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:

Section 1. Subdivision 6 of section 313 of the executive law, as amended by chapter 96 of the laws of 2019, is amended to read as follows:

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 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

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

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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~~] **Within thirty days of** 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) **whether the waiver was a total or partial waiver; and**

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

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

(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[~~.~~]**; and**

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

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of the executive law made by section one of this act shall not affect the repeal of such article and shall be deemed repealed therewith; and (b) the amendments to subdivision 3 of section 311 of the executive law made by section two of this act shall not affect the repeal of such article and shall be deemed repealed therewith.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