

# STATE OF NEW YORK

10128

## IN ASSEMBLY

May 6, 2024

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

AN ACT in relation to commissioning a disparity study to determine the level of participation of women and minority businesses in state contracting and requires establishment of programs and goals based on the results of such study

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

1 Section 1. 1. Definitions. As used in this section, the following  
2 terms shall have the following meanings:

3 (a) "Department" means the department of economic development.

4 (b) "Minority" means an individual who is a member of a race which  
5 comprises less than 50 percent of the total population of this state.

6 (c) "Minority-owned business enterprise" shall mean a business enter-  
7 prise, including a sole proprietorship, partnership, limited liability  
8 company or corporation that is:

9 (i) at least fifty-one percent owned by one or more minority group  
10 members;

11 (ii) an enterprise in which such minority ownership is real, substan-  
12 tial and continuing;

13 (iii) an enterprise in which such minority ownership has and exercises  
14 the authority to control independently the day-to-day business decisions  
15 of the enterprise;

16 (iv) an enterprise authorized to do business in this state and inde-  
17 pendently owned and operated;

18 (v) an enterprise owned by an individual or individuals, whose owner-  
19 ship, control and operation are relied upon for certification, with a  
20 personal net worth that does not exceed \$15,000,000, and such other  
21 amount as the director shall set forth in regulations, as adjusted annu-  
22 ally on the first of January for inflation according to the consumer  
23 price index of the previous year; and

24 (vi) an enterprise that is a small business.

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

LBD15302-01-4

(d) "Minority group member" shall mean a United States citizen or permanent resident noncitizen who is and can demonstrate membership in one of the following groups:

(i) Black persons having origins in any of the Black African racial groups;

(ii) Hispanic/Latino persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race;

(iii) Native American or Alaskan native persons having origins in any of the original peoples of North America;

(iv) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.

(e) "Women-owned business enterprise" shall mean a business enterprise, including a sole proprietorship, partnership, limited liability company or corporation that is:

(i) at least fifty-one percent owned by one or more United States citizens or permanent resident noncitizens who are women;

(ii) an enterprise in which the ownership interest of such women is real, substantial and continuing;

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

(iv) an enterprise authorized to do business in this state and independently owned and operated;

(v) 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 \$15,000,000, 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

(vi) an enterprise that is a small business pursuant to subdivision twenty of this section.

A firm owned by a minority group member who is also a woman may be certified as a minority-owned business enterprise, a women-owned business enterprise, or both, and may be counted towards either a minority-owned business enterprise goal or a women-owned business enterprise goal, in regard to any contract or any goal, set by an agency or authority, but such participation may not be counted towards both such goals. Such an enterprise's participation in a contract may not be divided between the minority-owned business enterprise goal and the women-owned business enterprise goal.

2. Disparity study. (a) The department shall commission a state-wide disparity study regarding the participation of minority-owned business enterprises and women-owned business enterprises in state contracts to be delivered to the governor and the legislature no later than January 1, 2026. The study shall be prepared by an independent entity and selected through a request for proposal process. The study shall determine:

(i) Whether there is a disparity between the number of qualified minority-owned business enterprises and women-owned business enterprises ready, willing, and able to perform state contracts and the number of such contractors actually engaged to perform such contracts; and

(ii) What changes, if any, should be made to state policies affecting minority-owned business enterprises and women-owned business enterprises.

1 (b) Upon completion of the study, the department shall post such study  
2 on its website.

3 (c) Within one year of the completion of the state-wide disparity  
4 study commissioned pursuant to this subdivision, the department shall:

5 (i) Provide goals for equitable participation of minority-owned busi-  
6 ness enterprises and women-owned business enterprises in the performance  
7 of state contracts to the extent that any disparity is revealed by such  
8 study;

9 (ii) Establish procedures to ensure that minority-owned business  
10 enterprises and women-owned business enterprises shall be given the  
11 opportunity for equitable participation in the performance of state  
12 contracts and to assist in identifying those state contracts for which  
13 minority-owned business enterprises and women-owned business enterprises  
14 may best bid to achieve the goals set forth pursuant to this subdivi-  
15 sion;

16 (iii) Provide for the certification and decertification of minority-  
17 owned business enterprises and women-owned business enterprises as such  
18 and the maintenance by the department of a current list of certified  
19 minority-owned business enterprises and women-owned business enter-  
20 prises; and

21 (iv) Collect statistical data concerning actual participation of  
22 minority-owned business enterprises and women-owned business enterprises  
23 in state contracting.

24 (d) All contracting agencies, where practicable, feasible, and appro-  
25 priate, shall assess the diversity practices of contractors submitting  
26 bids or proposals in connection with the award of a state contract and  
27 promote the achievement of goals set forth by the department pursuant to  
28 paragraph (c) of this subdivision.

29 § 2. This act shall take effect immediately.