STATE OF NEW YORK

7050

2023-2024 Regular Sessions

IN ASSEMBLY

May 10, 2023

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

AN ACT to amend the executive law, in relation to authorizing not-for-profit corporation inclusion as minority and women-owned enterprises

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

Section 1. Subdivisions 1, 7 and 15 of section 310 of the executive law, subdivision 1 as added by chapter 261 of the laws of 1988, subdivisions 7 and 15 as amended by chapter 22 of the laws of 2014, paragraph (e) of subdivision 7 and paragraph (e) of subdivision 15 as amended by chapter 96 of the laws of 2019, and paragraph (a) of subdivision 15 as amended by chapter 669 of the laws of 2022, are amended to read as follows:

1. "Certified business" shall mean a business **or not-for-profit corporation** verified as a minority or women-owned business enterprise pursuant to section three hundred fourteen of this article.

7. "Minority-owned business enterprise" shall mean**:**

(a) a business enterprise, including a sole proprietorship, partnership, limited liability company or corporation that is:

[~~(a)~~] **(i)** at least fifty-one percent owned by one or more minority group members;

[~~(b)~~] **(ii)** an enterprise in which such minority ownership is real, substantial and continuing;

[~~(c)~~] **(iii)** an enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise;

[~~(d)~~] **(iv)** an enterprise authorized to do business in this state and independently owned and operated;

[~~(e)~~] **(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 fifteen million dollars, and

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

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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

[~~(f)~~] **(vi)** an enterprise that is a small business pursuant to subdivision twenty of this section[~~.~~]**; or**

(b) a not-for-profit corporation:

(i) that includes a governing board of at least fifty-one percent minority group members;

(ii) in which such leadership is real, substantial and continuing; and

(iii) incorporated in this state and independently operated.

15. "Women-owned business enterprise" shall mean**:**

(a) a business enterprise, including a sole proprietorship, partnership, limited liability company or corporation that is:

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

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

[~~(c)~~] **(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;

[~~(d)~~] **(iv)** an enterprise authorized to do business in this state and independently owned and operated;

[~~(e)~~] **(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 fifteen million dollars, 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

[~~(f)~~] **(vi)** an enterprise that is a small business pursuant to subdivision twenty of this section[~~.~~]**; or**

(b) a not-for-profit corporation:

(i) that includes a governing board of at least fifty-one percent women;

(ii) in which such leadership is real, substantial and continuing; and

(iii) incorporated in this state and independently operated.

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. Subdivision 2 of section 314 of the executive law, as amended by chapter 96 of the laws of 2019, is amended to read as follows:

2. For the purposes of this article, the office shall be responsible for verifying businesses **and not-for-profit corporations** as being owned, operated, [~~and~~] **and/or** controlled by minority group members or women and for certifying such verified businesses **and not-for-profit corporations**. The director shall prepare a directory of certified businesses for use by contracting agencies and contractors in carrying out the provisions of this article. The director shall periodically, but no less than annually, update the directory.

§ 3. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that the amendments to

sections 310 and 314 of the executive law made by sections one and two of this act shall not affect the repeal of such sections and shall be deemed repealed therewith.