STATE OF NEW YORK

5076

2023-2024 Regular Sessions

IN ASSEMBLY

March 2, 2023

Introduced by M. of A. BARCLAY, WALSH, J. M. GIGLIO -- Multi-Sponsored by -- M. of A. K. BROWN, HAWLEY -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to a statewide disparity study regarding the participation of minority and women-owned business enterprises in state contracts

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

Section 1. Section 312-a of the executive law is amended by adding a new subdivision 3 to read as follows:

3. The director shall develop a procedure to obtain direct feedback from applicants on any problems and burdens they encountered during the application process or throughout the program and examine how the issues can be addressed to eliminate future program limitations.

§ 2. Subdivision 6 of section 313 of the executive law, as amended by chapter 96 of the laws of 2019 and paragraph (b) as amended by chapter 348 of the laws of 2021, 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

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

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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~~] **businesses** 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 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 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, in a location easily accessible to the general public: (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; (4) whether the waiver was a partial or total waiver; and (5) the specific contract provisions to which the waiver applies.

(c) The commissioner is authorized to grant a partial or total waiver of such good faith efforts to contracts within such a county, upon request of the presiding officer of such county and upon a finding that there is such a scarcity of minority and women-owned business enterprises within that county as to effectively preclude participation of such enterprises in such contracts, and where no reasonable means of accomplishing the provisions of this section exist. The commissioner shall promulgate rules and regulations necessary to implement these provisions.

§ 3. Subdivisions 1 and 3 of section 314 of the executive law, subdivision 1 as amended by chapter 567 of the laws of 2022, and subdivision 3 as amended by chapter 96 of the laws of 2019, are amended and a new subdivision 1-a is added to read as follows:

1. The director shall promulgate rules and regulations providing for the establishment of a statewide certification program including rules and regulations governing the approval, denial or revocation of any such certification including revocations for convictions for fraudulently misrepresenting the status of minority or women-owned business enterprises. Such rules shall set forth the maximum personal net worth of a minority group member or woman who may be relied upon to certify a business as a minority-owned business enterprise or women-owned business enterprise with a minimum personal net worth threshold of fifteen million dollars, and may thereafter establish different maximum levels of personal net worth for minority group members and women on an industry-by-industry basis for such industries as the director shall determine. Such regulations relating to the classification of the industry-by-industry personal net worth thresholds above the fifteen million dollar threshold shall consider the personal net worth of the owners of both certified and non-certified businesses, including but not limited to, prime contractors and subcontractors, as well as any such other factors needed to establish such thresholds. Such rules and regulations shall include, but not be limited to, such matters as may be required to ensure that the established procedures thereunder shall at least be in compliance with the code of fair procedure set forth in section seventy-three of the civil rights law, and consistent with the provisions of article twenty-three-A of the correction law. **Applications shall be made available online and in print and specifically list out all infor-**

mation and documents required by an applicant to apply for the program in clear language.

1-a. The director shall promulgate rules and regulations to establish an online help source. This source shall provide real time business support for new and existing certified businesses.

3. Following application for certification pursuant to this section, the director shall provide the applicant with verbal notice of the status of the application, including notice of any outstanding deficiencies, within twenty-four hours and written notice of the status of the application, including notice of any outstanding deficiencies, within [~~twenty-one~~] seven days. Within [~~forty-five~~] thirty days of submission of a final completed application, [~~the director shall provide the applicant with written notice of a determination by the office approving or denying such certification~~] the application shall be deemed approved unless the director shall deny such certification and, in the event of a denial a statement setting forth the reasons for such denial. Upon a determination denying or revoking certification, the business enterprise for which certification has been so denied or revoked shall, upon written request made within thirty days from receipt of notice of such determination, be entitled to a hearing before an independent hearing officer designated for such purpose by the director. In the event that a request for a hearing is not made within such thirty day period, such determination shall be deemed to be final. The independent hearing officer shall conduct a hearing and upon the conclusion of such hearing, issue a written recommendation to the director to affirm, reverse or modify such determination of the director. Such written recommendation shall be issued to the parties. The director, within thirty days, by order, must accept, reject or modify such recommendation of the hearing officer and set forth in writing the reasons therefor. The director shall serve a copy of such order and reasons therefor upon the business enterprise by personal service or by certified mail return receipt requested. The order of the director shall be subject to review pursuant to article seventy-eight of the civil practice law and rules.

§ 4. This act shall take effect immediately; provided however, that the amendments to article 15-A of the executive law made by this act shall not affect the repeal of such article and shall be deemed repealed therewith.