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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award notification letter to the minority and women-owned business enterprise listed on the utilization plan. The minority and women-owned business enterprise listed on the original utilization plan at the time of submission shall not be amended or changed by the contractor after submission to the contracting agency for approval. The contracting agency shall be required to notify the prime contractor in writing within [~~a period of time specified by the director~~] ten days as to any deficiencies contained in the contractor's utilization plan[~~;~~] and 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;~~] seven days of such notification. The contracting agency 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~~], unless such enterprise cannot perform under the contract or such enterprise is no longer certified by the state. 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~~].

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

(b-2) After receiving the first payment on the contract, the prime contractor shall make payments to the minority and women-owned business enterprise for work performed under the contract within twenty days of receipt of each payment received from the contracting agency. A minority and women-owned business enterprise may notify the contracting agency of any violation of this paragraph by the prime contractor and the contracting agency shall then notify the prime contractor to correct such deficiency within ten days of notification. The failure of the contractor to make such payments to the minority and women-owned business enterprise shall result in disqualification and the contracting agency shall re-award such contract to the next lowest bidder or eligible bidder.

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

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

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

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

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