# STATE OF NEW YORK

3955

2023-2024 Regular Sessions

# IN ASSEMBLY

February 8, 2023

Introduced by M. of A. BICHOTTE HERMELYN -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to criteria for certification by the division of minority and women's business development of minority and women-owned business enterprise status; and to repeal subdivision 19 of section 310 of such law relating to the definition of personal net worth

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

Section 1. Paragraph (a) of subdivision 2-a of section 314 of the executive law, as amended by chapter 96 of the laws of 2019, clause (i) as amended by chapter 669 of the laws of 2022, is amended to read as follows:

(a) The director shall establish a procedure enabling the office to accept New York municipal corporation certification verification for minority and women-owned business enterprise applicants in lieu of requiring the applicant to complete the state certification process. The director shall promulgate rules and regulations to set forth criteria for the acceptance of municipal corporation certification. All eligible municipal corporation certifications shall require business enterprises seeking certification to meet the following standards:

(i) have at least fifty-one percent ownership by a minority or a women-owned enterprise and be owned by United States citizens or permanent resident noncitizens;

(ii) be an enterprise in which the minority and/or women-ownership interest is real, substantial and continuing;

(iii) be an enterprise in which the minority and/or women-ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise;

(iv) be an enterprise authorized to do business in this state;

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

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(v) be subject to a physical site inspection to verify the fifty-one percent ownership requirement;

(vi) be owned by an individual or individuals, whose ownership, control and operation are relied upon for certification[~~, with a personal net worth that does not exceed fifteen million dollars and such other amount as the director shall set forth in regulations, as adjusted annually for inflation according to the consumer price index~~] and that has been awarded contracts by one or more agencies within the past three years where the total city funding received by the enterprise from the expense and capital budgets for such contracts was equal to or greater than sixty million dollars, exclusive of any payments made to subcontractors, and whose size has exceeded the size standards established for its industry by the United States small business administration for three years; and

(vii) be an enterprise that is a small business pursuant to subdivision twenty of section three hundred ten of this article.

§ 2. Paragraph (e) of subdivision 7, paragraph (e) of subdivision 15 and subdivision 20 of section 310 of the executive law, paragraph (e) of subdivision 7 and paragraph (e) of subdivision 15 as amended by chapter 96 of the laws of 2019 and subdivision 20 as added by chapter 175 of the laws of 2010, are amended to read as follows:

(e) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification[~~, with a personal net worth that does not exceed fifteen million dollars, and such other amount as the director shall set forth in regulations, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year~~] and that has been awarded contracts by one or more agencies within the past three years where the total state funding received by the enterprise from the expense and capital budgets for such contracts was equal to or greater than sixty million dollars, exclusive of any payments made to subcontractors, and whose size has exceeded the size and standards established for its industry by the United States small business administration for three years; and

(e) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification[~~, with a personal net worth that does not exceed fifteen million dollars, and such other amount as the director shall set forth in regulations, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year~~] and that has been awarded contracts by one or more agencies within the past three years where the total state funding received by the enterprise from the expense and capital budgets for such contracts was equal to or greater than sixty million dollars, exclusive of any payments made to subcontractors, and whose size has exceeded the size standards established for its industry by the United States small business administration for three years; and

20. "Small business" as used in this section, unless otherwise indicated, shall mean a business which has a significant business presence in the state, is independently owned and operated, not dominant in its field and [~~employs, based on its industry, a certain number of persons as determined by the director, but not to exceed three hundred, taking into consideration factors which include, but are not limited to, federal small business administration standards~~] whose size does not exceed the size standards established by the United States small business administration for its industry pursuant to 13 CFR part 121 and any

amendments thereto. The director may issue regulations on the construction of the terms in this definition.

§ 3. Subdivision 19 of section 310 of the executive law is REPEALED.

§ 4. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that the amendments to article 15-A of the executive law made by sections one and two of this act shall not affect the expiration of such article and shall be deemed to expire therewith.