

# STATE OF NEW YORK

3518--A

2025-2026 Regular Sessions

## IN ASSEMBLY

January 28, 2025

Introduced by M. of A. BICHOTTE HERMELYN, SIMON, ZINERMAN, SEAWRIGHT, JACKSON, COLTON, WALKER, GONZALEZ-ROJAS, HYNDMAN, SANTABARBARA -- read once and referred to the Committee on Governmental Operations -- recommitted to the Committee on Governmental Operations in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, in relation to requiring contracting agencies to contact minority and women-owned business enterprises when such enterprise is listed on a utilization plan and when a contract is awarded

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

1 Section 1. Paragraphs (a) and (b) of subdivision 5 of section 313 of  
2 the executive law, as amended by chapter 40 of the laws of 2023, are  
3 amended and six new paragraphs (b-1), (b-2), (b-3), (b-4), (b-5) and (e)  
4 are added to read as follows:  
5 (a) Contracting agencies shall administer the rules and regulations  
6 promulgated by the director in a good faith effort to achieve the maxi-  
7 mum feasible participation by [~~minority~~] both minority-owned and [~~women~~  
8 ~~owned~~] women-owned business enterprises adopted pursuant to this article  
9 and the regulations of the director prior to the contractor's inception  
10 of the scope of work outlined in an awarded contract. Such rules and  
11 regulations: shall require a contractor to [~~submit a~~] utilize the minor-  
12 ity and women-owned business enterprises listed on the utilization plan  
13 [~~after~~] submitted when bids are opened, [~~when bids are required, but~~  
14 ~~prior~~] provided that the minority-owned or women-owned business enter-  
15 prise is still certified with New York state. Prior to the award of a  
16 state contract [~~, shall require~~] with minority and women-owned business  
17 enterprise goals the contracting agency [~~to~~] shall review the utiliza-  
18 tion plan submitted by the contractor and [~~to~~] shall post the utiliza-  
19 tion plan and any waivers of compliance issued pursuant to subdivision

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

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1 six of this section on the website of the contracting agency[~~, shall~~  
2 ~~require the~~]. Within five business days after an award letter is sent to  
3 the contractor, the contracting agency shall submit an award notifica-  
4 tion letter to the minority and women-owned business enterprise  
5 listed on the utilization plan. The minority and women-owned business  
6 enterprise listed on the original utilization plan at the time of  
7 submission shall not be amended or changed by the contractor after  
8 submission to the contracting agency for approval without good cause  
9 shown and the written approval of the contracting agency. The contract-  
10 ing agency shall be required to notify the contractor in writing within  
11 ~~[a period of time specified by the director]~~ ten days as to any defi-  
12 ciencies contained in the contractor's utilization plan[~~,~~] and shall  
13 require remedy thereof within [a period of time specified by the direc-  
14 ~~tor, shall require the contractor to submit compliance reports relating~~  
15 ~~to the operation and implementation of any utilization plan,]~~ seven days  
16 of such notification. The contracting agency shall not allow any auto-  
17 matic waivers but shall allow a contractor to apply for a partial or  
18 total waiver of the minority and women-owned business enterprise partic-  
19 ipation requirements pursuant to subdivisions six and seven of this  
20 section; shall allow a contractor to file a complaint with the director  
21 pursuant to subdivision eight of this section in the event a contracting  
22 agency has failed or refused to issue a waiver of the minority and  
23 women-owned business enterprise participation requirements or has denied  
24 such request for a waiver; and shall allow a contracting agency to file  
25 a complaint with the director pursuant to subdivision nine of this  
26 section in the event a contractor is failing or has failed to comply  
27 with the minority and women-owned business enterprise participation  
28 requirements set forth in the state contract where no waiver has been  
29 granted.

30 (b) The rules and regulations promulgated pursuant to this subdivision  
31 regarding a utilization plan shall provide that where enterprises have  
32 been identified within a utilization plan, a contractor shall attempt,  
33 in good faith, to utilize such enterprise [~~at least to the extent indi-~~  
34 ~~cated~~], unless such enterprise cannot perform under the contract or such  
35 enterprise is no longer certified by the state. A contracting agency may  
36 require a contractor to indicate, within a utilization plan, what meas-  
37 ures and procedures [~~he or she~~] the contractor intends to take to comply  
38 with the provisions of this article[~~, but may not require, as a condi-~~  
39 ~~tion of award of, or compliance with, a contract that a contractor~~  
40 ~~utilize a particular enterprise in performance of the contract~~].

41 (b-1) After the contracting agency awards a contract, the contractor  
42 shall execute a subcontractor's agreement and provide a work assignment  
43 to each subcontractor listed in the bid, proposal, utilization plan, or  
44 other subcontractor disclosure submitted to the contracting agency with-  
45 in forty-five days of such award.

46 (b-2) After receiving payment on the contract, the contractor shall  
47 make payments to each subcontractor, including any minority-owned or  
48 women-owned business enterprise subcontractor, for work performed under  
49 the contract within twenty days of receipt of each payment received from  
50 the contracting agency, provided that such payment shall not be deemed  
51 late where the contractor has made a good faith effort to make timely  
52 payment and the subcontractor is unavailable, refuses to accept payment,  
53 has failed to provide necessary payment information, or where there is a  
54 good faith dispute regarding the work performed or amount owed. A  
55 subcontractor may notify the contracting agency of any violation of this  
56 paragraph by the contractor, and the contracting agency shall then noti-

1 fy the contractor to correct such deficiency within ten days of notifi-  
2 cation. The failure of the contractor to make such payments to a subcon-  
3 tractor shall result in disqualification, and the contracting agency  
4 shall re-award such contract to the next lowest bidder or eligible  
5 bidder, unless the contractor has made a good faith effort to make time-  
6 ly payment to each subcontractor.

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

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

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

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

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