually, as required by the director,~~] no later than May fifteenth of every year and shall include such information as is necessary for the director to determine whether the contracting agency and any contractor to the contracting agency have complied with the purposes of this article, including, without limitation, a summary of all waivers of the requirements of subdivisions six and seven of section three hundred thirteen of this article allowed by the contracting agency during the period covered by the report, including a description of the basis of the waiver request and the rationale for granting any such waiver and any instances in which the contract agency has deemed a contractor to have committed a violation pursuant to section three hundred sixteen of this article and such other information as the director shall require. 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.

4. The division of minority and women's business development shall issue an annual report which: (a) summarizes the report submitted by each contracting agency pursuant to subdivision three of this section; (b) contains such comparative or other information as the director deems appropriate, including but not limited to goals compared to actual participation of minority and women-owned business enterprises in state contracting and a listing of annual participation rates for each agency, the total number of certified minority and women-owned businesses for that reporting year, and the total dollar value of state expenditures on certified minority and women-owned business contracts and subcontracts for that reporting year, to evaluate the effectiveness of the activities undertaken by each such contracting agency to promote increased participation by certified minority or women-owned businesses with respect to state contracts and subcontracts; (c) contains a summary of all waivers of the requirements of subdivisions six and seven of section three hundred thirteen of this article allowed by each contracting agency during the period covered by the report, including a description of the basis of the waiver request and the contracting agency's rationale for

granting any such waiver; (d) describes any efforts to create a database or other information storage and retrieval system containing information relevant to contracting with minority and women-owned business enterprises; and (e) contains a summary of (i) all determinations of violations of this 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: (a)** its annual goals for contracts with minority-owned and women-owned business enterprises**; (b)** the number of actual contracts issued to minority-owned and women-owned business enterprises; [~~and~~] **(c)** 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~~]**; (d)** 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**; (e) which expenditures are exempt from participation goals and the rationale for such exemption; and (f) every four years, beginning September fifteenth, two thousand twenty, each agency shall include in such annual report its four-year growth plan pursuant to section three hundred eleven of this article.**

6. Each contracting agency that substantially fails to [~~meet the goals supported by the disparity study,~~] **make a good faith effort** as defined by regulation of the director, **to achieve the maximum feasible participation of minority and women-owned business enterprises in such agency's contracting** shall be required to submit to the director a remedial action plan to remedy such failure.

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.

§ 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.

§ 8-a. Subdivision 1 of section 143 of the state finance law, as amended by chapter 43 of the laws of 1969, is amended to read as follows:

1. Notwithstanding any inconsistent provision of any general or special law, the board, division, department, bureau, agency, officer or commission of the state charged with the duty of preparing plans and specifications for and awarding or entering into contracts for the performance of public work [~~shall~~] may require the payment of a fixed sum of money, not exceeding one hundred dollars, for each copy of such plans and specifications, by persons or corporations desiring a copy thereof. Any person or corporation desiring a copy of such plans and specifications and making the deposit required by this section shall be furnished with one copy of the plans and specifications. Notwithstanding the foregoing, where payment is required it shall be waived upon request by minority- and women-owned business enterprises certified pursuant to article fifteen-A of the executive law or by service-disabled veteran-owned business enterprises certified pursuant to article seventeen-B of the executive law. Such payment may also be waived when such plans and specifications are made available and obtained electronically or in any non-paper form from the board, division, department, bureau, agency, officer or commission of the state.

§ 9. Subdivision 6 of section 163 of the state finance law, as amended by chapter 569 of the laws of 2015, is amended and a new subdivision 6-d is added 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~~] five hundred thousand dollars without a formal competitive process and for commodities that are food, including milk and milk products, grown, produced or harvested in New York state in an amount not to exceed two hundred thousand dollars, without a formal competitive process.

6-d. Pursuant to the authority provided in subdivision six of this section, state agencies shall report annually on a fiscal year basis by July first of the ensuing year to the director of the division of minority and women-owned business development the total number and total value of contracts awarded to businesses certified pursuant to article fifteen-A of the executive law, and with respect to contracts awarded to businesses certified pursuant to article seventeen-B of the executive law such information shall be reported to the division of service-disabled veteran-owned business enterprises for inclusion in their respective annual reports.

§ 10. Subparagraph (i) of paragraph (b) of subdivision 3 and paragraph (a) of subdivision 8 of section 2879 of the public authorities law, subparagraph (i) of paragraph (b) of subdivision 3 as amended by chapter 174 of the laws of 2010 and paragraph (a) of subdivision 8 as amended by chapter 844 of the laws of 1992, are 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~~] five hundred thousand dollars without a formal competitive process;

(a) Each corporation shall annually submit its report on procurement contracts to the division of the budget and copies thereof to the department of audit and control, the department of economic development, the senate finance committee and the assembly ways and means committee. Such report shall include the total number and total dollar value of contracts awarded to certified minority and women-owned business enterprises pursuant to subparagraph (i) of paragraph (b) of subdivision three of this section.

§ 11. Paragraph (a) of subdivision 3 of section 139-j of the state finance law is amended by adding two new subparagraphs 10 and 11 to read as follows:

(10) Complaints by minority-owned business enterprises or women-owned business enterprises, certified as such by the division of minority and women's business development, to the minority and women-owned business enterprise statewide advocate concerning the procuring governmental entity's failure to comply with the requirements of section three hundred fifteen of the executive law;

(11) Communications between the minority and women-owned business enterprise statewide advocate and the procuring governmental entity in furtherance of an investigation of the minority and women-owned business enterprise statewide advocate pursuant to section three hundred twelve-a of the executive law.

§ 12. Subdivision 6 of section 8 of the public buildings law, as amended by chapter 840 of the laws of 1980, is amended to read as follows:

6. All contracts for amounts in excess of five thousand dollars for the work of construction, reconstruction, alteration, repair or improve-

ment of any state building, whether constructed or to be constructed must be offered for public bidding and may be awarded to the lowest responsible and reliable bidder, as will best promote the public interest, by the said department or other agency with the approval of the comptroller for the whole or any part of the work to be performed, and, in the discretion of the said department or other agency, such contracts may be sublet; provided, however, that no such contract shall be awarded to a bidder other than the lowest responsible and reliable bidder, except for certain contracts awarded to minority or women-owned business enterprises as provided herein, without the written approval of the comptroller. When a proposal consists of unit prices of items specified to be performed, except for certain contracts awarded to minority or women-owned business enterprises as provided herein, the lowest bid shall be deemed to be that which specifically states the lowest gross sum for which the entire work will be performed, including all the items specified in the proposal thereof. The lowest bid shall be determined by the commissioner of general services on the basis of the gross sum for which the entire work will be performed, arrived at by a correct computation of all the items specified in the proposal therefor at the unit prices contained in the bid. Provided, however, that where a responsible and reliable bidder certified as a minority-owned business enterprise or women-owned business enterprise pursuant to article fifteen-A of the executive law submits a bid of one million four hundred thousand dollars or less, as adjusted annually for inflation beginning January first, two thousand twenty, the bid of the minority or women-owned business enterprise shall be deemed the lowest bid unless it exceeds the bid of the lowest bidder by more than ten percent.

§ 13. 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 OOO 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:

§ 14. 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 bidder in conjunction with the award of a state contract or a proposed party to a state contract.

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

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

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

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

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

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

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

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

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

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

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

Albany County Airport Authority;
Albany Port District Commission;
Alfred, Almond, Hornellsville Sewer Authority;
Battery Park City Authority;
Cayuga County Water and Sewer Authority;
(Nelson A. Rockefeller) Empire State Plaza Performing Arts Center Corporation;
Industrial Exhibit Authority;
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.

8. "State contract" shall mean: (a) a written agreement in excess of one hundred thousand dollars whereby a state agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; and (b) 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.

9. "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.

§ 822. Workforce participation goals. 1. The director, in consultation with the department, shall develop aspirational goals for the utilization of minority group members and women in each construction trade, profession, and occupation.

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

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

(ii) The director may establish aspirational goals for the expected participation of minority group members and women for municipalities where the director deems feasible and appropriate.

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

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

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

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

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

(i) Black men;

(ii) Black women;

(iii) Hispanic men;

(iv) Hispanic women;

(v) Native American men;

(vi) Native American women;

(vii) Asian men;

(viii) Asian women;

(ix) Caucasian women.

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

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

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

(iii) if applicable, any aspirational goal established by the division.

(d) In any case, where a state agency establishes a workforce participation goal on an invitation for bids, request for proposals, or other solicitation that will result in the award of a state contract for construction that deviates from the aspirational goal for work or service in the county or municipality in which the work or service will be performed, the state agency shall document numerical evidence demonstrating that the application of the aspirational goal would not be practical, feasible, or appropriate.

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

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

(i) A certification stating that the contractor will make a good faith effort to achieve the applicable workforce participation goal and will contractually require any subcontractors to the contractor to make a good faith effort to achieve the applicable workforce participation goal in any subcontracted work;

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

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

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

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

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

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

(iii) The level of anticipated participation by minority group members and women in each of the construction trades, professions, and occupations required in the performance of the work of the state contract;

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

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

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

(a) In the event that a contractor submits a certification or waiver request that is accepted by the state agency, the state agency shall establish in the state contract the expected level of participation by minority group members and women in each of the construction trades, professions, and occupations required in performance of the work of the state contract, require that the contractor make good faith efforts to achieve such workforce participation goals, require that the contractor require any subcontractors to make a good faith effort to achieve the applicable workforce participation goal in any subcontracted work.

(b) In the event that a contractor fails to submit a certification, waiver request, or any other information required by the state agency, or the state agency determines that a contractor's waiver request does not demonstrate that the applicable workforce participation goal is impractical, unfeasible, or inappropriate, the state agency shall notify the contractor of the deficiency in writing and provide the contractor five business days to remedy the noticed deficiency. A state agency may reject any bid or proposal of a contractor that fails to timely respond

to a notice of deficiency or to provide documentation remedying the deficiency to the satisfaction of the state agency.

(c) Where failure to remedy any notified deficiency in the workforce utilization plan is a ground for disqualification, that issue and all other grounds for disqualification shall be stated in writing by the contracting state agency. The director shall establish via regulation, rules for state contracting agencies aimed at the measurement, reduction and elimination of erroneous business disqualifications including a process affording a contractor notice and an opportunity to be heard related to such disqualifications.

§ 823. Reporting. 1. State contracts shall require contractors to submit, and to require any subcontractors to submit, to the contracting state agency reports documenting the hours worked by employees of the contractor and any subcontractors in the performance of the work of the state contract. Such reports shall be submitted no less frequently than monthly for state contracts for construction. Such reports shall identify in the aggregate the race, ethnicity, gender, and trade, profession, or occupation of each employee performing work on a state contract.

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

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

§ 824. Enforcement. 1. Where it appears that a contractor cannot, after a good faith effort, meet the workforce participation goals set forth in a particular state contract, a contractor may file a written application with the contracting state agency requesting a partial or total waiver of such requirements. Such request shall set forth the reasons for such contractor's inability to meet the workforce participation goal, specifically describe the reasons for any deviations from the anticipated workforce participation goal set forth in the contractor's bid or proposal leading to the award of the state contract, and describe the efforts by the contractor and any subcontractors to achieve the maximum feasible participation of minority group members and women in the performance of the work of the state contract. Where the contractor's inability to achieve the workforce participation goal on a state contract is attributable to the failure of one or more subcontractors to make good faith efforts to achieve the maximum feasible participation of minority group members and women in the performance of the work of the state contract, the contractor shall identify such subcontractor or subcontractors to the contracting state agency.

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

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

(b) The contractor contractually required each of its subcontractors to make a good faith effort to achieve the maximum feasible partic-

ipation of minority group members and women in the performance of the subcontracted work, periodically monitored such subcontractors' deployment of minority group members and women in the performance of the subcontracted work, provided notice to such subcontractors of any deficiencies in their deployment of minority group members and women in the performance of such subcontracted work, and could not achieve the workforce participation goal for one or more construction trades, professions, or occupations without the good faith efforts of such subcontractors.

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

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

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

§ 826. Severability. If any clause, sentence, paragraph, section or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this article directly involved in the controversy in which the judgment shall have been rendered.

§ 15. Severability. If any clause, sentence, paragraph, subdivision, section or part contained in any part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part contained in any part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 16. This act shall take effect on the one hundred eightieth day after it shall have become a law, provided, however, that the provisions of section twelve of this act shall apply to any state contracts executed and entered into on or after January 1, 2020 and shall exclude such contracts that have been previously awarded or have pending bids or pending requests for proposals issued prior to such date, and shall not apply to projects that have commenced project design prior to such date; provided, further, that:

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

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

(c) the amendments to section 139-j of the state finance law, made by section eleven of this act, shall not affect the expiration and repeal of such section, and shall expire and be deemed repealed therewith; and

(d) section fourteen of this act shall expire and be deemed repealed December 31, 2024.