*** § 310. Definitions.** As used in this article, the following terms shall have the following meanings:

1. "Certified business" shall mean a business verified as a minority or women-owned business enterprise pursuant to section three hundred fourteen of this article.

2. "Contracting agency" shall mean a state agency which is a party or a proposed party to a state contract or, in the case of a state contract described in paragraph (c) of subdivision thirteen of this section, shall mean the New York state housing finance agency, housing trust fund corporation or affordable housing corporation, whichever has made or proposes to make the grant or loan for the state assisted housing project.

3. "Contractor" shall mean an individual, a business enterprise, including a sole proprietorship, a partnership, a corporation, a not-for-profit corporation, or any other party to a state contract, or a bidder in conjunction with the award of a state contract or a proposed party to a state contract.

4. "Director" shall mean the director of the division of minority and women's business development in the department of economic development.

5. "Large county" shall mean a county having a population in excess of two hundred eighty-five thousand according to the most recent federal decennial census, provided however, that a county having a population in excess of two hundred eighty-five thousand according to the nineteen hundred eighty federal decennial census shall continue to be a large county thereafter notwithstanding a later census showing a population of less than two hundred eighty-five thousand for such county.

6. "Metropolitan area" shall mean a city with a population of one million or more and a county having a population in excess of one million and immediately contiguous to such city.

7. "Minority-owned business enterprise" shall mean a business

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

(a) at least fifty-one percent owned by one or more minority group members;

(b) an enterprise in which such minority ownership is real, substantial and continuing;

(c) 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) an enterprise authorized to do business in this state and independently owned and operated;

(e) 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) an enterprise that is a small business pursuant to subdivision twenty of this section.

8. "Minority group member" shall mean a United States citizen or permanent resident noncitizen who is and can demonstrate membership in one of the following groups:

(a) Black persons having origins in any of the Black African racial groups;

(b) Hispanic/Latino persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race;

(c) Native American or Alaskan native persons having origins in any of the original peoples of North America.

(d) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.

9. "Utilization plan" shall mean a plan prepared by a contractor and submitted in connection with a proposed state contract. The utilization plan shall identify certified minority or women-owned business

enterprises, if known, that have committed to perform work in connection with the proposed state contract as well as any such enterprises, if known, which the contractor intends to use in connection with the contractor's performance of the proposed state contract. The plan shall specifically contain a list, including the name, address and telephone number, of each certified enterprise with which the contractor intends to subcontract.

10. "Office" shall mean the division of minority and women's business development in the department of economic development.

11. "State agency" shall mean (a) (i) any state department, or (ii) any division, board, commission or bureau of any state department, or (iii) the state university of New York and the city university of New York, including all their constituent units except community colleges and the independent institutions operating statutory or contract colleges on behalf of the state, or (iv) a board, a majority of whose members are appointed by the governor or who serve by virtue of being state officers or employees as defined in subparagraph (i), (ii) or (iii) of paragraph (i) of subdivision one of section seventy-three of the public officers law:

(b) a "state authority," as defined in subdivision one of section two of the public authorities law, and the following:

Albany County Airport Authority;
Albany Port District Commission;
Alfred, Almond, Hornellsville Sewer Authority;
Battery Park City Authority;
Cayuga County Water and Sewer Authority;
(Nelson A. Rockefeller) Empire State Plaza Performing Arts Center Corporation;
Industrial Exhibit Authority;
Livingston County Water and Sewer Authority;
Long Island Power Authority;
Long Island Rail Road;
Long Island Market Authority;
Manhattan and Bronx Surface Transit Operating Authority;
Metro-North Commuter Railroad;

Metropolitan Suburban Bus Authority;
Metropolitan Transportation Authority;
Natural Heritage Trust;
New York City Transit Authority;
New York Convention Center Operating Corporation;
New York State Bridge Authority;
New York State Olympic Regional Development Authority;
New York State Thruway Authority;
Niagara Falls Public Water Authority;
Niagara Falls Water Board;
Port of Oswego Authority;
Power Authority of the State of New York;
Roosevelt Island Operating Corporation;
Schenectady Metroplex Development Authority;
State Insurance Fund;
Staten Island Rapid Transit Operating Authority;
State University Construction Fund;
Syracuse Regional Airport Authority;
Triborough Bridge and Tunnel Authority.
Upper Mohawk valley regional water board.
Upper Mohawk valley regional water finance authority.
Upper Mohawk valley memorial auditorium authority.
Urban Development Corporation and its subsidiary corporations.

(c) the following only to the extent of state contracts entered into for its own account or for the benefit of a state agency as defined in paragraph (a) or (b) of this subdivision:

Dormitory Authority of the State of New York;
Facilities Development Corporation;
New York State Energy Research and Development Authority;
New York State Science and Technology Foundation.

12. "State assisted housing project" shall mean, for such projects which receive from the New York state housing finance agency, the affordable housing corporation, the housing trust fund corporation or the division of housing and community renewal a grant or loan for all or part of the total project cost:

(a) a "permanent housing project for homeless families" or "project"

as defined in subdivision five of section sixty-four of the private housing finance law;

(b) a "project" as defined in subdivision twelve of section one thousand one hundred one of the private housing finance law provided said project is located in a large county and consists of more than twelve residential units at a single site;

(c) "affordable home ownership development programs" or "project" as defined in subdivision eight of section one thousand one hundred eleven of the private housing finance law provided said project is located in a metropolitan area as herein defined and consists of more than twelve residential units at a single site;

(d) a "turnkey/enhanced rental project" or "project" as defined in subdivision two of section one thousand one hundred six-a of the private housing finance law;

(e) "infrastructure improvements" as defined in subdivision two of section one thousand one hundred thirty-one of the private housing finance law, to the extent that such "infrastructure improvements" are applied for in connection with a state assisted housing project as defined in paragraphs (a) through (d) of this subdivision and provided further that the applicant for such infrastructure improvements and for such state assisted housing project are identical.

13. "State contract" shall mean: (a) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars, whereby a contracting agency is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or any combination of the foregoing, to be performed for, on behalf of, or rendered or furnished to the contracting agency; (b) a written agreement in excess of one hundred thousand dollars whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; and (c) a written agreement in excess of one hundred thousand dollars whereby the owner of a state assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of

real property and improvements thereon for such project.

14. "Subcontract" shall mean an agreement providing for a total expenditure in excess of twenty-five thousand dollars for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon between a contractor and any individual or business enterprise, including a sole proprietorship, partnership, corporation, or not-for-profit corporation, in which a portion of a contractor's obligation under a state contract is undertaken or assumed, but shall not include any construction, demolition, replacement, major repair, renovation, planning or design of real property or improvements thereon for the beneficial use of the contractor.

15. "Women-owned business enterprise" shall mean a business enterprise, including a sole proprietorship, partnership, limited liability company or corporation that is:

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

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

(c) 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) an enterprise authorized to do business in this state and independently owned and operated;

(e) 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) an enterprise that is a small business pursuant to subdivision twenty of this section.

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.

16. "Statewide advocate" shall mean the person appointed by the director to serve in the capacity of the minority and women-owned business enterprise statewide advocate and procurement ombudsman.

17. "Commissioner" shall mean the commissioner of the department of economic development.

18. "Lessee" shall mean an individual, a business enterprise, including a sole proprietorship, a partnership, a corporation, a not-for-profit corporation, or any other party to a lease with a state agency as defined in subdivision eleven of this section, or a respondent in conjunction with the award of such a lease or a proposed lessee with a state agency as defined in subdivision eleven of this section.

19. "Personal net worth" shall mean the aggregate adjusted net value of the assets of an individual remaining after total liabilities are deducted. Personal net worth includes the individual's share of assets held jointly with said individual's spouse and does not include the individual's ownership interest in the certified minority and women-owned business enterprise, the individual's equity in his or her primary residence, ownership interest in a holding company established for the exclusive and sole purpose of leasing machinery, equipment, or vehicles exclusively to the certified minority or women-owned business enterprise that is majority owned by the minority group member or woman relied upon for certification, and the holding company does not own any other assets of any kind, or up to seven hundred fifty thousand dollars of the present cash value of any qualified retirement savings plan or individual retirement account held by the individual less any penalties for early withdrawal.

20. "Small business" as used in this section, unless otherwise indicated, shall mean a business which has a significant business presence in the state, is independently owned and operated, not dominant in its field and employs, based on its industry, a certain number of persons as determined by the director, but not to exceed three hundred, except during a declared state disaster emergency as defined pursuant to section twenty-eight of this chapter, not to exceed three hundred employees who work thirty or more hours per week over the period of fifty-two weeks for a total of one thousand five hundred sixty hours worked, taking into consideration factors which include, but are not limited to, federal small business administration standards pursuant to 13 CFR part 121 and any amendments thereto. The director may issue regulations on the construction of the terms in this definition. For purposes of this subdivision, an employee may break from employment for up to thirteen weeks without the fifty-two week lookback period resetting.

21. "The disparity study" shall refer to the disparity study commissioned by the department of economic development, pursuant to section three hundred twelve-a of this article, and published on June thirtieth, two thousand seventeen.

22. "Diversity practices" shall mean the contractor's practices and policies with respect to:

(a) utilizing or mentoring certified minority and women-owned business enterprises in contracts awarded by a state agency or other public corporation, as subcontractors and suppliers; and

(b) entering into partnerships, joint ventures or other similar arrangements with certified minority and women-owned business enterprises as defined in this article or other applicable statute or regulation governing an entity's utilization of minority or women-owned business enterprises.

23. "Provisional MWBE Certification" shall mean minority and women-owned business enterprise certification status which shall not exceed one year, but which may be renewed by the director.

* NB Repealed July 1, 2028