STATE OF NEW YORK

989

2023-2024 Regular Sessions

IN ASSEMBLY

January 11, 2023

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

AN ACT to amend the executive law and the state finance law, in relation to minority and women-owned business enterprise fraud and the monies of the minority and women-owned business enterprise fund; to amend a chapter of the laws of 2022 amending the executive law and the state finance law relating to minority and women-owned business enterprises post completion certification, duties of the director and creating the minority and women-owned business enterprise fund, as proposed in legislative bills numbers S. 3390-A and A. 9259-A, in relation to the effectiveness thereof; and to repeal certain provisions of the executive law relating thereto

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

Section 1. Section 314-a of the executive law, as added by a chapter of the laws of 2022 amending the executive law and the state finance law relating to minority and women-owned business enterprises post completion certification, duties of the director and creating the minority and women-owned business enterprise fund, as proposed in legislative bills numbers S. 3390-A and A. 9259-A, is REPEALED.

§ 2. Subdivision 5 of section 313 of the executive law, as amended by chapter 96 of the laws of 2019, is amended to read as follows:

5. (a) Contracting agencies shall administer the rules and regulations promulgated by the director in a good faith effort to achieve the maximum feasible participation by minority and women owned business enterprises adopted pursuant to this article and the regulations of the director. Such rules and regulations: shall require a contractor to submit a utilization plan after bids are opened, when bids are required, but prior to the award of a state contract; shall require the contracting agency to review the utilization plan submitted by the contractor and to post the utilization plan and any waivers of compliance issued

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

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pursuant to subdivision six of this section on the website of the contracting agency; shall require the contracting agency to notify the contractor in writing within a period of time specified by the director as to any deficiencies contained in the contractor's utilization plan; shall require remedy thereof within a period of time specified by the director; shall require the contractor to submit [~~periodic~~] compliance reports relating to the operation and implementation of any utilization plan; shall not allow any automatic waivers but shall allow a contractor to apply for a partial or total waiver of the minority and women-owned business enterprise participation requirements pursuant to subdivisions six and seven of this section; shall allow a contractor to file a complaint with the director pursuant to subdivision eight of this section in the event a contracting agency has failed or refused to issue a waiver of the minority and women-owned business enterprise participation requirements or has denied such request for a waiver; and shall allow a contracting agency to file a complaint with the director pursuant to subdivision nine of this section in the event a contractor is failing or has failed to comply with the minority and women-owned business enterprise participation requirements set forth in the state contract where no waiver has been granted.

(b) The rules and regulations promulgated pursuant to this subdivision regarding a utilization plan shall provide that where enterprises have been identified within a utilization plan, a contractor shall attempt, in good faith, to utilize such enterprise at least to the extent indicated. A contracting agency may require a contractor to indicate, within a utilization plan, what measures and procedures he or she intends to take to comply with the provisions of this article, but may not require, as a condition of award of, or compliance with, a contract that a contractor utilize a particular enterprise in performance of the contract.

(c) **The rules and regulations promulgated pursuant to this subdivision regarding compliance reports shall provide that such reports shall include a standardized prepayment declaration, to be completed before each payment to a contractor, in which: (i) a representative of the contractor lists any business that was or shall be relied upon for credit toward minority and women-owned business enterprise participation and states under penalty of perjury that such business or businesses appeared on the division's directory of certified minority and women-owned business enterprises at the time of contracting and that each business performed or shall perform a commercially useful function on the contract; and (ii) a representative of any business that was or shall be relied upon for credit toward minority and women-owned business enterprise participation states under penalty of perjury that it appeared on the division's directory of certified minority and women-owned business enterprises at the time of contracting and performed or shall perform a commercially useful function on the contract. Such standardized prepayment declarations shall be submitted electronically on a centralized state registry designated by the division prior to any payment to a contractor. The rules and regulations promulgated pursuant to this subdivision may also require the contractor or subcontractor to submit documentation, as needed, to support any statements made in such standardized prepayment declarations.**

(d) Without limiting other grounds for the disqualification of bids or proposals on the basis of non-responsibility, a contracting agency may disqualify the bid or proposal of a contractor as being non-responsible for failure to remedy notified deficiencies contained in the contrac-

tor's utilization plan within a period of time specified in regulations promulgated by the director after receiving notification of such deficiencies from the contracting agency. Where failure to remedy any notified deficiency in the utilization plan is a ground for disqualification, that issue and all other grounds for disqualification shall be stated in writing by the contracting agency. Where the contracting agency states that a failure to remedy any notified deficiency in the utilization plan is a ground for disqualification the contractor shall be entitled to an administrative hearing, on a record, involving all grounds stated by the contracting agency. Such hearing shall be conducted by the appropriate authority of the contracting agency to review the determination of disqualification. A final administrative determination made following such hearing shall be reviewable in a proceeding commenced under article seventy-eight of the civil practice law and rules, provided that such proceeding is commenced within thirty days of the notice given by certified mail return receipt requested rendering such final administrative determination. Such proceeding shall be commenced in the supreme court, appellate division, third department and such proceeding shall be preferred over all other civil causes except election causes, and shall be heard and determined in preference to all other civil business pending therein, except election matters, irrespective of position on the calendar. Appeals taken to the court of appeals of the state of New York shall be subject to the same preference.

§ 3. Paragraphs (f), (h), (i), (j), (k), (l), (m) and (n) of subdivision 3 of section 311 of the executive law, paragraphs (f) and (j) as amended and paragraphs (l), (m) and (n) as added by a chapter of the laws of 2022 amending the executive law and the state finance law relating to minority and women-owned business enterprises post completion certification, duties of the director and creating the minority and women-owned business enterprise fund, as proposed in legislative bills numbers S. 3390-A and A. 9259-A, and paragraphs (h), (i) and (k) as amended by chapter 825 of the laws of 2021, are amended to read as follows:

(f) to prepare and update, no less than annually, a directory of certified minority and women-owned business enterprises which shall, wherever practicable, **(i) make publicly available records of all certifications and recertifications, (ii)** be divided into categories of labor, services, supplies, equipment, materials and recognized construction trades**,** and [~~**which shall**~~] **(iii)** indicate areas or locations of the state where such enterprises are available to perform services[~~**, and to use this information to create an internet based, searchable, centralized state registry detailing certifications, waivers, and all documents submitted pertaining to certification or denial of certification, or compliance with goals for utilization of minority and women-owned business enterprises**~~];

(h) **to make publicly available on the division's website records of all revocations of certification for convictions for fraudulently misrepresenting the status of minority or women-owned business enterprises or for evidence of fraudulent conduct with regard to participation of a minority or women-owned business enterprise in the performance of state contracts and the reasoning for such revocations after a final determination has been made, provided that information falling into the categories enumerated in paragraphs (a) through (j) of subdivision two of section eighty-seven of the public officers law shall be withheld;**

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

[~~(i)~~] (j) to streamline the state certification process to accept federal and municipal corporation certifications;

[~~(j)~~] (k) to make publicly available on the division's website records of all waivers of compliance reported pursuant to paragraph (b) of subdivision six of section three hundred thirteen of this article [~~on the division's website~~], including the reasoning for denial of such waivers after a final determination has been made, provided that information falling into the categories enumerated in paragraphs (a) through (j) of subdivision two of section eighty-seven of the public officers law shall be withheld;

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

~~(l) to perform inspections of minority or women-owned business's place of business, warehouse or storage facility to confirm the existence of a workforce, equipment and supplies~~]; and

(m) to [~~perform~~] coordinate with appropriate offices, agencies, or authorities, where applicable, to conduct site visits or perform inspections of financial records of minority or women-owned business enterprises [~~to ensure such enterprises are~~] in [~~compliance~~] accordance with [~~applicable laws; and~~

~~(n) to ensure the protection of individuals who report suspected violations of this article and applicable laws related to minority and women-owned business enterprises~~] this article and the regulations of the director.

§ 4. Subdivision 3 of section 97-k of the state finance law, as added by a chapter of the laws of 2022 amending the executive law and the state finance law relating to minority and women-owned business enterprises post completion certification, duties of the director and creating the minority and women-owned business enterprise fund, as proposed in legislative bills numbers S. 3390-A and A. 9259-A, is amended to read as follows:

3. Monies of the fund, following appropriation by the legislature, shall be expended by the appropriate New York state offices, agencies, or authorities to acquire software, employ personnel to audit, investigate and prosecute minority and women-owned business enterprise fraud and to underwrite minority and women-owned business enterprise programs to assist minority and women business enterprise owners to develop sustainable businesses, provided that expenditures for such activities shall only be required under this section to the extent that monies are available in the fund to support them.

§ 5. Section 6 of a chapter of the laws of 2022 amending the executive law and the state finance law relating to minority and women-owned business enterprises post completion certification, duties of the director and creating the minority and women-owned business enterprise fund, as proposed in legislative bills numbers S. 3390-A and A. 9259-A, is amended to read as follows:

§ 6. This act shall take effect [~~immediately~~] **on the one hundred eightieth 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, two, three and four of this act shall not affect the repeal of such article and shall be deemed repealed therewith.

§ 6. This act shall take effect immediately; provided, however, that sections one, two, three and four of this act shall take effect on the same date and in the same manner as a chapter of the laws of 2022 amending the executive law and the state finance law relating to minority and women-owned business enterprises post completion certification, duties of the director and creating the minority and women-owned business enterprise fund, as proposed in legislative bills numbers S. 3390-A and A. 9259-A, takes effect; and provided, further, that the amendments made to article 15-A of the executive law made by sections two and three of this act shall not affect the repeal of such article and shall be deemed repealed therewith.