

STATE OF NEW YORK

4473--A

2021-2022 Regular Sessions

IN SENATE

February 5, 2021

Introduced by Sens. JACKSON, COMRIE, LIU -- read twice and ordered printed, and when printed to be committed to the Committee on Procurement and Contracts -- recommitted to the Committee on Procurement and Contracts in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, in relation to participation by minority group members and women with respect to certain state contracts; and to amend the state finance law, in relation to establishing a mentor-protege program for small and minority and women-owned business concerns and in relation to performance and payment bond requirements

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

1 Section 1. Subdivisions 3 and 4 of section 311 of the executive law,
2 subdivision 3 as added by chapter 261 of the laws of 1988, paragraphs
3 (d) and (e) of subdivision 3 as amended by chapter 55 of the laws of
4 1992, paragraph (g) of subdivision 3 as amended by section 1 of part BB
5 of chapter 59 of the laws of 2006, paragraphs (h), (i) and (j) of subdivi-
6 sion 3 as amended and paragraph (k) of subdivision 3 as added by chap-
7 ter 825 of the laws of 2021, subdivision 4 as amended by chapter 361 of
8 the laws of 2009, and paragraph (f) of subdivision 3 and the opening
9 paragraph of subdivision 4 as amended and paragraph (d-1) of subdivision
10 3 and paragraphs (d) and (e) of subdivision 4 as added by chapter 96 of
11 the laws of 2019, are amended to read as follows:

12 3. The director shall have the following powers and duties:

13 (a) to encourage and assist contracting agencies in their efforts to
14 increase participation by minority and women-owned business enterprises
15 on state contracts and subcontracts so as to facilitate the award of a
16 fair share of such contracts to them and to provide on the division's

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

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1 website a list of each contracting agency's minority and women-owned
2 business enterprises certification outreach seminars;

3 (b) to develop standardized forms and reporting documents necessary to
4 implement this article;

5 (c) to conduct educational outreach programs to encourage the certif-
6 ication of minority and women-owned business enterprises consistent with
7 the purposes of this article;

8 (d) to review [~~periodically~~] quarterly the practices and procedures of
9 each contracting agency with respect to compliance with the provisions
10 of this article, and to require them to file [~~periodic~~] quarterly
11 reports with the division of minority and women's business development
12 as to the level of minority and women-owned business enterprises partic-
13 ipation in the awarding of agency contracts for goods and services
14 including but not limited to the number of state contracts awarded to
15 certified minority-owned or women-owned business enterprises, the maxi-
16 imum dollar amount obligated pursuant to all those contracts, and the
17 total expenditures made pursuant to all such contracts; the number of
18 state contracts awarded to certified minority or women-owned business
19 enterprises, the maximum dollar amount obligated pursuant to all those
20 contracts, and the total expenditures made pursuant to all such
21 contracts; the number of state contracts awarded which include a utili-
22 zation plan for business participation by certified minority or women-
23 owned business enterprises, the maximum amount obligated pursuant to
24 those contracts, and the total expenditures made pursuant to all such
25 contracts; the number of state contracts awarded upon which a waiver was
26 granted from goals required by the contracts for business participation
27 by certified minority or women-owned business enterprises, and the maxi-
28 imum amount obligated pursuant to those contracts; the number of state
29 contracts awarded which required goals for employment of minority group
30 members and women; and the number of state contracts awarded for which
31 waivers of employment goals required by the contracts have been granted;

32 (d-1) to require all contracting state agencies to develop a four-year
33 growth plan to determine a means of promoting and increasing partic-
34 ipation by minority-owned and women-owned business enterprises with
35 respect to state contracts and subcontracts. Every four years, beginning
36 September fifteenth, two thousand twenty, each contracting state agency
37 shall submit a four-year growth plan as part of its annual report to the
38 governor and legislature pursuant to section one hundred sixty-four of
39 this chapter[~~+~~];

40 (e) on January first of each year report to the governor, the tempo-
41 rary president of the senate, the speaker of the assembly, the minority
42 leaders of the senate and the assembly, and the chairpersons of the
43 senate finance and assembly ways and means committees on the [~~level~~]
44 actual versus projected levels of minority and women-owned business
45 enterprises participating in each agency's contracts for goods [~~and~~],
46 services and construction, including but not limited to the number of
47 state contracts awarded to certified minority-owned or women-owned busi-
48 ness enterprises, the maximum dollar amount obligated pursuant to all
49 those contracts, and the total expenditures made pursuant to all such
50 contracts, and on activities of the office and effort by each contract-
51 ing agency to promote employment of minority group members and women,
52 and to promote and increase participation by certified businesses with
53 respect to state contracts and subcontracts so as to facilitate the
54 award of a fair share of state contracts to such businesses. The comp-
55 troller shall assist the division in collecting information on the
56 participation of certified business for each contracting agency. Such

1 report may recommend new activities and programs to effectuate the
2 purposes of this article;

3 (e-1) the director shall list in the division's annual report the
4 names of non-compliant agencies and the extent of their noncompliance in
5 submitting its quarterly minority and women-owned business enterprise
6 utilization reports; and, shall implement a master list of all the state
7 agencies required to file quarterly compliance reports and shall attach
8 such list to the division's annual report;

9 (f) to prepare and update, [~~no less than annually,~~] quarterly a direc-
10 tory of certified minority and women-owned business enterprises which
11 shall, wherever practicable, be divided into categories of labor,
12 services, supplies, equipment, materials and recognized construction
13 trades and which shall indicate areas or locations of the state where
14 such enterprises are available to perform services, and to use this
15 information to create an internet based, centralized state registry to
16 enable appropriate state certified minority and women-owned business
17 enterprises to access contract and subcontract opportunities;

18 (g) to appoint independent hearing officers who by contract or terms
19 of employment shall preside over adjudicatory hearings pursuant to
20 section three hundred fourteen of this article for the office and who
21 are assigned no other work by the office;

22 (h) notwithstanding the provisions of section two hundred ninety-six
23 of this chapter, to file a complaint pursuant to the provisions of
24 section two hundred ninety-seven of this chapter where the director has
25 knowledge that a contractor may have violated the provisions of para-
26 graph (a), (b) or (c) of subdivision one of section two hundred ninety-
27 six of this chapter where such violation is unrelated, separate or
28 distinct from the state contract as expressed by its terms;

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

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

34 (k) to work in conjunction with the industrial commissioner pursuant
35 to paragraph (j) of subdivision one of section eight hundred eleven of
36 the labor law to assist contractors in identifying minority group
37 members and women who are participating in apprenticeship agreements
38 under article twenty-three of the labor law.

39 4. The director shall provide assistance to, and facilitate access to
40 programs serving certified businesses as well as applicants to ensure
41 that such businesses benefit, as needed, from technical, managerial and
42 financial, and general business assistance; training; marketing; organ-
43 ization and personnel skill development; project management assistance;
44 technology assistance; bond and insurance education assistance; and
45 other business development assistance. The director shall maintain a
46 toll-free number at the department of economic development to be used to
47 answer questions concerning the MWBE certification process. In addition,
48 the director [~~may~~] shall, either independently or in conjunction with
49 other state agencies:

50 (a) develop a clearinghouse of information on programs and services
51 provided by entities that may assist such businesses;

52 (b) review bonding and paperwork requirements imposed by contracting
53 agencies that may unnecessarily impede the ability of such businesses to
54 compete; [~~and~~]

55 (c) seek to maximize utilization by minority and women-owned business
56 enterprises of available federal resources including but not limited to

1 federal grants, loans, loan guarantees, surety bonding guarantees, tech-
2 nical assistance, and programs and services of the federal small busi-
3 ness administration[~~-~~];

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

9 (e) identify and establish mentorship opportunities and other business
10 development programs to increase capacity and better prepare MWBEs for
11 bidding on contracts with state agencies upon successful completion of
12 the mentorship opportunity. Such mentorship opportunities shall be
13 intended to ensure that mentor and mentee are connected based on a
14 commercially useful function.

15 § 2. Subdivision 5 of section 312 of the executive law, as added by
16 chapter 261 of the laws of 1988, is amended to read as follows:

17 5. The director shall promulgate rules and regulations to ensure that
18 contractors and subcontractors undertake programs of affirmative action
19 and equal employment opportunity as required by this section. Such rules
20 and regulations as they pertain to any particular agency shall be devel-
21 oped after consultation with contracting agencies. Such rules and regu-
22 lations [~~may~~] shall require a contractor, after notice in a bid solici-
23 tation, to submit an equal employment opportunity program [~~after bid~~
24 ~~opening and prior to the award of any contract~~] at the time bids are
25 submitted, and [~~may~~] shall require the contractor or subcontractor to
26 submit compliance reports relating to the contractor's or subcontrac-
27 tor's operation and implementation of any equal employment opportunity
28 program in effect as of the date the contract is executed. The contract-
29 ing agency [~~may recommend to the director that~~] shall have the right to
30 recommend that the director take appropriate action according to the
31 procedures set forth in section three hundred sixteen of this article
32 against the contractor for noncompliance with the requirements of this
33 section. The contracting agency shall be responsible for monitoring
34 compliance with this section.

35 § 3. Subdivisions 2-a, 3 and paragraph (a) of subdivision 5 of section
36 313 of the executive law, as amended by chapter 96 of the laws of 2019,
37 are amended to read as follows:

38 2-a. The director shall promulgate rules and regulations that will
39 accomplish the following:

40 (a) provide for the certification and decertification of minority and
41 women-owned business enterprises for all agencies through a single proc-
42 ess that meets applicable requirements;

43 (b) require that each contract solicitation document accompanying each
44 solicitation set forth the expected degree of minority and women-owned
45 business enterprise participation based, in part, on:

46 (i) the potential subcontract opportunities available in the prime
47 procurement contract;

48 (ii) the availability, as contained within the study, of certified
49 minority and women-owned business enterprises to respond competitively
50 to the potential subcontract opportunities as reflected in the divi-
51 sion's directory of certified minority and women-owned business enter-
52 prises; and

53 (iii) the findings of the disparity study;

54 (c) require that each agency provide a current list of certified
55 minority business enterprises to each prospective contractor or direct

1 them to the division's directory of certified minority and women-owned
2 business enterprises for such purpose;

3 (d) allow a contractor that is a certified minority-owned or women-
4 owned business enterprise to use the work it performs to meet require-
5 ments for use of certified minority-owned or women-owned business enter-
6 prises as subcontractors;

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

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

14 (g) consistent with subdivision six of this section, provide for
15 circumstances under which an agency may waive obligations of the
16 contractor relating to minority and women-owned business enterprise
17 participation;

18 (h) require that an agency verify that minority and women-owned busi-
19 ness enterprises listed in a successful bid are actually participating
20 to the extent listed in the project for which the bid was submitted;

21 (i) provide for the collection of statistical data by each agency
22 concerning actual minority and women-owned business enterprise partic-
23 ipation;

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

27 (k) encourage joint ventures, partnerships, and mentor-protege
28 relationships as defined in section one hundred forty-seven of the state
29 finance law, between prime contractors and minority and women-owned
30 business enterprises; and

31 Such rules shall set forth the maximum personal net worth of a minori-
32 ty group member or woman who may be relied upon to certify a business as
33 a minority-owned business enterprise or women-owned business enterprise,
34 and may establish different maximum levels of personal net worth for
35 minority group members and women on an industry-by-industry basis for
36 such industries as the director shall determine. Such regulations relat-
37 ing to the classification of the industry-by-industry personal net worth
38 thresholds above the fifteen million dollar threshold shall consider the
39 personal net worth of the owners of both certified and non-certified
40 businesses, including but not limited to, prime contractors and subcon-
41 tractors, as well as any such other factors needed to establish such
42 thresholds. The provisions of the regulations pertaining to personal net
43 worth shall, to the extent practicable, be implemented by June thirti-
44 eth, two thousand twenty and shall consider adjustments for inflation
45 annually on January first of the previous year according to the consumer
46 price index.

47 3. Solely for the purpose of providing the opportunity for meaningful
48 participation by certified businesses in the performance of state
49 contracts as provided in this section, state contracts shall include
50 leases of real property by a state agency to a lessee where: the terms
51 of such leases provide for the construction, demolition, replacement,
52 major repair or renovation of real property and improvements thereon by
53 such lessee; and the cost of such construction, demolition, replacement,
54 major repair or renovation of real property and improvements thereon
55 shall exceed the sum of one hundred thousand dollars. Reports to the
56 director pursuant to section three hundred fifteen of this article shall

1 include activities with respect to all such state contracts. Contracting
2 agencies shall include or require to be included with respect to state
3 contracts for the acquisition, construction, demolition, replacement,
4 major repair or renovation of real property and improvements thereon,
5 such provisions as ~~[may]~~ shall be necessary to effectuate the provisions
6 of this section in every bid specification and state contract, includ-
7 ing, but not limited to: (a) provisions requiring contractors to make a
8 good faith effort to solicit active participation by enterprises identi-
9 fied in the directory of certified businesses; (b) requiring the parties
10 to agree as a condition of entering into such contract, to be bound by
11 the provisions of section three hundred sixteen of this article; and (c)
12 requiring the contractor to include the provisions set forth in para-
13 graphs (a) and (b) of this subdivision in every subcontract in a manner
14 that the provisions will be binding upon each subcontractor as to work
15 in connection with such contract. Provided, however, that no such
16 provisions shall be binding upon contractors or subcontractors in the
17 performance of work or the provision of services that are unrelated,
18 separate or distinct from the state contract as expressed by its terms,
19 and nothing in this section shall authorize the director or any
20 contracting agency to impose any requirement on a contractor or subcon-
21 tractor except with respect to a state contract.

22 (a) Contracting agencies shall administer the rules and regulations
23 promulgated by the director in a good faith effort to achieve the maxi-
24 mum feasible participation by minority and women owned business enter-
25 prises adopted pursuant to this article and the regulations of the
26 director. Such rules and regulations: shall require a contractor to
27 submit a utilization plan ~~[after bids are opened]~~ at the time bids are
28 submitted, when bids are required, ~~[but prior to the award of a state~~
29 ~~contract]~~; shall require the contracting agency to review the utiliza-
30 tion plan submitted by the contractor and to post the utilization plan
31 and any waivers of compliance issued pursuant to subdivision six of this
32 section on the website of the contracting agency; shall require the
33 contracting agency to notify the contractor in writing within a period
34 of time specified by the director as to any deficiencies contained in
35 the contractor's utilization plan; shall require remedy thereof within a
36 period of time specified by the director; shall require the contractor
37 to submit ~~[periodic]~~ quarterly compliance reports relating to the opera-
38 tion and implementation of any utilization plan; shall not allow any
39 automatic waivers but shall allow a contractor to apply for a partial or
40 total waiver of the minority and women-owned business enterprise partic-
41 ipation requirements pursuant to subdivisions six and seven of this
42 section; shall allow a contractor to file a complaint with the director
43 pursuant to subdivision eight of this section in the event a contracting
44 agency has failed or refused to issue a waiver of the minority and
45 women-owned business enterprise participation requirements or has denied
46 such request for a waiver; and shall allow a contracting agency to file
47 a complaint with the director pursuant to subdivision nine of this
48 section in the event a contractor is failing or has failed to comply
49 with the minority and women-owned business enterprise participation
50 requirements set forth in the state contract where no waiver has been
51 granted.

52 § 4. Subdivisions 1 and 3 of section 315 of the executive law, as
53 amended by chapter 96 of the laws of 2019, are amended to read as
54 follows:

55 1. Each contracting agency shall be responsible for monitoring state
56 contracts under its jurisdiction, and recommending matters to the office

1 respecting non-compliance with the provisions of this article so that
2 the office ~~[may]~~ shall take such action as ~~[is appropriate]~~ stated in
3 subdivision three of section three hundred sixteen of this article. Each
4 contracting agency shall have the right to recommend that the director
5 impose a sanction, penalty, or fine for three or more violations of
6 subdivision one of section three hundred of this article, to ensure
7 compliance with the provisions of this article, the rules and regu-
8 lations of the director issued hereunder and the contractual provisions
9 required pursuant to this article. All contracting agencies shall comply
10 with the rules and regulations of the office and are directed to cooper-
11 ate with the office and to furnish to the office such information and
12 assistance as may be required in the performance of its functions under
13 this article.

14 3. ~~[Each contracting agency shall report to the director with respect~~
15 ~~to activities undertaken to promote employment of minority group members~~
16 ~~and women and promote and increase participation by certified businesses~~
17 ~~with respect to state contracts and subcontracts. Such reports shall be~~
18 ~~submitted no later than May fifteenth of every year and shall include~~
19 ~~such information as is necessary for the director to determine whether~~
20 ~~the contracting agency and any contractor to the contracting agency have~~
21 ~~complied with the purposes of this article, including, without limita-~~
22 ~~tion, a summary of all waivers of the requirements of subdivisions six~~
23 ~~and seven of section three hundred thirteen of this article allowed by~~
24 ~~the contracting agency during the period covered by the report, includ-~~
25 ~~ing a description of the basis of the waiver request and the rationale~~
26 ~~for granting any such waiver and any instances in which the contract~~
27 ~~agency has deemed a contractor to have committed a violation pursuant to~~
28 ~~section three hundred sixteen of this article and such other information~~
29 ~~as the director shall require. Each agency shall also include in such~~
30 ~~annual report whether or not it has been required to prepare a remedial~~
31 ~~plan, and, if so, the plan and the extent to which the agency has~~
32 ~~complied with each element of the plan.]~~ (a) Each contracting agency
33 shall prepare a quarterly report and submit copies to the commissioner
34 of economic development, the commissioner of general services, and the
35 director as to the level of minority and women-owned business enter-
36 prises participation in the awarding of agency contracts for goods and
37 services, including but not limited to, the number of state contracts
38 awarded to certified minority or women-owned business enterprises; the
39 maximum dollar amount obligated pursuant to such contracts, and the
40 total expenditures made pursuant to all such contracts; the number of
41 state contracts awarded upon which a waiver was granted from goals
42 required by the contracts for business participation by certified minor-
43 ity or women-owned business enterprises, and the maximum amount obli-
44 gated pursuant to such contracts; the number of state contracts awarded
45 which required goals for employment of minority group members and women;
46 and the number of state contracts awarded for which waivers of employ-
47 ment goals required by the contracts have been granted;

48 (b) In addition, each contracting agency shall be responsible for the
49 cost of an independent audit resulting from the agency's repeated
50 violations of this section.

51 (c) Within thirty days after completion, a copy of the quarterly
52 minority and women-owned business enterprise report shall be transmitted
53 to the commissioner of economic development, the commissioner of general
54 services, and the director. A contracting agency, which has not let more
55 than two million dollars in service and/or construction contracts within
56 the applicable period may apply to the commissioner of economic develop-

1 ment, and the director for a waiver of the required annual report. The
2 waiver application shall be made on such form as the commissioner of
3 economic development and the director may prescribe.

4 (d) If a contracting agency shall fail to file or substantially
5 complete, as determined by the commissioner of economic development and
6 the director, the report required by this section, the director shall
7 provide notice to the contracting agency. The notice shall state the
8 following:

9 (i) that the failure to file a report as required is a violation of
10 this section, or in case of an insufficient report, the manner in which
11 the report submitted is deficient;

12 (ii) that the contracting agency has thirty days to comply with this
13 section or provide an adequate written explanation to the commissioner
14 of economic development, the commissioner of general services and the
15 director of the contracting agency's reasons for the inability to
16 comply; and

17 (iii) that the contracting agency's continued failure to provide
18 either the required report or an adequate explanation will result in an
19 independent audit of the contracting agency, the cost of which shall be
20 borne by the contracting agency.

21 § 5. Section 316 of the executive law, as amended by chapter 175 of
22 the laws of 2010, is amended to read as follows:

23 § 316. [~~Enforcement~~] Violations and enforcement. 1. It shall be a
24 violation for any person or entity to:

25 (a) intentionally use or acquire an MWBE name through deceit or other
26 dishonest means in order to negotiate a lower bid from a non-MWBE.

27 (b) submit to the department of economic development, documents or
28 other material as evidence of a good faith effort to comply with the
29 provisions of this article without, in fact, having entered into any
30 contract, agreement, subcontract, or sub-agreement with an MWBE for the
31 use or purchase of such business enterprise's goods or services in the
32 performance of the awarded state contract.

33 (c) fail to provide an MWBE with sufficient information or other
34 required supporting documentation in order for the MWBE to prepare a
35 proper bid.

36 2. Upon receipt by the director of a complaint by a contracting agency
37 that a contractor has violated the provisions of a state contract which
38 have been included to comply with the provisions of this article or of a
39 contractor that a contracting agency has violated such provisions or has
40 failed or refused to issue a waiver where one has been applied for
41 pursuant to subdivision six of section three hundred thirteen of this
42 article or has denied such application, the director shall attempt to
43 resolve the matter giving rise to such complaint. If efforts to resolve
44 such matter to the satisfaction of all parties are unsuccessful, the
45 director shall refer the matter, within thirty days of the receipt of
46 the complaint, to the division's hearing officers. Upon conclusion of
47 the administrative hearing, the hearing officer shall submit to the
48 director his or her decision regarding the alleged violation of the
49 contract and recommendations regarding the imposition of sanctions,
50 fines or penalties. The director, within ten days of receipt of the
51 decision, shall file a determination of such matter and shall cause a
52 copy of such determination along with a copy of this article to be
53 served upon the contractor by personal service or by certified mail
54 return receipt requested. The decision of the hearing officer shall be
55 final and may only be vacated or modified as provided in article seven-
56 ty-eight of the civil practice law and rules upon an application made

1 within the time provided by such article. The determination of the
2 director as to the imposition of any fines, sanctions or penalties shall
3 be reviewable pursuant to article seventy-eight of the civil practice
4 law and rules. The penalties imposed for any violation which is premised
5 upon either a fraudulent or intentional misrepresentation by the
6 contractor or the contractor's willful and intentional disregard of the
7 minority and women-owned participation requirement included in the
8 contract may include a determination that the contractor shall be ineli-
9 gible to submit a bid to any contracting agency or be awarded any such
10 contract for a period not to exceed one year following the final deter-
11 mination; provided however, if a contractor has previously been deter-
12 mined to be ineligible to submit a bid pursuant to this section, the
13 penalties imposed for any subsequent violation, if such violation occurs
14 within five years of the first violation, may include a determination
15 that the contractor shall be ineligible to submit a bid to any contract-
16 ing agency or be awarded any such contract for a period not to exceed
17 five years following the final determination. The division of minority
18 and women's business development shall maintain a website listing all
19 contractors that have been deemed ineligible to submit a bid pursuant to
20 this section and the date after which each contractor shall once again
21 become eligible to submit bids.

22 3. The director shall impose a sanction, penalty, or fine on any
23 individual or entity that has three or more violations of this article
24 within five years. Such fine shall be paid by such individual or entity.
25 Such fine shall be remitted and deposited into a fund, to be managed by
26 the commissioner of economic development. Such funds shall be used to
27 subsidize the facilitation of the provisions of this article. Other
28 sanctions shall include barring such entity or individual from contract-
29 ing with such agency for a period not to exceed five years.

30 § 6. Subdivision 1 of section 137 of the state finance law, as sepa-
31 rately amended by section 17 of part MM of chapter 57 and by chapter 619
32 of the laws of 2008, is amended to read as follows:

33 1. In addition to other bond or bonds, if any, required by law for the
34 completion of a work specified in a contract for the prosecution of a
35 public improvement for the state of New York a municipal corporation, a
36 public benefit corporation or a commission appointed pursuant to law, or
37 in the absence of any such requirement, the comptroller may or the other
38 appropriate official, respectively, shall nevertheless require prior to
39 the approval of any such contract a bond guaranteeing prompt payment of
40 moneys due to all persons furnishing labor or materials to the contrac-
41 tor or any subcontractors in the prosecution of the work provided for in
42 such contract. Whenever a municipal corporation issues a permit subject
43 to compliance with section two hundred twenty of the labor law, such
44 permittee or its contractor or subcontractors furnishing workers shall
45 post a payment bond subject to this section. Provided, however, that all
46 performance bonds and payment bonds may, at the discretion of the head
47 of the state agency, public benefit corporation or commission, or his or
48 her designee, be dispensed with for the completion of a work specified
49 in a contract for the prosecution of a public improvement for the state
50 of New York for which bids are solicited where the aggregate amount of
51 the contract is under one hundred **fifty** thousand dollars and provided
52 further, that in a case where the contract is not subject to the multi-
53 ple contract award requirements of section one hundred thirty-five of
54 this article, such requirements may be dispensed with where the head of
55 the state agency, public benefit corporation or commission finds it to
56 be in the public interest and where the aggregate amount of the contract

1 awarded or to be awarded is less than two hundred thousand dollars. The
2 head of the state agency, public benefit corporation or commission, or
3 his or her designee, shall adjust the aggregate contract amounts listed
4 in this subdivision every year to account for increases in the costs of
5 construction. Advertisements for bids shall provide information on the
6 requirements for, or dispensation of, performance and payment bonds.

7 Provided further, that in a case where a performance or payment bond is
8 dispensed with, twenty per centum may be retained from each progress
9 payment or estimate until the entire contract work has been completed
10 and accepted, at which time the head of the state agency, public benefit
11 corporation or commission shall, pending the payment of the final esti-
12 mate, pay not to exceed seventy-five per centum of the amount of the
13 retained percentage.

14 § 7. Subdivision 4 of section 139-f of the state finance law, as
15 amended by chapter 83 of the laws of 1995, is amended to read as
16 follows:

17 4. Notwithstanding any other provision of this section or other law,
18 requirements for the furnishing of a performance bond or a payment bond
19 may be dispensed with at the discretion of the head of the state agency
20 or corporation, or his or her designee, where the public owner is a
21 state agency or corporation described in subdivision one-a of this
22 section and the aggregate amount of the contract awarded or to be
23 awarded is under fifty thousand dollars and, in a case where the
24 contract is not subject to the multiple contract award requirements of
25 section one hundred thirty-five of this article, such requirements may
26 be dispensed with where the head of the state agency or corporation
27 finds it to be in the public interest and where the aggregate amount of
28 the contract awarded or to be awarded is under [~~two~~] three hundred thou-
29 sand dollars. The head of the state agency, public benefit corporation
30 or commission, or his or her designee, shall adjust the aggregate
31 contract amounts listed in this subdivision every year to account for
32 increases in the costs of construction. Advertisements for bids shall
33 provide information on the requirements for, or dispensation of,
34 performance and payment bonds. Provided further, that in a case where a
35 performance or payment bond is dispensed with, twenty per centum may be
36 retained from each progress payment or estimate until the entire
37 contract work has been completed and accepted, at which time the head of
38 the state agency or corporation shall, pending the payment of the final
39 estimate, pay not to exceed seventy-five per centum of the amount of the
40 retained percentage.

41 § 8. The opening paragraph of section 139-g of the state finance law,
42 as amended by chapter 636 of the laws of 2003, is amended to read as
43 follows:

44 In every state agency, department and authority which has let more
45 than two million dollars in service and construction contracts and state
46 assisted project contracts in the prior fiscal year, the chief executive
47 officer of that agency, department or authority shall, with respect to
48 those contracts and state assisted project contracts let by his or her
49 agency, department or authority:

50 § 9. The opening paragraph of subdivision (b) of section 139-g of the
51 state finance law, as amended by chapter 636 of the laws of 2003, is
52 amended to read as follows:

53 identify all small-business and certified women and minority-owned
54 business concerns which, in the judgment of the chief executive officer
55 of that agency, department or authority, can bid on those contracts and
56 state assisted project contracts which are usually and customarily let

1 by that agency, department or authority, or in which that authority
2 provides a grant or loan or tax exempt financing, with a reasonable
3 expectation of success. Such chief executive officers shall carry out
4 the provisions of this subdivision:

5 § 10. Section 139-g of the state finance law is amended by adding a
6 new subdivision (e) to read as follows:

7 (e) For the purposes of this section, the following words shall have
8 the following meanings:

9 (i) "State assisted project contract" shall mean any written agreement
10 arising out of a state assisted housing project or state assisted
11 economic development project or state assisted higher education project
12 or state assisted hospital or health care facility project, for which
13 the total project cost exceeds two million dollars and for which the
14 project owner is committed to spend or does expend funds for the acqui-
15 sition, construction, demolition, replacement, major repair, or reno-
16 vation of real property and improvements thereon for such project.

17 (ii) "State assisted housing project" shall mean those projects which
18 receive from the New York state housing finance agency tax-exempt
19 financing for all or part of the total project cost.

20 (iii) "State assisted economic development project" shall mean those
21 projects which receive from the New York foundation of science technolo-
22 gy and innovation, or the urban development corporation and its subsid-
23 aries a grant or loan or tax-exempt financing for all or part of the
24 total project cost.

25 (iv) "State assisted higher education project" shall mean those
26 projects which receive from the dormitory authority of the state of New
27 York a grant or loan or tax-exempt financing for all or part of the
28 total project cost.

29 (v) "State assisted hospital or health care facility project" shall
30 mean those projects which receive from the dormitory authority of the
31 state of New York a grant or loan or tax-exempt financing for all or
32 part of the total project cost.

33 § 11. This act shall take effect immediately, provided however, the
34 amendments to article 15-A of the executive law made by sections one,
35 two, three, four and five of this act shall not affect the expiration of
36 such article and shall be deemed repealed therewith.