

# STATE OF NEW YORK

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3760

2021-2022 Regular Sessions

## IN SENATE

January 30, 2021

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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.