

STATE OF NEW YORK

9094

IN SENATE

November 16, 2020

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

AN ACT to amend the executive law, in relation to requiring contracting agencies to contact minority and women-owned business enterprises when such enterprise is listed on a utilization plan

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

1 Section 1. Paragraphs (a) and (b) of subdivision 5 of section 313 of
2 the executive law, as amended by chapter 96 of the laws of 2019, are
3 amended to read as follows:

4 (a) Contracting agencies shall administer the rules and regulations
5 promulgated by the director in a good faith effort to achieve the maxi-
6 mum feasible participation by minority and women owned business enter-
7 prises adopted pursuant to this article and the regulations of the
8 director. Such rules and regulations: shall require a contractor to
9 submit a utilization plan after bids are opened, when bids are required,
10 but prior to the award of a state contract; shall require the contract-
11 ing agency to review the utilization plan submitted by the contractor
12 and to post the utilization plan and any waivers of compliance issued
13 pursuant to subdivision six of this section on the website of the
14 contracting agency; shall require the contracting agency to notify the
15 minority and women-owned business enterprise when listed on the utiliza-
16 tion plan; shall require the contracting agency to notify the contractor
17 in writing within a period of time specified by the director as to any
18 deficiencies contained in the contractor's utilization plan; shall
19 require remedy thereof within a period of time specified by the direc-
20 tor; shall require the contractor to submit periodic compliance reports
21 relating to the operation and implementation of any utilization plan;
22 shall not allow any automatic waivers but shall allow a contractor to
23 apply for a partial or total waiver of the minority and women-owned
24 business enterprise participation requirements pursuant to subdivisions
25 six and seven of this section; shall allow a contractor to file a
26 complaint with the director pursuant to subdivision eight of this
27 section in the event a contracting agency has failed or refused to issue

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

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1 a waiver of the minority and women-owned business enterprise partic-
2 ipation requirements or has denied such request for a waiver; and shall
3 allow a contracting agency to file a complaint with the director pursu-
4 ant to subdivision nine of this section in the event a contractor is
5 failing or has failed to comply with the minority and women-owned busi-
6 ness enterprise participation requirements set forth in the state
7 contract where no waiver has been granted.

8 (b) The rules and regulations promulgated pursuant to this subdivision
9 regarding a utilization plan shall provide that where enterprises have
10 been identified within a utilization plan, a contractor shall attempt,
11 in good faith, to utilize such enterprise [~~at least to the extent indi-~~
12 ~~cated~~], unless such enterprise cannot perform under the contract or such
13 enterprise is no longer certified by the state. A contracting agency may
14 require a contractor to indicate, within a utilization plan, what meas-
15 ures and procedures he or she intends to take to comply with the
16 provisions of this article[, ~~but may not require, as a condition of~~
17 ~~award of, or compliance with, a contract that a contractor utilize a~~
18 ~~particular enterprise in performance of the contract~~].

19 § 2. This act shall take effect immediately; provided, however, that
20 the amendments to paragraphs (a) and (b) of subdivision 5 of section 313
21 of the executive law made by section one of this act shall not affect
22 the repeal of such section and shall be deemed repealed therewith.