STATE OF NEW YORK

9153

IN ASSEMBLY

February 8, 2024

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

AN ACT to amend the state finance law, in relation to providing for prompt payment by contractors receiving public funds of amounts owed to small businesses and minority-owned business enterprises

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

Section 1. The state finance law is amended by adding a new section 149 to read as follows:

§ 149. Payments by contractors to small businesses and minority-owned business enterprise subcontractors. 1. For the purposes of this section:

(a) "Covered project" means a project which is paid for in whole or in part out of public funds as such term is defined in this section where the amount of all such public funds, when aggregated, is at least thirty percent of the total project costs and where such project costs are over five million dollars.

(b) "Paid for in whole or in part out of public funds" means any of the following:

(i) the payment of money, by a public entity, or a third party acting on behalf of and for the benefit of a public entity, directly to or on behalf of the contractor, subcontractor, developer or owner that is not subject to repayment; or

(ii) the savings achieved from fees, rents, interest rates, or other loan costs, or insurance costs that are lower than market rate costs; savings from reduced taxes as a result of tax credits, tax abatements, tax exemptions or tax increment financing; savings from payments in lieu of taxes; and any other savings from reduced, waived, or forgiven costs that would have otherwise been at a higher or market rate but for the involvement of the public entity.

(c) "Contract" means an enforceable agreement entered into by a contractor and a subcontractor.

(d) "Contractor" means any person, partnership, firm, corporation, or association:

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

LBD14364-01-4

(i) selling materials, equipment, or supplies or leasing property or equipment to a state agency;

(ii) constructing, reconstructing, rehabilitating, or repairing buildings or highways for, or on behalf of, a state agency; or

(iii) rendering or providing services pursuant to a contract with a state agency.

(e) "Subcontractor" means a person engaged by a contractor or another subcontractor to perform a portion of the contractor's obligations under a contract.

(f) "Small business concern" or "small business" means a business which is resident in this state, independently owned and operated, not dominant in its field and employs one hundred or less persons.

(g) "Minority-owned business enterprise" has the meaning set forth in subdivision seven of section three hundred ten of the executive law.

2. Within seven calendar days of the receipt of any payment from state agencies, the contractor receiving payment for a covered project shall pay each of their small business and minority-owned business enterprise contractors and/or subcontractors the proceeds from the payment representing the value of the work performed and/or furnished by the subcontractor and reflecting the percentage of the subcontractor's work completed or the supplied in the requisition approved by the owner and based upon the actual value of the subcontract or purchase order less an amount necessary to satisfy any claims, liens or judgments against the subcontractor or which have not been suitably discharged and less any retained amount as hereafter described. The contractor receiving payment for a covered project shall also generate invoices no later than seven days of date of service. Invoice service period and date of payment from receipt of undisputed invoice should not exceed thirty days. Failure by the contractor to make any payment, including any remaining amounts of the contract balance or generate invoices no later than seven days of date of service as hereinafter described, to any small business or minority-owned business enterprise subcontractor or within seven calendar days of the receipt of any payment from state agencies shall result in the commencement and accrual of interest on amounts due to such subcontractor or for the period beginning on the day immediately following the expiration of such seven calendar day period and ending on the date on which payment is made by the contractor to such subcontractor. Such interest shall be the sole responsibility of the contractor, and shall be paid at the rate of interest in effect on the date payment is made by the contractor.

§ 2. This act shall take effect immediately.