

STATE OF NEW YORK

7787

2023-2024 Regular Sessions

IN ASSEMBLY

June 15, 2023

Introduced by M. of A. SIMON -- 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 establishing a mentor-protege program for small and minority and women-owned business concerns and 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, paragraph (g) of subdivision 3 as amended by section 1 of part BB
5 of chapter 59 of the laws of 2006, paragraphs (h) and (i) of subdivision
6 3 as amended and paragraph (k) of subdivision 3 as added by chapter 825
7 of the laws of 2021, paragraphs (f) and (j) of subdivision 3 as amended
8 and paragraphs (l), (m) and (n) of subdivision 3 as added by chapter 567
9 of the laws of 2022, subdivision 4 as amended by chapter 361 of the laws
10 of 2009 and the opening paragraph of subdivision 4 as amended and para-
11 graph (d-1) of subdivision 3 and paragraphs (d) and (e) of subdivision 4
12 as added by chapter 96 of the laws of 2019, are amended to read as
13 follows:

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

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

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

LBD07382-01-3

1 (b) to develop standardized forms and reporting documents necessary to
2 implement this article;

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

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

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

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

(e-1) the director shall list in the division's annual report the names of non-compliant agencies and the extent of their noncompliance in submitting its quarterly minority and women-owned business enterprise utilization reports; and, shall implement a master list of all the state agencies required to file quarterly compliance reports and shall attach such list to the division's annual report;

(f) to prepare and update, [~~no less than annually,~~] quarterly a directory of certified minority and women-owned business enterprises which shall, wherever practicable, be divided into categories of labor, services, supplies, equipment, materials and recognized construction trades and which shall indicate areas or locations of the state where such enterprises are available to perform services, and to use this information to create an internet based, searchable, centralized state registry detailing certifications, waivers, and all documents submitted pertaining to certification or denial of certification, or compliance with goals for utilization of minority and women-owned business enterprises;

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

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

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

(j) to make publicly available records of all waivers of compliance reported pursuant to paragraph (b) of subdivision six of section three hundred thirteen of this article on the division's website;

(k) to work in conjunction with the industrial commissioner pursuant to paragraph (j) of subdivision one of section eight hundred eleven of the labor law to assist contractors in identifying minority group members and women who are participating in apprenticeship agreements under article twenty-three of the labor law[~~-~~].

(l) to perform inspections of minority or women-owned business's place of business, warehouse or storage facility to confirm the existence of a workforce, equipment and supplies;

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

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

4. The director shall provide assistance to, and facilitate access to programs serving certified businesses as well as applicants to ensure that such businesses benefit, as needed, from technical, managerial and financial, and general business assistance; training; marketing; organization and personnel skill development; project management assistance; technology assistance; bond and insurance education assistance; and other business development assistance. The director shall maintain a toll-free number at the department of economic development to be used to answer questions concerning the MWBE certification process. In addition,

1 the director [~~may~~] shall, either independently or in conjunction with
2 other state agencies:

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

5 (b) review bonding and paperwork requirements imposed by contracting
6 agencies that may unnecessarily impede the ability of such businesses to
7 compete; [~~and~~]

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

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

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

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

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

44 § 3. Subdivisions 2-a, 3 and paragraph (a) of subdivision 5 of section
45 313 of the executive law, as amended by chapter 96 of the laws of 2019,
46 are amended to read as follows:

47 2-a. The director shall promulgate rules and regulations that will
48 accomplish the following:

49 (a) provide for the certification and decertification of minority and
50 women-owned business enterprises for all agencies through a single proc-
51 ess that meets applicable requirements;

52 (b) require that each contract solicitation document accompanying each
53 solicitation set forth the expected degree of minority and women-owned
54 business enterprise participation based, in part, on:

55 (i) the potential subcontract opportunities available in the prime
56 procurement contract;

(ii) the availability, as contained within the study, of certified minority and women-owned business enterprises to respond competitively to the potential subcontract opportunities as reflected in the division's directory of certified minority and women-owned business enterprises; and

(iii) the findings of the disparity study;

(c) require that each agency provide a current list of certified minority business enterprises to each prospective contractor or direct them to the division's directory of certified minority and women-owned business enterprises for such purpose;

(d) allow a contractor that is a certified ~~minority-owned~~ minority or women-owned business enterprise to use the work it performs to meet requirements for use of certified ~~minority-owned~~ minority or women-owned business enterprises as subcontractors;

(e) establish criteria for agencies to credit the participation of minority and women-owned business enterprises towards the achievement of the minority and women-owned business enterprise participation goals on a state contract based on the commercially useful function provided by each minority and women-owned business enterprise on the contract;

(f) provide for joint ventures, which a bidder may count toward meeting its minority and women-owned business enterprise participation;

(g) consistent with subdivision six of this section, provide for circumstances under which an agency may waive obligations of the contractor relating to minority and women-owned business enterprise participation;

(h) require that an agency verify that minority and women-owned business enterprises listed in a successful bid are actually participating to the extent listed in the project for which the bid was submitted;

(i) provide for the collection of statistical data by each agency concerning actual minority and women-owned business enterprise participation;

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

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

Such rules shall set forth the maximum personal net worth of a minority group member or woman who may be relied upon to certify a business as a minority-owned business enterprise or women-owned business enterprise, and may establish different maximum levels of personal net worth for minority group members and women on an industry-by-industry basis for such industries as the director shall determine. Such regulations relating to the classification of the industry-by-industry personal net worth thresholds above the fifteen million dollar threshold shall consider the personal net worth of the owners of both certified and non-certified businesses, including but not limited to, prime contractors and subcontractors, as well as any such other factors needed to establish such thresholds. The provisions of the regulations pertaining to personal net worth shall, to the extent practicable, be implemented by June thirtieth, two thousand twenty and shall consider adjustments for inflation annually on January first of the previous year according to the consumer price index.

3. Solely for the purpose of providing the opportunity for meaningful participation by certified businesses in the performance of state

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

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

1 with the minority and women-owned business enterprise participation
2 requirements set forth in the state contract where no waiver has been
3 granted.

4 § 4. Subdivisions 1 and 3 of section 315 of the executive law, as
5 amended by chapter 96 of the laws of 2019, are amended to read as
6 follows:

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

21 3. ~~[Each contracting agency shall report to the director with respect~~
22 ~~to activities undertaken to promote employment of minority group members~~
23 ~~and women and promote and increase participation by certified businesses~~
24 ~~with respect to state contracts and subcontracts. Such reports shall be~~
25 ~~submitted no later than May fifteenth of every year and shall include~~
26 ~~such information as is necessary for the director to determine whether~~
27 ~~the contracting agency and any contractor to the contracting agency have~~
28 ~~complied with the purposes of this article, including, without limita-~~
29 ~~tion, a summary of all waivers of the requirements of subdivisions six~~
30 ~~and seven of section three hundred thirteen of this article allowed by~~
31 ~~the contracting agency during the period covered by the report, includ-~~
32 ~~ing a description of the basis of the waiver request and the rationale~~
33 ~~for granting any such waiver and any instances in which the contract~~
34 ~~agency has deemed a contractor to have committed a violation pursuant to~~
35 ~~section three hundred sixteen of this article and such other information~~
36 ~~as the director shall require. Each agency shall also include in such~~
37 ~~annual report whether or not it has been required to prepare a remedial~~
38 ~~plan, and, if so, the plan and the extent to which the agency has~~
39 ~~complied with each element of the plan.]~~

40 (a) Each contracting agency
41 shall prepare a quarterly report and submit copies to the commissioner
42 of economic development, the commissioner of general services, and the
43 director as to the level of minority and women-owned business enter-
44 prises participation in the awarding of agency contracts for goods and
45 services, including but not limited to, the number of state contracts
46 awarded to certified minority or women-owned business enterprises; the
47 maximum dollar amount obligated pursuant to such contracts; and the
48 total expenditures made pursuant to all such contracts; the number of
49 state contracts awarded upon which a waiver was granted from goals
50 required by the contracts for business participation by certified minor-
51 ity or women-owned business enterprises, and the maximum amount obli-
52 gated pursuant to such contracts; the number of state contracts awarded
53 which required goals for employment of minority group members and women;
54 and the number of state contracts awarded for which waivers of employ-
ment goals required by the contracts have been granted;

1 (b) In addition, each contracting agency shall be responsible for the
2 cost of an independent audit resulting from the agency's repeated
3 violations of this section.

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

13 (d) If a contracting agency shall fail to file or substantially
14 complete, as determined by the commissioner of economic development and
15 the director, the report required by this section, the director shall
16 provide notice to the contracting agency. The notice shall state the
17 following:

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

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

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

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

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

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

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

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

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

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

31 ~~[2-]~~ 3. Any fines, or portion thereof, imposed pursuant to the forego-
32 ing subdivision, or imposed by a court of competent jurisdiction related
33 to convictions involving fraud related to this article or otherwise
34 involving a minority or women-owned business enterprise, may be required
35 by the entity imposing such fines to be paid to the minority and women-
36 owned business enterprise fund established pursuant to section ninety-
37 seven-k of the state finance law.

38 4. The director shall impose a sanction, penalty, or fine on any indi-
39 vidual or entity that has three or more violations of this article with-
40 in five years. Such fine shall be paid by such individual or entity.
41 Notwithstanding the provisions of subdivision three of this section,
42 such fine shall be remitted and deposited into a fund, to be managed by
43 the commissioner of economic development. Such funds shall be used to
44 subsidize the facilitation of the provisions of this article. Other
45 sanctions shall include barring such entity or individual from contract-
46 ing with such agency for a period not to exceed five years.

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

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

1 moneys due to all persons furnishing labor or materials to the contrac-
2 tor or any subcontractors in the prosecution of the work provided for in
3 such contract. Whenever a municipal corporation issues a permit subject
4 to compliance with section two hundred twenty of the labor law, such
5 permittee or its contractor or subcontractors furnishing workers shall
6 post a payment bond subject to this section. Provided, however, that all
7 performance bonds and payment bonds may, at the discretion of the head
8 of the state agency, public benefit corporation or commission, or his or
9 her designee, be dispensed with for the completion of a work specified
10 in a contract for the prosecution of a public improvement for the state
11 of New York for which bids are solicited where the aggregate amount of
12 the contract is under one hundred **fifty** thousand dollars and provided
13 further, that in a case where the contract is not subject to the multi-
14 ple contract award requirements of section one hundred thirty-five of
15 this article, such requirements may be dispensed with where the head of
16 the state agency, public benefit corporation or commission finds it to
17 be in the public interest and where the aggregate amount of the contract
18 awarded or to be awarded is less than two hundred thousand dollars. The
19 head of the state agency, public benefit corporation or commission, or
20 his or her designee, shall adjust the aggregate contract amounts listed
21 in this subdivision every year to account for increases in the costs of
22 construction. Advertisements for bids shall provide information on the
23 requirements for, or dispensation of, performance and payment bonds.
24 Provided further, that in a case where a performance or payment bond is
25 dispensed with, twenty per centum may be retained from each progress
26 payment or estimate until the entire contract work has been completed
27 and accepted, at which time the head of the state agency, public benefit
28 corporation or commission shall, pending the payment of the final esti-
29 mate, pay not to exceed seventy-five per centum of the amount of the
30 retained percentage.

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

34 4. Notwithstanding any other provision of this section or other law,
35 requirements for the furnishing of a performance bond or a payment bond
36 may be dispensed with at the discretion of the head of the state agency
37 or corporation, or his or her designee, where the public owner is a
38 state agency or corporation described in subdivision one-a of this
39 section and the aggregate amount of the contract awarded or to be
40 awarded is under fifty thousand dollars and, in a case where the
41 contract is not subject to the multiple contract award requirements of
42 section one hundred thirty-five of this article, such requirements may
43 be dispensed with where the head of the state agency or corporation
44 finds it to be in the public interest and where the aggregate amount of
45 the contract awarded or to be awarded is under [~~two~~] **three** hundred thou-
46 sand dollars. The head of the state agency, public benefit corporation
47 or commission, or his or her designee, shall adjust the aggregate
48 contract amounts listed in this subdivision every year to account for
49 increases in the costs of construction. Advertisements for bids shall
50 provide information on the requirements for, or dispensation of,
51 performance and payment bonds. Provided further, that in a case where a
52 performance or payment bond is dispensed with, twenty per centum may be
53 retained from each progress payment or estimate until the entire
54 contract work has been completed and accepted, at which time the head of
55 the state agency or corporation shall, pending the payment of the final

1 estimate, pay not to exceed seventy-five per centum of the amount of the
2 retained percentage.

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

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

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

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

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

25 (e) For the purposes of this section, the following terms shall have
26 the following meanings:

27 (i) "State assisted project contract" shall mean any written agreement
28 arising out of a state assisted housing project or state assisted
29 economic development project or state assisted higher education project
30 or state assisted hospital or health care facility project, for which
31 the total project cost exceeds two million dollars and for which the
32 project owner is committed to spend or does expend funds for the acqui-
33 sition, construction, demolition, replacement, major repair, or reno-
34 vation of real property and improvements thereon for such project.

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

38 (iii) "State assisted economic development project" shall mean those
39 projects which receive from the New York foundation of science, technol-
40 ogy and innovation, or the urban development corporation and its subsid-
41 aries a grant or loan or tax-exempt financing for all or part of the
42 total project cost.

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

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

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