

STATE OF NEW YORK

3637

2025-2026 Regular Sessions

IN ASSEMBLY

January 29, 2025

Introduced by M. of A. SIMON, SHIMSKY, SEPTIMO, REYES, SEAWRIGHT, DeSTEFANO, DAVILA -- 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 (f), (h), (i), (j), (k),
6 (l) and (m) of subdivision 3 as amended by chapter 40 of the laws of
7 2023, subdivision 4 as amended by chapter 361 of the laws of 2009 and
8 the opening paragraph of subdivision 4 as amended and paragraph (d-1) of
9 subdivision 3 and paragraphs (d) and (e) of subdivision 4 as added by
10 chapter 96 of the laws of 2019, are amended to read as follows:

11 3. The director shall have the following powers and duties:
12 (a) to encourage and assist contracting agencies in their efforts to
13 increase participation by minority and women-owned business enterprises
14 on state contracts and subcontracts so as to facilitate the award of a
15 fair share of such contracts to them and to provide on the division's
16 website a list of each contracting agency's minority and women-owned
17 business enterprises certification outreach seminars;
18 (b) to develop standardized forms and reporting documents necessary to
19 implement this article;
20 (c) to conduct educational outreach programs to encourage the certifi-
21 cation of minority and women-owned business enterprises consistent with
22 the purposes of this article;

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

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1 (d) to review [~~periodically~~] quarterly the practices and procedures of
2 each contracting agency with respect to compliance with the provisions
3 of this article, and to require them to file [~~periodic~~] quarterly
4 reports with the division of minority and women's business development
5 as to the level of minority and women-owned business enterprises partic-
6 ipation in the awarding of agency contracts for goods and services
7 including but not limited to the number of state contracts awarded to
8 certified minority or women-owned business enterprises, the maximum
9 dollar amount obligated pursuant to all those contracts, and the total
10 expenditures made pursuant to all such contracts; the number of state
11 contracts awarded to certified minority or women-owned business enter-
12 prises, the maximum dollar amount obligated pursuant to all those
13 contracts, and the total expenditures made pursuant to all such
14 contracts; the number of state contracts awarded which include a utili-
15 zation plan for business participation by certified minority or women-
16 owned business enterprises, the maximum amount obligated pursuant to
17 those contracts, and the total expenditures made pursuant to all such
18 contracts; the number of state contracts awarded upon which a waiver was
19 granted from goals required by the contracts for business participation
20 by certified minority or women-owned business enterprises, and the maxi-
21 imum amount obligated pursuant to those contracts; the number of state
22 contracts awarded which required goals for employment of minority group
23 members and women; and the number of state contracts awarded for which
24 waivers of employment 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 (e-1) the director shall list in the division's annual report the
53 names 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 (f) 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, (i) make publicly available records of all
6 certifications and recertifications, (ii) be divided into categories of
7 labor, services, supplies, equipment, materials and recognized
8 construction trades, and (iii) indicate areas or locations of the state
9 where such enterprises are available to perform services;

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

14 (h) to make publicly available on the division's website records of
15 all revocations of certification for convictions for fraudulently
16 misrepresenting the status of minority or women-owned business enter-
17 prises or for evidence of fraudulent conduct with regard to partic-
18 ipation of a minority or women-owned business enterprise in the perform-
19 ance of state contracts and the reasoning for such revocations after a
20 final determination has been made, provided that information falling
21 into the categories enumerated in paragraphs (a) through (j) of subdivi-
22 sion two of section eighty-seven of the public officers law shall be
23 withheld;

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

31 (j) to streamline the state certification process to accept federal
32 and municipal corporation certifications;

33 (k) to make publicly available on the division's website records of
34 all waivers of compliance reported pursuant to paragraph (b) of subdivi-
35 sion six of section three hundred thirteen of this article, including
36 the reasoning for denial of such waivers after a final determination has
37 been made, provided that information falling into the categories enumer-
38 ated in paragraphs (a) through (j) of subdivision two of section eight-
39 y-seven of the public officers law shall be withheld;

40 (l) to work in conjunction with the industrial commissioner pursuant
41 to paragraph (j) of subdivision one of section eight hundred eleven of
42 the labor law to assist contractors in identifying minority group
43 members and women who are participating in apprenticeship agreements
44 under article twenty-three of the labor law; and

45 (m) to coordinate with appropriate offices, agencies, or authorities,
46 where applicable, to conduct site visits or perform inspections of
47 financial records of minority or women-owned business enterprises in
48 accordance with this article and the regulations of the director.

49 4. The director shall provide assistance to, and facilitate access to
50 programs serving certified businesses as well as applicants to ensure
51 that such businesses benefit, as needed, from technical, managerial and
52 financial, and general business assistance; training; marketing; organ-
53 ization and personnel skill development; project management assistance;
54 technology assistance; bond and insurance education assistance; and
55 other business development assistance. The director shall maintain a
56 toll-free number at the department of economic development to be used to

1 answer questions concerning the MWBE certification process. In addition,
2 the director [~~may~~] shall, either independently or in conjunction with
3 other state agencies:

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

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

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

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

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

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

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

45 § 3. Subdivisions 2-a, 3 and paragraph (a) of subdivision 5 of section
46 313 of the executive law, subdivisions 2-a and 3 as amended by chapter
47 96 of the laws of 2019, and paragraph (a) of subdivision 5 as amended by
48 chapter 40 of the laws of 2023, are amended to read as follows:

49 2-a. The director shall promulgate rules and regulations that will
50 accomplish the following:

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

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

1 (i) the potential subcontract opportunities available in the prime
2 procurement contract;

3 (ii) the availability, as contained within the study, of certified
4 minority and women-owned business enterprises to respond competitively
5 to the potential subcontract opportunities as reflected in the divi-
6 sion's directory of certified minority and women-owned business enter-
7 prises; and

8 (iii) the findings of the disparity study;

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

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

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

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

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

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

31 (i) provide for the collection of statistical data by each agency
32 concerning actual minority and women-owned business enterprise partic-
33 ipation;

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

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

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

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

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

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

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

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

22 3. [~~Each contracting agency shall report to the director with respect~~
23 ~~to activities undertaken to promote employment of minority group members~~
24 ~~and women and promote and increase participation by certified businesses~~
25 ~~with respect to state contracts and subcontracts. Such reports shall be~~
26 ~~submitted no later than May fifteenth of every year and shall include~~
27 ~~such information as is necessary for the director to determine whether~~
28 ~~the contracting agency and any contractor to the contracting agency have~~
29 ~~complied with the purposes of this article, including, without limita-~~
30 ~~tion, a summary of all waivers of the requirements of subdivisions six~~
31 ~~and seven of section three hundred thirteen of this article allowed by~~
32 ~~the contracting agency during the period covered by the report, includ-~~
33 ~~ing a description of the basis of the waiver request and the rationale~~
34 ~~for granting any such waiver and any instances in which the contract~~
35 ~~agency has deemed a contractor to have committed a violation pursuant to~~
36 ~~section three hundred sixteen of this article and such other information~~
37 ~~as the director shall require. Each agency shall also include in such~~
38 ~~annual report whether or not it has been required to prepare a remedial~~
39 ~~plan, and, if so, the plan and the extent to which the agency has~~
40 ~~complied with each element of the plan.] (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-
55 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~~] such hearing officer's decision regarding the
2 alleged violation of the contract and recommendations regarding the
3 imposition of sanctions, fines or penalties. The director, within ten
4 days of receipt of the decision, shall file a determination of such
5 matter and shall cause a copy of such determination along with a copy of
6 this article to be served upon the contractor by personal service or by
7 certified mail return receipt requested. The decision of the hearing
8 officer shall be final and may only be vacated or modified as provided
9 in article seventy-eight of the civil practice law and rules upon an
10 application made within the time provided by such article. The determi-
11 nation of the director as to the imposition of any fines, sanctions or
12 penalties shall be reviewable pursuant to article seventy-eight of the
13 civil practice law and rules. The penalties imposed for any violation
14 which is premised upon either a fraudulent or intentional misrepresen-
15 tation by the contractor or the contractor's willful and intentional
16 disregard of the minority and women-owned participation requirement
17 included in the contract may include a determination that the contractor
18 shall be ineligible to submit a bid to any contracting agency or be
19 awarded any such contract for a period not to exceed one year following
20 the final determination; provided however, if a contractor has previous-
21 ly been determined to be ineligible to submit a bid pursuant to this
22 section, the penalties imposed for any subsequent violation, if such
23 violation occurs within five years of the first violation, may include a
24 determination that the contractor shall be ineligible to submit a bid to
25 any contracting agency or be awarded any such contract for a period not
26 to exceed five years following the final determination. The division of
27 minority and women's business development shall maintain a website list-
28 ing all contractors that have been deemed ineligible to submit a bid
29 pursuant to this section and the date after which each contractor shall
30 once again 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~~
9 ~~or her~~] such head of the state agency, public benefit corporation or
10 commission's designee, be dispensed with for the completion of a work
11 specified in a contract for the prosecution of a public improvement for
12 the state of New York for which bids are solicited where the aggregate
13 amount of the contract is under one hundred fifty thousand dollars and
14 provided further, that in a case where the contract is not subject to
15 the multiple contract award requirements of section one hundred thirty-
16 five of this article, such requirements may be dispensed with where the
17 head of the state agency, public benefit corporation or commission finds
18 it to be in the public interest and where the aggregate amount of the
19 contract awarded or to be awarded is less than two hundred thousand
20 dollars. The head of the state agency, public benefit corporation or
21 commission, or such head of the state agency, public benefit corporation
22 or commission's designee, shall adjust the aggregate contract amounts
23 listed in this subdivision every year to account for increases in the
24 costs of construction. Advertisements for bids shall provide information
25 on the requirements for, or dispensation of, performance and payment
26 bonds. Provided further, that in a case where a performance or payment
27 bond is dispensed with, twenty per centum may be retained from each
28 progress payment or estimate until the entire contract work has been
29 completed and accepted, at which time the head of the state agency,
30 public benefit corporation or commission shall, pending the payment of
31 the final estimate, pay not to exceed seventy-five per centum of the
32 amount of the retained percentage.

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

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

1 the entire contract work has been completed and accepted, at which time
2 the head of the state agency or corporation shall, pending the payment
3 of the final estimate, pay not to exceed seventy-five per centum of the
4 amount of the retained percentage.

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

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

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

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

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

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

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

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

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

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

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

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