

STATE OF NEW YORK

3760

2021-2022 Regular Sessions

IN SENATE

January 30, 2021

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

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

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

1 Section 1. Subdivision 6 of section 313 of the executive law, as
2 amended by chapter 96 of the laws of 2019, 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 available to
15 provide goods or services required under the contract in the region in
16 which the state contract is to be performed, the total dollar value of
17 the state contract, the scope of work to be performed and the project
18 size and term. If, based on such considerations, the contracting agency
19 determines there is not a reasonable availability of contractors on the
20 list of certified business to furnish services for the project, it shall
21 issue a waiver of compliance to the contractor. In making such determi-
22 nation, the contracting agency shall first consider the availability of
23 other business enterprises located in the region and shall thereafter

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

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1 consider the financial ability of minority and women-owned businesses
2 located outside the region in which the contract is to be performed to
3 perform the state contract.

4 (b) [~~Upon~~] Within thirty days of the issuance of all waivers of
5 compliance as provided in paragraph (a) of this subdivision, the
6 contracting agency shall:

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

8 (ii) publish on the contracting agency's website on a monthly basis,
9 if practicable, but no less than on a quarterly basis:

10 (1) information identifying the contract, including the value of the
11 contract;

12 (2) the name of the contractor receiving the waiver;

13 (3) the date of the waiver; [~~and~~]

14 (4) whether the waiver was a total or partial waiver; and

15 (5) the specific contract provisions to which the waiver applies.

16 § 2. Paragraph (j) of subdivision 3 of section 311 of the executive
17 law, as amended by chapter 96 of the laws of 2019, is amended and a new
18 paragraph (k) is added to read as follows:

19 (j) to make publicly available records of all waivers of compliance
20 reported pursuant to paragraph (b) of subdivision six of section three
21 hundred thirteen of this article on the division's website[~~-~~]; and

22 (k) to keep a record of partial and total waivers of compliance
23 reported pursuant to paragraph (b) of subdivision six of section three
24 hundred thirteen of this article and to make such record publicly avail-
25 able on the divisions website. The record shall provide, at a minimum:
26 (i) information identifying the contract, including the value of the
27 contract; (ii) information identifying the contracting agency; (iii) the
28 name of the contractor receiving the waiver; and (iv) the date of the
29 waiver.

30 § 3. This act shall take effect on the sixtieth day after it shall
31 have become a law; provided, however, that: (a) the amendments to
32 subdivision 6 of section 313 of the executive law made by section one of
33 this act shall not affect the repeal of such article and shall be deemed
34 repealed therewith; and (b) the amendments to subdivision 3 of section
35 311 of the executive law made by section two of this act shall not
36 affect the repeal of such article and shall be deemed repealed there-
37 with. Effective immediately the addition, amendment and/or repeal of
38 any rule or regulation necessary for the implementation of this act on
39 its effective date are authorized to be made on or before such date.