

STATE OF NEW YORK

3963

2023-2024 Regular Sessions

IN ASSEMBLY

February 8, 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 participation by minority group members and women with respect to certain state contracts; and to amend the state finance law, in relation to performance and payment bond requirements

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

1 Section 1. Subdivisions 3 and 4 of section 311 of the executive law,
2 subdivision 3 as added by chapter 261 of the laws of 1988, paragraphs
3 (d) and (e) of subdivision 3 as amended by chapter 55 of the laws of
4 1992, paragraphs (f) and (j) as amended and paragraphs (l), (m) and (n)
5 of subdivision 3 as added by chapter 567 of the laws of 2022, the open-
6 ing paragraph of subdivision 4 as amended and paragraph (d-1) of subdi-
7 vision 3 and paragraphs (d) and (e) of subdivision 4 as added by chapter
8 96 of the laws of 2019, paragraph (g) of subdivision 3 as amended by
9 section 1 of part BB of chapter 59 of the laws of 2006, paragraphs (h)
10 and (i) as amended and paragraph (k) of subdivision 3 as added by chap-
11 ter 825 of the laws of 2021, and subdivision 4 as amended by chapter 361
12 of the laws of 2009, are amended to read as follows:

13 3. The director shall have the following powers and duties:

14 (a) to encourage and assist contracting agencies in their efforts to
15 increase participation by minority and women-owned business enterprises
16 on state contracts and subcontracts [~~so-as~~] to facilitate the award of a
17 fair share of such contracts to them and to provide on the division's
18 website a list of each contracting agency's minority and women-owned
19 business enterprises certification outreach seminars;

20 (b) to develop standardized forms and reporting documents necessary to
21 implement this article;

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

LBD05916-01-3

1 (c) to conduct educational outreach programs to encourage the certifi-
2 ication of minority and women-owned business enterprises consistent with
3 the purposes of this article;

4 (d) to review [~~periodically~~] quarterly the practices and procedures of
5 each contracting agency with respect to compliance with the provisions
6 of this article, and to require them to file [~~periodic~~] quarterly
7 reports with the division of minority and women's business development
8 as to the level of minority and women-owned business enterprises partic-
9 ipation in the awarding of agency contracts for goods and services
10 including but not limited to the number of state contracts awarded to
11 certified minority or women-owned business enterprises, the maximum
12 dollar amount obligated pursuant to all those contracts, and the total
13 expenditures made pursuant to all such contracts; the number of state
14 contracts awarded which include a utilization plan for business partic-
15 ipation by certified minority or women-owned business enterprises, the
16 maximum amount obligated pursuant to those contracts, and the total
17 expenditures made pursuant to all such contracts; the number of state
18 contracts awarded upon which a waiver was granted from goals required by
19 the contracts for business participation by certified minority or
20 women-owned business enterprises, and the maximum amount obligated
21 pursuant to those contracts; the number of state contracts awarded which
22 required goals for employment of minority group members and women; and
23 the number of state contracts awarded for which waivers of employment
24 goals required by the contracts have been granted;

25 (d-1) to require all contracting state agencies to develop a four-year
26 growth plan to determine a means of promoting and increasing partic-
27 ipation by [~~minority-owned~~] minority and women-owned business enter-
28 prises with respect to state contracts and subcontracts. Every four
29 years, beginning September fifteenth, two thousand twenty, each
30 contracting state agency shall submit a four-year growth plan as part of
31 its annual report to the governor and legislature pursuant to section
32 one hundred sixty-four of this chapter.

33 (e) on January first of each year report to the governor, the tempo-
34 rary president of the senate, the speaker of the assembly, the minority
35 leaders of the senate and the assembly, and the chairpersons of the
36 senate finance and assembly ways and means committees on the [~~level~~]
37 actual versus projected levels of minority and women-owned business
38 enterprises participating in each agency's contracts for goods [~~and~~],
39 services and construction, including but not limited to the number of
40 state contracts awarded to certified minority or women-owned business
41 enterprises, the maximum dollar amount obligated pursuant to all those
42 contracts, and the total expenditures made pursuant to all such
43 contracts, and on activities of the office and effort by each contract-
44 ing agency to promote employment of minority group members and women,
45 and to promote and increase participation by certified businesses with
46 respect to state contracts and subcontracts so as to facilitate the
47 award of a fair share of state contracts to such businesses. The comp-
48 troller shall assist the division in collecting information on the
49 participation of certified business for each contracting agency. Such
50 report may recommend new activities and programs to effectuate the
51 purposes of this article;

52 (f) the director shall list in the division's annual report the names
53 of non-compliant agencies and the extent of their noncompliance in
54 submitting its quarterly minority and women-owned business enterprise
55 utilization reports; and, shall implement a master list of all the state

1 agencies required to file quarterly compliance reports and shall attach
2 such list to the division's annual report.

3 ~~(g)~~ to prepare and update~~[, no less than annually,]~~ quarterly a direc-
4 tory of certified minority and women-owned business enterprises which
5 shall, wherever practicable, be divided into categories of labor,
6 services, supplies, equipment, materials and recognized construction
7 trades and which shall indicate areas or locations of the state where
8 such enterprises are available to perform services, and to use this
9 information to create an internet based, searchable, centralized state
10 registry detailing certifications, waivers, and all documents submitted
11 pertaining to certification or denial of certification, or compliance
12 with goals for utilization of minority and women-owned business enter-
13 prises and for such enterprises to access contract and subcontract
14 opportunities;

15 ~~(g)~~ (h) to appoint independent hearing officers who by contract or
16 terms of employment shall preside over adjudicatory hearings pursuant to
17 section three hundred fourteen of this article for the office and who
18 are assigned no other work by the office;

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

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

28 ~~(j)~~ (k) to make publicly available records of all waivers of compli-
29 ance reported pursuant to paragraph (b) of subdivision six of section
30 three hundred thirteen of this article on the division's website;

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

36 ~~(l)~~ (m) to perform inspections of minority or women-owned business's
37 place of business, warehouse or storage facility to confirm the exist-
38 ence of a workforce, equipment and supplies;

39 ~~(m)~~ (n) to perform inspections of financial records of minority or
40 women-owned business enterprises to ensure such enterprises are in
41 compliance with applicable laws; and

42 ~~(n)~~ (o) to ensure the protection of individuals who report suspected
43 violations of this article and applicable laws related to minority and
44 women-owned business enterprises.

45 4. The director shall provide assistance to, and facilitate access to
46 programs serving certified businesses as well as applicants to ensure
47 that such businesses benefit, as needed, from technical, managerial and
48 financial, and general business assistance; training; marketing; organ-
49 ization and personnel skill development; project management assistance;
50 technology assistance; bond and insurance education assistance; and
51 other business development assistance. The director shall maintain a
52 toll-free number at the department of economic development to be used to
53 answer questions concerning the MWBE certification process. In addition,
54 the director ~~may~~ shall, either independently or in conjunction with
55 other state agencies:

1 (a) develop a clearinghouse of information on programs and services
2 provided by entities that may assist such businesses;

3 (b) review bonding and paperwork requirements imposed by contracting
4 agencies that may unnecessarily impede the ability of such businesses to
5 compete; and

6 (c) seek to maximize utilization by minority and women-owned business
7 enterprises of available federal resources including but not limited to
8 federal grants, loans, loan guarantees, surety bonding guarantees, tech-
9 nical assistance, and programs and services of the federal small busi-
10 ness administration.

11 (d) conduct outreach events, training workshops, seminars, and other
12 such educational programs throughout the state, including all regional
13 offices, to state agencies, external stakeholders, and the public, to
14 promote awareness and utilization of minority and women-owned business
15 enterprises; and

16 (e) identify and establish mentorship opportunities and other business
17 development programs to increase capacity and better prepare MWBEs for
18 bidding on contracts with state agencies upon successful completion of
19 the mentorship opportunity. Such mentorship opportunities shall be
20 intended to ensure that mentor and mentee are connected based on a
21 commercially useful function.

22 § 2. Subdivision 5 of section 312 of the executive law, as added by
23 chapter 261 of the laws of 1988, is amended to read as follows:

24 5. The director shall promulgate rules and regulations to ensure that
25 contractors and subcontractors undertake programs of affirmative action
26 and equal employment opportunity as required by this section. Such rules
27 and regulations as they pertain to any particular agency shall be devel-
28 oped after consultation with contracting agencies. Such rules and regu-
29 lations ~~[may]~~ shall require a contractor, after notice in a bid solic-
30 itation, to submit an equal employment opportunity program ~~[after bid~~
31 ~~opening and prior to the award of any contract]~~ at the time bids are
32 submitted, and ~~[may]~~ shall require the contractor or subcontractor to
33 submit compliance reports relating to the contractor's or subcontrac-
34 tor's operation and implementation of any equal employment opportunity
35 program in effect as of the date the contract is executed. The contract-
36 ing agency ~~[may recommend to the director that]~~ shall have the right to
37 recommend that the director take appropriate action according to the
38 procedures set forth in section three hundred sixteen of this article
39 against the contractor for noncompliance with the requirements of this
40 section. The contracting agency shall be responsible for monitoring
41 compliance with this section.

42 § 3. Paragraph (j) of subdivision 2-a of section 313 of the executive
43 law, as amended by chapter 96 of the laws of 2019, is amended and a new
44 paragraph (k) is added to read as follows:

45 (j) require each agency to consult the most current disparity study
46 when calculating agency-wide and contract specific participation goals
47 pursuant to this article; ~~[and]~~

48 (k) encourage joint ventures, partnerships, and mentor-protege
49 relationships as defined in section one hundred forty-seven of the state
50 finance law, between prime contractors and minority and women-owned
51 business enterprises; and

52 § 4. Subdivision 3 and paragraph (a) of subdivision 5 of section 313
53 of the executive law, as amended by chapter 96 of the laws of 2019, are
54 amended to read as follows:

55 3. Solely for the purpose of providing the opportunity for ~~[meaning-~~
56 ~~ful]~~ increased participation by certified businesses in the performance

1 of state contracts as provided in this section, state contracts shall
2 include leases of real property by a state agency to a lessee where: the
3 terms of such leases provide for the construction, demolition, replace-
4 ment, major repair or renovation of real property and improvements ther-
5 eon by such lessee; and the cost of such construction, demolition,
6 replacement, major repair or renovation of real property and improve-
7 ments thereon shall exceed the sum of one hundred thousand dollars.
8 Reports to the director pursuant to section three hundred fifteen of
9 this article shall include activities with respect to all such state
10 contracts. Contracting agencies shall include or require to be included
11 with respect to state contracts for the acquisition, construction, demo-
12 lition, replacement, major repair or renovation of real property and
13 improvements thereon, such provisions as ~~may~~ shall be necessary to
14 effectuate the provisions of this section in every bid specification and
15 state contract, including, but not limited to: (a) provisions requiring
16 contractors to make a good faith effort to solicit active participation
17 by enterprises identified in the directory of certified businesses; (b)
18 requiring the parties to agree as a condition of entering into such
19 contract, to be bound by the provisions of section three hundred sixteen
20 of this article; and (c) requiring the contractor to include the
21 provisions set forth in paragraphs (a) and (b) of this subdivision in
22 every subcontract in a manner that the provisions will be binding upon
23 each subcontractor as to work in connection with such contract.
24 Provided, however, that no such provisions shall be binding upon
25 contractors or subcontractors in the performance of work or the
26 provision of services that are unrelated, separate or distinct from the
27 state contract as expressed by its terms, and nothing in this section
28 shall authorize the director or any contracting agency to impose any
29 requirement on a contractor or subcontractor except with respect to a
30 state contract.

31 (a) Contracting agencies shall administer the rules and regulations
32 promulgated by the director in a good faith effort to achieve the maxi-
33 mum feasible participation by minority and women owned business enter-
34 prises adopted pursuant to this article and the regulations of the
35 director. Such rules and regulations: shall require a contractor to
36 submit a utilization plan [~~after bids are opened~~ at the time bids are
37 submitted, when bids are required~~, but prior to the award of a state~~
38 ~~contract~~]; shall require the contracting agency to review the utiliza-
39 tion plan submitted by the contractor and to post the utilization plan
40 and any waivers of compliance issued pursuant to subdivision six of this
41 section on the website of the contracting agency; shall require the
42 contracting agency to notify the contractor in writing within a period
43 of time specified by the director as to any deficiencies contained in
44 the contractor's utilization plan; shall require remedy thereof within a
45 period of time specified by the director; shall require the contractor
46 to submit [~~periodic~~ quarterly compliance reports relating to the opera-
47 tion and implementation of any utilization plan; shall not allow any
48 automatic waivers but shall allow a contractor to apply for a partial or
49 total waiver of the minority and women-owned business enterprise partic-
50 ipation requirements pursuant to subdivisions six and seven of this
51 section; shall allow a contractor to file a complaint with the director
52 pursuant to subdivision eight of this section in the event a contracting
53 agency has failed or refused to issue a waiver of the minority and
54 women-owned business enterprise participation requirements or has denied
55 such request for a waiver; and shall allow a contracting agency to file
56 a complaint with the director pursuant to subdivision nine of this

1 section in the event a contractor is failing or has failed to comply
2 with the minority and women-owned business enterprise participation
3 requirements set forth in the state contract where no waiver has been
4 granted.

5 § 5. Subdivisions 1, 2-a and 3 of section 315 of the executive law,
6 subdivisions 1 and 3 as amended and subdivision 2-a as added by chapter
7 96 of the laws of 2019, are amended and two new subdivisions 3-a and 8
8 are added to read as follows:

9 1. Each contracting agency shall be responsible for monitoring state
10 contracts under its jurisdiction, and recommending matters to the office
11 respecting non-compliance with the provisions of this article so that
12 the office [~~may~~] shall take such action as [~~is appropriate~~] stated in
13 subdivision three of section three hundred sixteen of this article. Each
14 contracting agency shall have the right to recommend that the director
15 impose a sanction, penalty, or fine for three or more violations of
16 subdivision one of section three hundred sixteen of this article, to
17 ensure compliance with the provisions of this article, the rules and
18 regulations of the director issued hereunder and the contractual
19 provisions required pursuant to this article. All contracting agencies
20 shall comply with the rules and regulations of the office and are
21 directed to cooperate with the office and to furnish to the office such
22 information and assistance as may be required in the performance of its
23 functions under this article.

24 2-a. [~~To the extent practicable, upon completion of the restrictive~~
25 ~~period of a procurement, each~~] Each contracting agency when notifying a
26 contractor of a winning bid award shall also notify any minority or
27 women-owned business enterprise identified in the contractor's submitted
28 utilization plan of such contractor's receipt of the winning bid award.

29 3. Each contracting agency shall report to the commissioner of econom-
30 ic development, the commissioner of general services and the director
31 with respect to activities undertaken to promote employment of minority
32 group members and women and promote and increase participation by certi-
33 fied businesses with respect to state contracts and subcontracts. Such
34 reports shall be submitted [~~no later than May fifteenth of every year~~]
35 quarterly and shall include such information as is necessary for the
36 director to determine whether the contracting agency and any contractor
37 to the contracting agency have complied with the purposes of this arti-
38 cle, including, without limitation, the number of state contracts
39 awarded to certified minority or women-owned business enterprises; the
40 maximum dollar amount obligated pursuant to all those contracts; and the
41 total expenditures made pursuant to all such contracts; the number of
42 state contracts awarded which include a utilization plan for business
43 participation by certified minority or women-owned business enterprises,
44 the maximum amount obligated pursuant to those contracts, and the total
45 expenditures made pursuant to all such contracts; a summary of all waiv-
46 ers of the requirements of subdivisions six and seven of section three
47 hundred thirteen of this article allowed by the contracting agency
48 during the period covered by the report, including a description of the
49 basis of the waiver request [~~and~~], the rationale for granting any such
50 waiver, the maximum amount obligated pursuant to those contracts; the
51 number of state contracts awarded which required goals for employment of
52 minority group members and women; the number of state contracts awarded
53 for which waivers of employment goals required by the contracts have
54 been granted, and any instances in which the contract agency has deemed
55 a contractor to have committed a violation pursuant to section three
56 hundred sixteen of this article and such other information as the direc-

tor shall require. Each agency shall also include in such annual report whether or not it has been required to prepare a remedial plan, and, if so, the plan and the extent to which the agency has complied with each element of the plan.

3-a. Within thirty days after completion, a copy of the quarterly minority and women-owned business enterprise report shall be transmitted to the commissioner of economic development, the commissioner of general services, and the director. A contracting agency, which has not let more than two million dollars in service and/or construction contracts within the applicable period may apply to the commissioner of economic development, and the director for a waiver of the required annual report. The waiver application shall be made on such form as the commissioner of economic development and the director may prescribe.

8. If a contracting agency shall fail to file or substantially complete, as determined by the commissioner of economic development and the director, the report required by this section, the director shall provide notice to the contracting agency. The notice shall state the following:

(a) that the failure to file a report as required is a violation of this section, or in the case of an insufficient report, the manner in which the report submitted is deficient;

(b) that the contracting agency has thirty days to comply with this section or provide an adequate written explanation to the commissioner of economic development and the commissioner of general services and the director of the contracting agency's reasons for the inability to comply; and

(c) that the contracting agency's continued failure to provide either the required report or an adequate explanation will result in an independent audit of the contracting agency, the cost of which shall be borne by the contracting agency.

§ 6. Section 316 of the executive law, as amended by chapter 567 of the laws of 2022, is amended to read as follows:

§ 316. [~~Enforcement~~] Violations and enforcement. 1. It shall be a violation for any person or entity to:

(a) intentionally use or acquire an MWBE name through deceit or other dishonest means in order to negotiate a lower bid from a non-MWBE.

(b) submit to the department of economic development, documents or other material as evidence of a good faith effort to comply with the provisions of this article without, in fact, having entered into any contract, agreement, subcontract, or sub-agreement with an MWBE for the use or purchase of such business enterprise's goods or services in the performance of the awarded state contract.

(c) fail to provide an MWBE with sufficient information or other required supporting documentation in order for the MWBE to prepare a proper bid.

2. Upon receipt by the director of a complaint by a contracting agency that a contractor has violated the provisions of a state contract which have been included to comply with the provisions of this article or of a contractor that a contracting agency has violated such provisions or has failed or refused to issue a waiver where one has been applied for pursuant to subdivision six of section three hundred thirteen of this article or has denied such application, the director shall attempt to resolve the matter giving rise to such complaint. If efforts to resolve such matter to the satisfaction of all parties are unsuccessful, the director shall refer the matter, within thirty days of the receipt of the complaint, to the division's hearing officers. Upon conclusion of

1 the administrative hearing, the hearing officer shall submit to the
2 director his or her decision regarding the alleged violation of the
3 contract and recommendations regarding the imposition of sanctions,
4 fines or penalties. The director, within ten days of receipt of the
5 decision, shall file a determination of such matter and shall cause a
6 copy of such determination along with a copy of this article to be
7 served upon the contractor by personal service or by certified mail
8 return receipt requested. The decision of the hearing officer shall be
9 final and may only be vacated or modified as provided in article seven-
10 ty-eight of the civil practice law and rules upon an application made
11 within the time provided by such article. The determination of the
12 director as to the imposition of any fines, sanctions or penalties shall
13 be reviewable pursuant to article seventy-eight of the civil practice
14 law and rules. The penalties imposed for any violation which is premised
15 upon either a fraudulent or intentional misrepresentation by the
16 contractor or the contractor's willful and intentional disregard of the
17 minority and women-owned participation requirement included in the
18 contract may include a determination that the contractor shall be ineli-
19 gible to submit a bid to any contracting agency or be awarded any such
20 contract for a period not to exceed one year following the final deter-
21 mination; provided however, if a contractor has previously been deter-
22 mined to be ineligible to submit a bid pursuant to this section, the
23 penalties imposed for any subsequent violation, if such violation occurs
24 within five years of the first violation, may include a determination
25 that the contractor shall be ineligible to submit a bid to any contract-
26 ing agency or be awarded any such contract for a period not to exceed
27 five years following the final determination. The division of minority
28 and women's business development shall maintain a website listing all
29 contractors that have been deemed ineligible to submit a bid pursuant to
30 this section and the date after which each contractor shall once again
31 become eligible to submit bids.

32 ~~[2-]~~ 3. The director shall impose a sanction, penalty, or fine on any
33 individual or entity that has three or more violations of this article
34 within five years. Any fines, or portion thereof, imposed pursuant to
35 ~~[the foregoing subdivision]~~ this section, or imposed by a court of
36 competent jurisdiction related to convictions involving fraud related to
37 this article or otherwise involving a minority or women-owned business
38 enterprise, ~~[may]~~ shall be required by the entity imposing such fines to
39 be paid to the minority and women-owned business enterprise fund estab-
40 lished pursuant to section ninety-seven-k of the state finance law.
41 Such funds shall be used to subsidize the facilitation of the provisions
42 of this article. Other sanctions shall include barring such entity or
43 individual from contracting with such agency for a period not to exceed
44 five years.

45 § 7. Subdivision 1 of section 137 of the state finance law, as sepa-
46 rately amended by section 17 of part MM of chapter 57 and chapter 619 of
47 the laws of 2008, is amended to read as follows:

48 1. In addition to other bond or bonds, if any, required by law for the
49 completion of a work specified in a contract for the prosecution of a
50 public improvement for the state of New York a municipal corporation, a
51 public benefit corporation or a commission appointed pursuant to law, or
52 in the absence of any such requirement, the comptroller may or the other
53 appropriate official, respectively, shall nevertheless require prior to
54 the approval of any such contract a bond guaranteeing prompt payment of
55 moneys due to all persons furnishing labor or materials to the contrac-
56 tor or any subcontractors in the prosecution of the work provided for in

1 such contract. Whenever a municipal corporation issues a permit subject
2 to compliance with section two hundred twenty of the labor law, such
3 permittee or its contractor or subcontractors furnishing workers shall
4 post a payment bond subject to this section. Provided, however, that all
5 performance bonds and payment bonds may, at the discretion of the head
6 of the state agency, public benefit corporation or commission, or his or
7 her designee, be dispensed with for the completion of a work specified
8 in a contract for the prosecution of a public improvement for the state
9 of New York for which bids are solicited where the aggregate amount of
10 the contract is under one hundred thousand dollars and provided further,
11 that in a case where the contract is not subject to the multiple
12 contract award requirements of section one hundred thirty-five of this
13 article, such requirements may be dispensed with where the head of the
14 state agency, public benefit corporation or commission finds it to be in
15 the public interest and where the aggregate amount of the contract
16 awarded or to be awarded is less than two hundred thousand dollars. In a
17 case where a contract is awarded to a small business concern or to a
18 minority or women-owned business concern, all performance bonds and
19 payment bonds may be dispensed with when the aggregate amount of the
20 contract is under five hundred thousand dollars. Advertisements for bids
21 shall provide information as to the requirements for, or dispensation
22 of, performance and payment bonds. Provided further, that in a case
23 where a performance or payment bond is dispensed with, twenty per centum
24 may be retained from each progress payment or estimate until the entire
25 contract work has been completed and accepted, at which time the head of
26 the state agency, public benefit corporation or commission shall, pend-
27 ing the payment of the final estimate, pay not to exceed seventy-five
28 per centum of the amount of the retained percentage.

29 § 8. Subdivision 4 of section 139-f of the state finance law, as
30 amended by chapter 83 of the laws of 1995, is amended to read as
31 follows:

32 4. Notwithstanding any other provision of this section or other law,
33 requirements for the furnishing of a performance bond or a payment bond
34 may be dispensed with at the discretion of the head of the state agency
35 or corporation, or his or her designee, where the public owner is a
36 state agency or corporation described in subdivision one-a of this
37 section and the aggregate amount of the contract awarded or to be
38 awarded is under fifty thousand dollars and, in a case where the
39 contract is not subject to the multiple contract award requirements of
40 section one hundred thirty-five of this article, such requirements may
41 be dispensed with where the head of the state agency or corporation
42 finds it to be in the public interest and where the aggregate amount of
43 the contract awarded or to be awarded is under two hundred thousand
44 dollars. In a case where a contract is awarded to a small business
45 concern or to a minority or women-owned business concern, all perform-
46 ance bonds and payment bonds may be dispensed with when the aggregate
47 amount of the contract is under five hundred thousand dollars. Adver-
48 tisements for proposals shall provide information as to the requirements
49 for, or dispensation of, performance and payment bonds. Provided
50 further, that in a case where a performance or payment bond is dispensed
51 with, twenty per centum may be retained from each progress payment or
52 estimate until the entire contract work has been completed and accepted,
53 at which time the head of the state agency or corporation shall, pending
54 the payment of the final estimate, pay not to exceed seventy-five per
55 centum of the amount of the retained percentage.

§ 9. The opening paragraph of section 139-g of the state finance law, as amended by chapter 636 of the laws of 2003, is amended to read as follows:

In every state agency, department and authority which has let more than two million dollars in service and construction contracts and state assisted project contracts in the prior fiscal year, the chief executive officer of that agency, department or authority shall, with respect to those contracts and state assisted project contracts let by his or her agency, department or authority:

§ 10. The opening paragraph of subdivision (b) of section 139-g of the state finance law, as amended by chapter 636 of the laws of 2003, is amended to read as follows:

identify all small-business and certified women and minority-owned business concerns which, in the judgment of the chief executive officer of that agency, department or authority, can bid on those contracts and state assisted project contracts which are usually and customarily let by that agency, department or authority, or in which that authority provides a grant or loan or tax exempt financing, with a reasonable expectation of success. Such chief executive officers shall carry out the provisions of this subdivision:

§ 11. Section 139-g of the state finance law is amended by adding a new subdivision (e) to read as follows:

(e) For the purposes of this section, the following words shall have the following meanings:

(i) "State assisted project contract" shall mean any written agreement arising out of a state assisted housing project or state assisted economic development project or state assisted higher education project or state assisted hospital or health care facility project, for which the total project cost exceeds two million dollars and for which the project owner is committed to spend or does expend funds for the acquisition, construction, demolition, replacement, major repair, or renovation of real property and improvements thereon for such project.

(ii) "State assisted housing project" shall mean those projects which receive from the New York state housing finance agency tax-exempt financing for all or part of the total project cost.

(iii) "State assisted economic development project" shall mean those projects which receive from the New York foundation of science technology and innovation, or the urban development corporation and its subsidiaries a grant or loan or tax-exempt financing for all or part of the total project cost.

(iv) "State assisted higher education project" shall mean those projects which receive from the dormitory authority of the state of New York a grant or loan or tax-exempt financing for all or part of the total project cost.

(v) "State assisted hospital or health care facility project" shall mean those projects which receive from the dormitory authority of the state of New York a grant or loan or tax-exempt financing for all or part of the total project cost.

§ 12. This act shall take effect immediately, provided however, the amendments to article 15-A of the executive law made by sections one, two, three, four, five and six of this act shall not affect the repeal of such article and shall be deemed repealed therewith.