

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:

1 Section 1. The state finance law is amended by adding a new section
2 149 to read as follows:

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

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

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

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

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

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

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

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

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

3 (ii) constructing, reconstructing, rehabilitating, or repairing build-
4 ings or highways for, or on behalf of, a state agency; or

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

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

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

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

15 2. Within seven calendar days of the receipt of any payment from state
16 agencies, the contractor receiving payment for a covered project shall
17 pay each of their small business and minority-owned business enterprise
18 contractors and/or subcontractors the proceeds from the payment repres-
19 enting the value of the work performed and/or furnished by the subcon-
20 tractor and reflecting the percentage of the subcontractor's work
21 completed or the supplied in the requisition approved by the owner and
22 based upon the actual value of the subcontract or purchase order less an
23 amount necessary to satisfy any claims, liens or judgments against the
24 subcontractor or which have not been suitably discharged and less any
25 retained amount as hereafter described. The contractor receiving payment
26 for a covered project shall also generate invoices no later than seven
27 days of date of service. Invoice service period and date of payment from
28 receipt of undisputed invoice should not exceed thirty days. Failure by
29 the contractor to make any payment, including any remaining amounts of
30 the contract balance or generate invoices no later than seven days of
31 date of service as hereinafter described, to any small business or
32 minority-owned business enterprise subcontractor or within seven calen-
33 dar days of the receipt of any payment from state agencies shall result
34 in the commencement and accrual of interest on amounts due to such
35 subcontractor or for the period beginning on the day immediately follow-
36 ing the expiration of such seven calendar day period and ending on the
37 date on which payment is made by the contractor to such subcontractor.
38 Such interest shall be the sole responsibility of the contractor, and
39 shall be paid at the rate of interest in effect on the date payment is
40 made by the contractor.

41 § 2. This act shall take effect immediately.