

STATE OF NEW YORK

1266

2023-2024 Regular Sessions

IN ASSEMBLY

January 13, 2023

Introduced by M. of A. BICHOTTE HERMELYN, SIMON, ZINERMAN, SEAWRIGHT, JACKSON -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to requiring contracting agencies to contact minority and women-owned business enterprises when such enterprise is listed on a utilization plan and when a contract is awarded

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

Section 1. Paragraphs (a) and (b) of subdivision 5 of section 313 of the executive law, as amended by chapter 96 of the laws of 2019, are amended and six new paragraphs (b-1), (b-2), (b-3), (b-4), (b-5) and (d) are added to read as follows:

(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~~] both minority-owned and [women owned] women-owned business enterprises adopted pursuant to this article and the regulations of the director prior to the prime contractor's inception of the scope of work outlined in an awarded contract. Such rules and regulations: shall require a prime contractor to [~~submit a~~] utilize the minority and women-owned business enterprises listed on the utilization plan [~~after~~] submitted when bids are opened, [~~when bids are required, but prior~~] provided that the minority-owned or women-owned business enterprise is still certified with New York state. Prior to the award of a state contract[~~, shall require~~] with minority and women-owned business enterprise goals the contracting agency [~~to~~] shall review the utilization plan submitted by the prime contractor and [~~to~~] shall post the utilization plan and any waivers of compliance issued pursuant to subdivision six of this section on the website of the contracting agency[~~, shall require the~~]. Within five business days after an award letter is sent to the prime contractor, the contracting agency shall submit an

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

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1 award notification letter to the minority and women-owned business
2 enterprise listed on the utilization plan. The minority and women-owned
3 business enterprise listed on the original utilization plan at the time
4 of submission shall not be amended or changed by the contractor after
5 submission to the contracting agency for approval. The contracting agen-
6 cy shall be required to notify the prime contractor in writing within [~~a~~
7 ~~period of time specified by the director~~] ten days as to any deficien-
8 cies contained in the contractor's utilization plan[+] and shall require
9 remedy thereof within [~~a period of time specified by the director, shall~~
10 ~~require the contractor to submit periodic compliance reports relating to~~
11 ~~the operation and implementation of any utilization plan,~~] seven days of
12 such notification. The contracting agency shall not allow any automatic
13 waivers but shall allow a contractor to apply for a partial or total
14 waiver of the minority and women-owned business enterprise participation
15 requirements pursuant to subdivisions six and seven of this section;
16 shall allow a contractor to file a complaint with the director pursuant
17 to subdivision eight of this section in the event a contracting agency
18 has failed or refused to issue a waiver of the minority and women-owned
19 business enterprise participation requirements or has denied such
20 request for a waiver; and shall allow a contracting agency to file a
21 complaint with the director pursuant to subdivision nine of this section
22 in the event a contractor is failing or has failed to comply with the
23 minority and women-owned business enterprise participation requirements
24 set forth in the state contract where no waiver has been granted.

25 (b) The rules and regulations promulgated pursuant to this subdivision
26 regarding a utilization plan shall provide that where enterprises have
27 been identified within a utilization plan, a contractor shall attempt,
28 in good faith, to utilize such enterprise [~~at least to the extent indi-~~
29 ~~cated~~], unless such enterprise cannot perform under the contract or such
30 enterprise is no longer certified by the state. A contracting agency may
31 require a contractor to indicate, within a utilization plan, what meas-
32 ures and procedures he or she intends to take to comply with the
33 provisions of this article[, ~~but may not require, as a condition of~~
34 ~~award of, or compliance with, a contract that a contractor utilize a~~
35 ~~particular enterprise in performance of the contract~~].

36 (b-1) After the contracting agency awards a contract, the prime
37 contractor shall execute a subcontractor's agreement and provide a work
38 assignment to the minority and women-owned business enterprises listed
39 in the utilization plan within forty-five days of such award. Failure
40 to comply with this requirement shall result in disqualification of the
41 prime contractor and the contracting agency shall re-award the contract
42 to the next lowest bidder or eligible bidder.

43 (b-2) After receiving the first payment on the contract, the prime
44 contractor shall make payments to the minority and women-owned business
45 enterprise for work performed under the contract within twenty days of
46 receipt of each payment received from the contracting agency. A minority
47 and women-owned business enterprise may notify the contracting agency of
48 any violation of this paragraph by the prime contractor and the
49 contracting agency shall then notify the prime contractor to correct
50 such deficiency within ten days of notification. The failure of the
51 contractor to make such payments to the minority and women-owned busi-
52 ness enterprise shall result in disqualification and the contracting
53 agency shall re-award such contract to the next lowest bidder or eligi-
54 ble bidder.

1 **(b-3) A prime contractor which is a certified minority-owned business**
2 **may self-certify and perform under the contract to meet the contract's**
3 **minority-owned business enterprise goals.**

4 **(b-4) A prime contractor which is a certified women-owned business may**
5 **self-certify and perform under the contract to meet the contract's**
6 **women-owned business enterprise goal only, and it must utilize a certi-**
7 **fied minority-owned business enterprise to perform under the contract to**
8 **meet the contract's minority-owned business goals.**

9 **(b-5) A prime contractor which is dually certified minority-owned and**
10 **women-owned business enterprise may self-certify and perform under the**
11 **contract to meet the contract's minority-owned and women-owned business**
12 **enterprise goals.**

13 **(d) This subdivision shall apply to all public contracts where a**
14 **public agency issues a request for proposals, notwithstanding whether**
15 **the contract could otherwise be awarded through the agency's discretion-**
16 **ary contract award process or the non-existence of a discretionary**
17 **contract award process within the public agency.**

18 § 2. This act shall take effect immediately; provided, however, that
19 the amendments to subdivision 5 of section 313 of the executive law made
20 by section one of this act shall not affect the repeal of such section
21 and shall be deemed repealed therewith.