

1 any loan made pursuant to the authority of such subdivision prior to
2 such expiration and repeal.

3 § 2. This act shall take effect immediately and shall be deemed to
4 have been in full force and effect on and after April 1, 2018.

5 PART Q

6 Section 1. Subdivisions 2, 7, 8, 13, 14, 15, 16, 19, 20, 21 and 22 of
7 section 310 of the executive law, subdivisions 2, 8 and 14 as added by
8 chapter 261 of the laws of 1988, subdivisions 7 and 15 as amended by
9 chapter 22 of the laws of 2014, subdivision 13 as amended by chapter 506
10 of the laws of 2009, subdivision 16, as amended by section 3 of part BB
11 of chapter 59 of the laws of 2006, subdivisions 19, 20, 21 and 22 as
12 added by chapter 175 of the laws of 2010 are amended and a new subdivi-
13 sion 24 is added to read as follows:

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

21 7. "Minority-owned business enterprise" shall mean a business enter-
22 prise, including a sole proprietorship, partnership, limited liability
23 company or corporation that is:

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

1 (b) an enterprise in which such minority ownership is real, substan-
2 tial and continuing;

3 (c) an enterprise in which such minority ownership has and exercises
4 the authority to control independently the day-to-day business decisions
5 of the enterprise;

6 (d) an enterprise authorized to do business in this state and inde-
7 pendently owned and operated;

8 (e) an enterprise owned by an individual or individuals, whose owner-
9 ship, control and operation are relied upon for certification, with a
10 personal net worth that does not exceed three million five hundred thou-
11 sand dollars, or such other amount as the director shall set forth in
12 regulations, as adjusted annually on the first of January for inflation
13 according to the consumer price index of the previous year; and

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

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

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

21 (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban,
22 Central or South American of either Indian or Hispanic origin, regard-
23 less of race;

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

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

1 13. "State contract" shall mean: (a) a written agreement or purchase
2 order instrument, providing for a total expenditure in excess of [twen-
3 ty-five] fifty thousand dollars, whereby a contracting agency is commit-
4 ted to expend or does expend or grant funds in return for labor,
5 services including but not limited to legal, financial and other profes-
6 sional services, supplies, equipment, materials or any combination of
7 the foregoing, to be performed for, or rendered or furnished to the
8 contracting agency; (b) a written agreement in excess of [one] two
9 hundred thousand dollars whereby a contracting agency is committed to
10 expend or does expend or grant funds for the acquisition, construction,
11 demolition, replacement, major repair or renovation of real property and
12 improvements thereon; [and] (c) a written agreement in excess of [one]
13 two hundred thousand dollars whereby the owner of a state assisted hous-
14 ing project is committed to expend or does expend funds for the acquisi-
15 tion, construction, demolition, replacement, major repair or renovation
16 of real property and improvements thereon for such project; and (d) a
17 written agreement or purchase order instrument, providing for a total
18 expenditure in excess of fifty thousand dollars, whereby a state-funded
19 entity is committed to expend or does expend funds paid to the state-
20 funded entity by the state of New York, including those paid to the
21 state-funded entity pursuant to an appropriation, for any product or
22 service.

23 14. "Subcontract" shall mean an agreement [providing for a total
24 expenditure in excess of twenty-five thousand dollars for the
25 construction, demolition, replacement, major repair, renovation, plan-
26 ning or design of real property and improvements thereon] between a
27 contractor and any individual or business enterprise, including a sole
28 proprietorship, partnership, corporation, or not-for-profit corporation,

1 in which a portion of a contractor's obligation under a state contract
2 is undertaken or assumed, but shall not include any construction, demo-
3 lition, replacement, major repair, renovation, planning or design of
4 real property or improvements thereon for the beneficial use of the
5 contractor.

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

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

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

13 (c) an enterprise in which such women ownership has and exercises the
14 authority to control independently the day-to-day business decisions of
15 the enterprise;

16 (d) an enterprise authorized to do business in this state and inde-
17 pendently owned and operated;

18 (e) an enterprise owned by an individual or individuals, whose owner-
19 ship, control and operation are relied upon for certification, with a
20 personal net worth that does not exceed three million five hundred thou-
21 sand dollars, or such other amount as the director shall set forth in
22 regulations, as adjusted annually on the first of January for inflation
23 according to the consumer price index of the previous year; and

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

26 A firm owned by a minority group member who is also a woman may be
27 certified as a minority-owned business enterprise, a women-owned busi-
28 ness enterprise, or both, and may be counted towards either a minority-

1 owned business enterprise goal or a women-owned business enterprise
2 goal, in regard to any contract or any goal, set by an agency or author-
3 ity, but such participation may not be counted towards both such goals.
4 Such an enterprise's participation in a contract may not be divided
5 between the minority-owned business enterprise goal and the women-owned
6 business enterprise goal.

7 16. "Statewide advocate" shall mean the person appointed by the
8 [commissioner] director to serve in the capacity of the minority and
9 women-owned business enterprise statewide advocate.

10 19. "Personal net worth" shall mean the aggregate adjusted net value
11 of the assets of an individual remaining after total liabilities are
12 deducted. Personal net worth includes the individual's share of assets
13 held jointly with said individual's spouse and does not include the
14 individual's ownership interest in the certified minority and women-
15 owned business enterprise, the individual's [equity in his or her prima-
16 ry residence] ownership interest in any holding company that leases real
17 property, machinery, equipment, or vehicles exclusively to the certified
18 minority or women-owned business enterprise, up to two hundred percent
19 of the median value of owner-occupied housing units in the municipality
20 in which the individual resides, or up to five hundred thousand dollars
21 of the present cash value of any qualified retirement savings plan or
22 individual retirement account held by the individual less any penalties
23 for early withdrawal.

24 20. "Small business" as used in this section, unless otherwise indi-
25 cated, shall mean a business which has a significant business presence
26 in the state, is independently owned and operated, not dominant in its
27 field and employs, based on its industry, a certain number of persons as
28 determined by the director[, but not to exceed three hundred], taking

1 into consideration factors which include, but are not limited to, feder-
2 al small business administration standards pursuant to 13 CFR part 121
3 and any amendments thereto. The director may issue regulations on the
4 construction of the terms in this definition.

5 21. "The [2010] disparity study" shall refer to the most recent
6 disparity study commissioned by the [empire state development corpo-
7 ration] department of economic development, pursuant to section three
8 hundred twelve-a of this article[, and published on April twenty-nine,
9 two thousand ten].

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

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

15 (b) entering into partnerships, joint ventures or other similar
16 arrangements with certified minority and women-owned business enter-
17 prises as defined in this article or other applicable statute or regu-
18 lation governing an entity's utilization of minority or women-owned
19 business enterprises; and

20 (c) the representation of minority group members and women as members
21 of the board of directors or executive officers of the contractor.

22 24. "State-funded entity" shall mean any unit of local government,
23 including, but not limited to, a county, city, town, village, or school
24 district that is paid pursuant to an appropriation in any state fiscal
25 year.

26 § 2. Subdivision 4 of section 311 of the executive law, as amended by
27 chapter 361 of the laws of 2009, is amended to read as follows:

1 4. The director [may] shall provide assistance to, and facilitate
2 access to programs serving [certified businesses as well as applicants]
3 minority and women-owned business enterprises to ensure that such busi-
4 nesses benefit, as needed, from technical, managerial and financial, and
5 general business assistance; training; marketing; organization and
6 personnel skill development; project management assistance; technology
7 assistance; bond and insurance education assistance; and other business
8 development assistance. The director shall maintain a toll-free number
9 at the department of economic development to be used to answer questions
10 concerning the MWBE certification process. In addition, the director
11 may, either independently or in conjunction with other state agencies:
12 (a) develop a clearinghouse of information on programs and services
13 provided by entities that may assist such businesses;
14 (b) review bonding and paperwork requirements imposed by contracting
15 agencies that may unnecessarily impede the ability of such businesses to
16 compete; and
17 (c) seek to maximize utilization by minority and women-owned business
18 enterprises of available federal resources including but not limited to
19 federal grants, loans, loan guarantees, surety bonding guarantees, tech-
20 nical assistance, and programs and services of the federal small busi-
21 ness administration.

22 § 3. Section 311-a of the executive law, as added by section 4 of part
23 BB of chapter 59 of the laws of 2006, is amended to read as follows:

24 § 311-a. Minority and women-owned business enterprise statewide advo-
25 cate. 1. There is hereby established within the [department of econom-
26 ic] division of minority and women's business development [an office of
27 the minority and women-owned business enterprise] a statewide advocate.
28 The statewide advocate shall be appointed by the [commissioner with the

1 advice of the small business advisory board as established in section
2 one hundred thirty-three of the economic development law and shall serve
3 in the unclassified service of the] director. [The statewide advocate
4 shall be located in the Albany empire state development office.]

5 2. The advocate shall act as a liaison for minority and women-owned
6 business enterprises (MWBES) to assist them in obtaining technical,
7 managerial, financial and other business assistance for certified busi-
8 nesses and applicants. The advocate shall receive and investigate
9 complaints brought by or on behalf of MWBEs concerning [certification
10 delays and instances of] violations of [law] the requirements of this
11 article by contractors and state agencies. [The statewide advocate shall
12 assist certified businesses and applicants in the certification process.
13 Other functions of the statewide advocate shall be directed by the
14 commissioner. The advocate may request and the director may appoint
15 staff and employees of the division of minority and women business
16 development to support the administration of the office of the statewide
17 advocate.]

18 3. The statewide advocate [shall establish a toll-free number at the
19 department of economic development to be used to answer questions
20 concerning the MWBE certification process] shall conduct periodic audits
21 of state agencies' compliance with the requirements of section three
22 hundred fifteen of this article, which audits shall include a review of
23 the books and records of state agencies concerning, among other things,
24 annual agency expenditures, annual participation of minority and women-
25 owned business enterprises as prime contractors and subcontractors in
26 state agencies' state contracts, and documentation of state agencies'
27 good faith efforts to maximize minority and women-owned business enter-
28 prise participation in such state agencies' contracting.

1 [4. The statewide advocate shall report to the director and commis-
2 sioner by November fifteenth on an annual basis on all activities
3 related to fulfilling the obligations of the office of the statewide
4 advocate. The commissioner shall include the unedited text of the state-
5 wide advocate's report within the reports submitted by the department of
6 economic development to the governor and the legislature.]

7 § 4. Section 312-a of the executive law, as amended by section 1 of
8 part Q of chapter 58 of the laws of 2015, is amended to read as follows:

9 § 312-a. Study of minority and women-owned business [enterprise
10 programs] enterprises. 1. The director of the division of minority and
11 [women-owned] women's business development [in the department of econom-
12 ic development] is authorized and directed to recommission a statewide
13 disparity study regarding the participation of minority and women-owned
14 business enterprises in state contracts since the amendment of this
15 article to be delivered to the governor and legislature [no later than
16 August fifteenth, two thousand sixteen]. The study shall be prepared by
17 an entity independent of the department and selected through a request
18 for proposal process. The purpose of such study is:

19 (a) to determine whether there is a disparity between the number of
20 qualified minority and women-owned businesses ready, willing and able to
21 perform state contracts for commodities, services and construction, and
22 the number of such contractors actually engaged to perform such
23 contracts, and to determine what changes, if any, should be made to
24 state policies affecting minority and women-owned business enterprises;
25 and (b) to determine whether there is a disparity between the number of
26 qualified minorities and women ready, willing and able, with respect to
27 labor markets, qualifications and other relevant factors, to participate
28 in contractor employment, management level bodies, including boards of

1 directors, and as senior executive officers within contracting entities
2 and the number of such group members actually employed or affiliated
3 with state contractors in the aforementioned capacities, and to deter-
4 mine what changes, if any, should be made to state policies affecting
5 minority and women group populations with regard to state contractors'
6 employment and appointment practices relative to diverse group members.
7 Such study shall include, but not be limited to, an analysis of the
8 history of minority and women-owned business enterprise programs and
9 their effectiveness as a means of securing and ensuring participation by
10 minorities and women, and a disparity analysis by market area and region
11 of the state. Such study shall distinguish between minority males,
12 minority females and non-minority females in the statistical analysis.

13 2. The director of the division of minority and [women-owned] women's
14 business development is directed to transmit the disparity study to the
15 governor and the legislature [not later than August fifteenth, two thou-
16 sand sixteen], and to post the study on the website of the department of
17 economic development.

18 § 5. Section 313 of the executive law, as amended by chapter 175 of
19 the laws of 2010, is amended to read as follows:

20 § 313. Opportunities for minority and women-owned business enter-
21 prises. 1. [Goals and requirements for agencies and contractors. Each
22 agency shall structure procurement procedures for contracts made direct-
23 ly or indirectly to minority and women-owned business enterprises, in
24 accordance with the findings of the two thousand ten disparity study,
25 consistent with the purposes of this article, to attempt to achieve the
26 following results with regard to total annual statewide procurement:

27 (a) construction industry for certified minority-owned business enter-
28 prises: fourteen and thirty-four hundredths percent;

1 (b) construction industry for certified women-owned business enter-
2 prises: eight and forty-one hundredths percent;

3 (c) construction related professional services industry for certified
4 minority-owned business enterprises: thirteen and twenty-one hundredths
5 percent;

6 (d) construction related professional services industry for certified
7 women-owned business enterprises: eleven and thirty-two hundredths
8 percent;

9 (e) non-construction related services industry for certified minori-
10 ty-owned business enterprises: nineteen and sixty hundredths percent;

11 (f) non-construction related services industry for certified women-
12 owned business enterprises: seventeen and forty-four hundredths percent;

13 (g) commodities industry for certified minority-owned business enter-
14 prises: sixteen and eleven hundredths percent;

15 (h) commodities industry for certified women-owned business enter-
16 prises: ten and ninety-three hundredths percent;

17 (i) overall agency total dollar value of procurement for certified
18 minority-owned business enterprises: sixteen and fifty-three hundredths
19 percent;

20 (j) overall agency total dollar value of procurement for certified
21 women-owned business enterprises: twelve and thirty-nine hundredths
22 percent; and

23 (k) overall agency total dollar value of procurement for certified
24 minority, women-owned business enterprises: twenty-eight and ninety-two
25 hundredths percent.

26 1-a. The director shall ensure that each state agency has been
27 provided with a copy of the two thousand ten disparity study.

1 1-b. Each agency shall develop and adopt agency-specific goals based
2 on the findings of the two thousand ten disparity study.

3 2.] The director shall promulgate rules and regulations [pursuant to
4 the goals established in subdivision one of this section] that provide
5 measures and procedures to ensure that certified minority and women-
6 owned businesses shall be given the opportunity for maximum feasible
7 participation in the performance of state contracts and to assist in the
8 agency's identification of those state contracts for which minority and
9 women-owned certified businesses may best bid to actively and affirma-
10 tively promote and assist their participation in the performance of
11 state contracts [so as to facilitate the agency's achievement of the
12 maximum feasible portion of the goals for state contracts to such busi-
13 nesses].

14 [2-a.] 2. The director shall promulgate rules and regulations that
15 will accomplish the following:

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

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

22 (i) the potential subcontract opportunities available in the prime
23 procurement contract; [and]

24 (ii) the availability[, as contained within the study,] of certified
25 minority and women-owned business enterprises to respond competitively
26 to the potential subcontract opportunities, as reflected in the divi-
27 sion's directory of certified minority and women-owned business enter-
28 prises; and

1 (iii) the findings of the disparity study.

2 (c) [require that each agency provide a current list of certified
3 minority business enterprises to each prospective contractor;

4 (d)] allow a contractor that is a certified minority-owned or women-
5 owned business enterprise to use the work it performs to meet require-
6 ments for use of certified minority-owned or women-owned business enter-
7 prises as subcontractors;

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

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

15 (f) consistent with subdivision six of this section, provide for
16 circumstances under which an agency or state-funded entity may waive
17 obligations of the contractor relating to minority and women-owned busi-
18 ness enterprise participation;

19 (g) require that an agency or state-funded entity verify that minority
20 and women-owned business enterprises listed in a successful bid are
21 actually participating to the extent listed in the project for which the
22 bid was submitted;

23 (h) provide for the collection of statistical data by each agency
24 concerning actual minority and women-owned business enterprise partic-
25 ipation; [and]

26 (i) require each agency to consult the most current disparity study
27 when calculating [agency-wide and contract specific] contract-specific
28 participation goals pursuant to this article; and

1 (j) provide for the periodic collection of reports from state-funded
2 entities in such form and at such time as the director shall require.

3 3. Solely for the purpose of providing the opportunity for meaningful
4 participation by certified businesses in the performance of state
5 contracts as provided in this section, state contracts shall include
6 leases of real property by a state agency to a lessee where: the terms
7 of such leases provide for the construction, demolition, replacement,
8 major repair or renovation of real property and improvements thereon by
9 such lessee; and the cost of such construction, demolition, replacement,
10 major repair or renovation of real property and improvements thereon
11 shall exceed the sum of [one] two hundred thousand dollars. Reports to
12 the director pursuant to section three hundred fifteen of this article
13 shall include activities with respect to all such state contracts.
14 Contracting agencies shall include or require to be included with
15 respect to state contracts for the acquisition, construction, demoli-
16 tion, replacement, major repair or renovation of real property and
17 improvements thereon, such provisions as may be necessary to effectuate
18 the provisions of this section in every bid specification and state
19 contract, including, but not limited to: (a) provisions requiring
20 contractors to make a good faith effort to solicit active participation
21 by enterprises identified in the directory of certified businesses
22 [provided to the contracting agency by the office]; (b) requiring the
23 parties to agree as a condition of entering into such contract, to be
24 bound by the provisions of section three hundred sixteen of this arti-
25 cle; and (c) requiring the contractor to include the provisions set
26 forth in paragraphs (a) and (b) of this subdivision in every subcontract
27 in a manner that the provisions will be binding upon each subcontractor
28 as to work in connection with such contract. Provided, however, that no

1 such provisions shall be binding upon contractors or subcontractors in
2 the performance of work or the provision of services that are unrelated,
3 separate or distinct from the state contract as expressed by its terms,
4 and nothing in this section shall authorize the director or any
5 contracting agency to impose any requirement on a contractor or subcon-
6 tractor except with respect to a state contract.

7 4. In the implementation of this section, the contracting agency shall

8 (a) consult the findings contained within the disparity study evidencing
9 relevant industry specific [availability of certified businesses]
10 disparities in the utilization of minority and women-owned businesses
11 relative to their availability;

12 (b) implement a program that will enable the agency to evaluate each
13 contract to determine the [appropriateness of the] appropriate goal
14 [pursuant to subdivision one of this section] for participation by
15 minority-owned business enterprises and women-owned business
16 enterprises;

17 (c) consider where practicable, the severability of construction
18 projects and other bundled contracts; and

19 (d) consider compliance with the requirements of any federal law
20 concerning opportunities for minority and women-owned business enter-
21 prises which effectuates the purpose of this section. The contracting
22 agency shall determine whether the imposition of the requirements of any
23 such law duplicate or conflict with the provisions hereof and if such
24 duplication or conflict exists, the contracting agency shall waive the
25 applicability of this section to the extent of such duplication or
26 conflict.

27 5. (a) Contracting agencies shall administer the rules and regulations
28 promulgated by the director in a good faith effort to [meet] achieve the

1 maximum feasible [portion of the agency's goals adopted] participation
2 of minority and women-owned business enterprises pursuant to this arti-
3 cle and the regulations of the director. Such rules and regulations:
4 shall require a contractor to submit a utilization plan after bids are
5 opened, when bids are required, but prior to the award of a state
6 contract; shall require the contracting agency to review the utilization
7 plan submitted by the contractor [and to post the utilization plan and
8 any waivers of compliance issued pursuant to subdivision six of this
9 section on the website of the contracting agency] within a reasonable
10 period of time as established by the director; shall require the
11 contracting agency to notify the contractor in writing within a period
12 of time specified by the director as to any deficiencies contained in
13 the contractor's utilization plan; shall require remedy thereof within a
14 period of time specified by the director; shall require the contractor
15 to submit periodic compliance reports relating to the operation and
16 implementation of any utilization plan; shall not allow any automatic
17 waivers but shall allow a contractor to apply for a partial or total
18 waiver of the minority and women-owned business enterprise participation
19 requirements pursuant to subdivisions six and seven of this section;
20 shall allow a contractor to file a complaint with the director pursuant
21 to subdivision eight of this section in the event a contracting agency
22 has failed or refused to issue a waiver of the minority and women-owned
23 business enterprise participation requirements or has denied such
24 request for a waiver; and shall allow a contracting agency to file a
25 complaint with the director pursuant to subdivision nine of this section
26 in the event a contractor is failing or has failed to comply with the
27 minority and women-owned business enterprise participation requirements
28 set forth in the state contract where no waiver has been granted.

1 (b) The rules and regulations promulgated pursuant to this subdivision
2 regarding a utilization plan shall provide that where enterprises have
3 been identified within a utilization plan, a contractor shall attempt,
4 in good faith, to utilize such enterprise at least to the extent indi-
5 cated. A contracting agency may require a contractor to indicate, within
6 a utilization plan, what measures and procedures he or she intends to
7 take to comply with the provisions of this article, but may not require,
8 as a condition of award of, or compliance with, a contract that a
9 contractor utilize a particular enterprise in performance of the
10 contract.

11 (c) Without limiting other grounds for the disqualification of bids or
12 proposals on the basis of non-responsibility, a contracting agency may
13 disqualify the bid or proposal of a contractor as being non-responsible
14 for failure to remedy notified deficiencies contained in the contrac-
15 tor's utilization plan within a period of time specified in regulations
16 promulgated by the director after receiving notification of such defi-
17 ciencies from the contracting agency. Where failure to remedy any noti-
18 fied deficiency in the utilization plan is a ground for disqualifica-
19 tion, that issue and all other grounds for disqualification shall be
20 stated in writing by the contracting agency. Where the contracting agen-
21 cy states that a failure to remedy any notified deficiency in the utili-
22 zation plan is a ground for disqualification the contractor shall be
23 entitled to an administrative hearing, on a record, involving all
24 grounds stated by the contracting agency. Such hearing shall be
25 conducted by the appropriate authority of the contracting agency to
26 review the determination of disqualification. A final administrative
27 determination made following such hearing shall be reviewable in a
28 proceeding commenced under article seventy-eight of the civil practice

1 law and rules, provided that such proceeding is commenced within thirty
2 days of the notice given by certified mail return receipt requested
3 rendering such final administrative determination. Such proceeding shall
4 be commenced in the supreme court, appellate division, third department
5 and such proceeding shall be preferred over all other civil causes
6 except election causes, and shall be heard and determined in preference
7 to all other civil business pending therein, except election matters,
8 irrespective of position on the calendar. Appeals taken to the court of
9 appeals of the state of New York shall be subject to the same prefer-
10 ence.

11 6. Where it appears that a contractor cannot, after a good faith
12 effort, comply with the minority and women-owned business enterprise
13 participation requirements set forth in a particular state contract, a
14 contractor may file a written application with the contracting agency
15 requesting a partial or total waiver of such requirements setting forth
16 the reasons for such contractor's inability to meet any or all of the
17 participation requirements together with an explanation of the efforts
18 undertaken by the contractor to obtain the required minority and women-
19 owned business enterprise participation. In implementing the provisions
20 of this section, the contracting agency shall consider the number and
21 types of minority and women-owned business enterprises [located] avail-
22 able to provide goods or services required under the contract in the
23 region in which the state contract is to be performed, the total dollar
24 value of the state contract, the scope of work to be performed and the
25 project size and term. If, based on such considerations, the contracting
26 agency determines there is not a reasonable availability of contractors
27 on the list of certified business to furnish services for the project,
28 it shall issue a waiver of compliance to the contractor. In making such

1 determination, the contracting agency shall first consider the avail-
2 ability of other business enterprises located in the region and shall
3 thereafter consider the financial ability of minority and women-owned
4 businesses located outside the region in which the contract is to be
5 performed to perform the state contract.

6 7. For purposes of determining a contractor's good faith effort to
7 comply with the requirements of this section or to be entitled to a
8 waiver therefrom the contracting agency shall consider:

9 (a) whether the contractor has [advertised in general circulation
10 media, trade association publications, and minority-focus and women-fo-
11 cus media and, in such event, (i) whether or not certified minority or
12 women-owned businesses which have been solicited by the contractor
13 exhibited interest in submitting proposals for a particular project by
14 attending] attended a pre-bid conference, if any, scheduled by the state
15 agency awarding the state contract with certified minority and women-
16 owned business enterprises; and

17 [(ii) whether certified businesses which have been solicited by the
18 contractor have responded in a timely fashion to the contractor's solici-
19 tations for timely competitive bid quotations prior to the contracting
20 agency's bid date; and]

21 (b) whether [there has been] the contractor provided timely written
22 notification of subcontracting opportunities on the state contract to
23 appropriate certified businesses that appear in the directory of certi-
24 fied businesses prepared pursuant to paragraph (f) of subdivision three
25 of section three hundred eleven of this article; and

26 (c) whether the contractor can reasonably structure the amount of work
27 to be performed under subcontracts in order to increase the likelihood
28 of participation by certified businesses.

1 8. In the event that a contracting agency fails or refuses to issue a
2 waiver to a contractor as requested within twenty days after having made
3 application therefor pursuant to subdivision six of this section or if
4 the contracting agency denies such application, in whole or in part, the
5 contractor may file a complaint with the director pursuant to section
6 three hundred sixteen of this article setting forth the facts and
7 circumstances giving rise to the contractor's complaint together with a
8 demand for relief. The contractor shall serve a copy of such complaint
9 upon the contracting agency by personal service or by certified mail,
10 return receipt requested. The contracting agency shall be afforded an
11 opportunity to respond to such complaint in writing.

12 9. If, after the review of a contractor's minority and women owned
13 business utilization plan or review of a periodic compliance report and
14 after such contractor has been afforded an opportunity to respond to a
15 notice of deficiency issued by the contracting agency in connection
16 therewith, it appears that a contractor is failing or refusing to comply
17 with the minority and women-owned business participation requirements as
18 set forth in the state contract and where no waiver from such require-
19 ments has been granted, the contracting agency may file a written
20 complaint with the director pursuant to section three hundred sixteen of
21 this article setting forth the facts and circumstances giving rise to
22 the contracting agency's complaint together with a demand for relief.
23 The contracting agency shall serve a copy of such complaint upon the
24 contractor by personal service or by certified mail, return receipt
25 requested. The contractor shall be afforded an opportunity to respond to
26 such complaint in writing.

27 § 6. Section 314 of the executive law, as added by chapter 261 of the
28 laws of 1988, subdivision 2-a as amended by chapter 175 of the laws of

1 2010, subdivision 4 as amended and subdivision 5 as added by chapter 399
2 of the laws of 2014, is amended to read as follows:

3 § 314. Statewide certification program. 1. The director shall promul-
4 gate rules and regulations providing for the establishment of a state-
5 wide certification program including rules and regulations governing the
6 approval, denial or revocation of any such certification. Such rules
7 shall set forth the maximum personal net worth of a minority group
8 member or woman who may be relied upon to certify a business as a minor-
9 ity-owned business enterprise or women-owned business enterprise, and
10 may establish different maximum levels of personal net worth for minori-
11 ty group members and women on an industry-by-industry basis for such
12 industries as the director shall determine. Such rules and regulations
13 shall include, but not be limited to, such matters as may be required to
14 ensure that the established procedures thereunder shall at least be in
15 compliance with the code of fair procedure set forth in section seven-
16 ty-three of the civil rights law.

17 2. For the purposes of this article, the office shall be responsible
18 for verifying businesses as being owned, operated, and controlled by
19 minority group members or women and for certifying such verified busi-
20 nesses. The director shall prepare a directory of certified businesses
21 for use by contracting agencies and contractors in carrying out the
22 provisions of this article. The director shall periodically update the
23 directory.

24 2-a. (a) The director shall establish a procedure enabling the office
25 to accept New York municipal corporation certification verification for
26 minority and women-owned business enterprise applicants in lieu of
27 requiring the applicant to complete the state certification process. The
28 director shall promulgate rules and regulations to set forth criteria

1 for the acceptance of municipal corporation certification. All eligible
2 municipal corporation certifications shall require business enterprises
3 seeking certification to meet the following standards:

4 (i) have at least fifty-one percent ownership by a minority or a
5 women-owned enterprise and be owned by United States citizens or perma-
6 nent resident aliens;

7 (ii) be an enterprise in which the minority and/or women-ownership
8 interest is real, substantial and continuing;

9 (iii) be an enterprise in which the minority and/or women-ownership
10 has and exercises the authority to control independently the day-to-day
11 business decisions of the enterprise;

12 (iv) be an enterprise authorized to do business in this state;

13 (v) be subject to a physical site inspection to verify the fifty-one
14 percent ownership requirement;

15 (vi) be owned by an individual or individuals, whose ownership,
16 control and operation are relied upon for certification, with a personal
17 net worth that does not exceed three million five hundred thousand
18 dollars, or such other amount as the director shall set forth in regu-
19 lations, as adjusted annually for inflation according to the consumer
20 price index; and

21 (vii) be an enterprise that is a small business pursuant to subdivi-
22 sion twenty of section three hundred ten of this article.

23 (b) The director shall work with all municipal corporations that have
24 a municipal minority and women-owned business enterprise program to
25 develop standards to accept state certification to meet the municipal
26 corporation minority and women-owned business enterprise certification
27 standards.

1 (c) The director shall establish a procedure enabling the division to
2 accept federal certification verification for minority and women-owned
3 business enterprise applicants, provided said standards comport with
4 those required by the state minority and women-owned business program,
5 in lieu of requiring the applicant to complete the state certification
6 process. The director shall promulgate rules and regulations to set
7 forth criteria for the acceptance of federal certification.

8 2-b. Each business applying for minority or women-owned business
9 enterprise certification pursuant to this section must agree to allow:
10 (i) the department of taxation and finance to share its tax information
11 with the division and (ii) the department of labor to share its tax and
12 employer information with the division.

13 3. Following application for certification pursuant to this section,
14 the director shall provide the applicant with written notice of the
15 status of the application, including notice of any outstanding deficien-
16 cies[, within thirty days]. Within [sixty] thirty days of submission of
17 a final completed application, the director shall provide the applicant
18 with written notice of a determination by the office approving or deny-
19 ing such certification and, in the event of a denial a statement setting
20 forth the reasons for such denial. Upon a determination denying or
21 revoking certification, the business enterprise for which certification
22 has been so denied or revoked shall, upon written request made within
23 thirty days from receipt of notice of such determination, be entitled to
24 a hearing before an independent hearing officer designated for such
25 purpose by the director. In the event that a request for a hearing is
26 not made within such thirty day period, such determination shall be
27 deemed to be final. The independent hearing officer shall conduct a
28 hearing and upon the conclusion of such hearing, issue a written recom-

1 mendation to the director to affirm, reverse or modify such determi-
2 nation of the director. Such written recommendation shall be issued to
3 the parties. The director, within thirty days, by order, must accept,
4 reject or modify such recommendation of the hearing officer and set
5 forth in writing the reasons therefor. The director shall serve a copy
6 of such order and reasons therefor upon the business enterprise by
7 personal service or by certified mail return receipt requested. The
8 order of the director shall be subject to review pursuant to article
9 seventy-eight of the civil practice law and rules.

10 4. The director may, after performing an availability analysis and
11 upon a finding that industry-specific factors coupled with personal net
12 worth or small business eligibility requirements pursuant to subdivi-
13 sions nineteen and twenty of section three hundred ten of this article,
14 respectively, have led to the significant exclusion of businesses owned
15 by minority group members or women in that industry, grant provisional
16 MWBE certification status to applicants from that designated industry,
17 provided, however, that all other eligibility requirements pursuant to
18 subdivision seven or fifteen of section three hundred ten of this arti-
19 cle, as applicable, are satisfied. Any industry-based determination made
20 under this section by the director shall be made widely available to the
21 public and posted on the division's website.

22 5. With the exception of provisional MWBE certification, as provided
23 for in subdivision twenty-three of section three hundred ten of this
24 article, all minority and women-owned business enterprise certifications
25 shall be valid for a period of three years.

26 § 7. Subdivisions 2, 3, 4, 5, 6 and 7 of section 315 of the executive
27 law, subdivision 2 as added by chapter 261 of the laws of 1988, and

1 subdivision 3 as amended and subdivisions 4, 5, 6 and 7 as added by
2 chapter 175 of the laws of 2010, are amended to read as follows:

3 2. [Each contracting agency shall provide to prospective bidders a
4 current copy of the directory of certified businesses, and a copy of the
5 regulations required pursuant to sections three hundred twelve and three
6 hundred thirteen of this article at the time bids or proposals are
7 solicited.

8 3.] Each contracting agency shall report to the director with respect
9 to activities undertaken to promote employment of minority group members
10 and women and promote and increase participation by certified businesses
11 with respect to state contracts and subcontracts. Such reports shall be
12 submitted periodically, but not less frequently than annually, as
13 required by the director, and shall include such information as is
14 necessary for the director to determine whether the contracting agency
15 and contractor have complied with the purposes of this article, includ-
16 ing, without limitation, a summary of all waivers of the requirements of
17 subdivisions six and seven of section three hundred thirteen of this
18 article allowed by the contracting agency during the period covered by
19 the report, [including a description of the basis of the waiver request
20 and the rationale for granting any such waiver] any instances in which
21 the state agency has deemed a contractor to have committed a violation
22 pursuant to section three hundred sixteen-a of this article, and such
23 other information as the director shall require. Each agency shall also
24 include in such annual report whether or not it has been required to
25 prepare a remedial plan, and, if so, the plan and the extent to which
26 the agency has complied with each element of the plan.

27 [4.] 3. The division of minority and women's business development
28 shall issue an annual report which: (a) summarizes the report submitted

1 by each contracting agency pursuant to subdivision [three] two of this
2 section; (b) contains such comparative or other information as the
3 director deems appropriate, including but not limited to goals compared
4 to actual participation of minority and women-owned business enterprises
5 in state contracting, to evaluate the effectiveness of the activities
6 undertaken by each such contracting agency to promote increased partic-
7 ipation by certified minority or women-owned businesses with respect to
8 state contracts and subcontracts; (c) contains a summary of all waivers
9 of the requirements of subdivisions six and seven of section three
10 hundred thirteen of this article allowed by each contracting agency
11 during the period covered by the report[, including a description of the
12 basis of the waiver request and the contracting agency's rationale for
13 granting any such waiver]; and (d) [describes any efforts to create a
14 database or other information storage and retrieval system containing
15 information relevant to contracting with minority and women-owned busi-
16 ness enterprises; and (e)] contains a summary of (i) all determinations
17 of violations of this article by a contractor or a contracting agency
18 made during the period covered by the annual report pursuant to section
19 three hundred sixteen-a of this article and
20 (ii) the penalties or sanctions, if any, assessed in connection with
21 such determinations and the rationale for such penalties or sanctions.
22 Copies of the annual report shall be provided to the commissioner, the
23 governor, the comptroller, the temporary president of the senate, the
24 speaker of the assembly, the minority leader of the senate, the minority
25 leader of the assembly and shall also be made widely available to the
26 public via, among other things, publication on a website maintained by
27 the division of minority and women's business development.

1 [5.] 4. Each agency shall include in its annual report to the governor
2 and legislature pursuant to section one hundred sixty-four of [the execu-
3 tive law] this chapter its annual goals for contracts with minority-
4 owned and women-owned business enterprises, the number of actual
5 contracts issued to minority-owned and women-owned business enterprises;
6 and a summary of all waivers of the requirements of subdivisions six and
7 seven of section three hundred thirteen of this article allowed by the
8 reporting agency during the preceding year, including a description of
9 the basis of the waiver request and the rationale for granting such
10 waiver. Each agency shall also include in such annual report whether or
11 not it has been required to prepare a remedial plan, and, if so, the
12 plan and the extent to which the agency has complied with each element
13 of the plan.

14 [6.] 5. Each contracting agency that substantially fails to [meet the
15 goals supported by the disparity study] make a good faith effort, as
16 defined by regulation of the director, to achieve the maximum feasible
17 participation of minority and women-owned business enterprises in such
18 agency's contracting shall be required to submit to the director a reme-
19 dial action plan to remedy such failure.

20 [7.] 6. If it is determined by the director that any agency has failed
21 to act in good faith to implement the remedial action plan, pursuant to
22 subdivision [six] five of this section within one year, the director
23 shall provide written notice of such a finding, which shall be publicly
24 available, and direct implementation of remedial actions to:

25 (a) assure that sufficient and effective solicitation efforts to women
26 and minority-owned business enterprises are being made by said agency;

1 (b) divide contract requirements, when economically feasible, into
2 quantities that will expand the participation of women and minority-
3 owned business enterprises;

4 (c) eliminate extended experience or capitalization requirements, when
5 programmatically and economically feasible, that will expand partic-
6 ipation by women and minority-owned business enterprises;

7 (d) identify specific proposed contracts as particularly attractive or
8 appropriate for participation by women and minority-owned business
9 enterprises with such identification to result from and be coupled with
10 the efforts of paragraphs (a), (b), and (c) of this subdivision; and

11 (e) upon a finding by the director that an agency has failed to take
12 affirmative measures to implement the remedial plan and to follow any of
13 the remedial actions set forth by the director, and in the absence of
14 any objective progress towards the agency's goals, require some or all
15 of the agency's procurement, for a specified period of time, be placed
16 under the direction and control of another agency or agencies.

17 § 8. Section 316-a of the executive law, as added by chapter 175 of
18 the laws of 2010, is amended to read as follows:

19 § 316-a. Prohibitions in contracts; violations. Every contracting
20 agency shall include a provision in its state contracts expressly
21 providing that any contractor who [willfully and intentionally] fails to
22 make a good faith effort to comply with the minority and women-owned
23 participation requirements of this article as set forth in such state
24 contract shall be liable to the contracting agency for liquidated or
25 other appropriate damages and shall provide for other appropriate reme-
26 dies on account of such breach. A contracting agency that elects to
27 proceed against a contractor for breach of contract as provided in this
28 section shall be precluded from seeking enforcement pursuant to section

1 three hundred sixteen of this article; provided however, that the
2 contracting agency shall include a summary of all enforcement actions
3 undertaken pursuant to this section in its annual report submitted
4 pursuant to [subdivision three of] section three hundred fifteen of this
5 article.

6 § 9. Subdivision 6 of section 163 of the state finance law, as amended
7 by chapter 569 of the laws of 2015, is amended to read as follows:

8 6. Discretionary buying thresholds. Pursuant to guidelines established
9 by the state procurement council: the commissioner may purchase services
10 and commodities in an amount not exceeding eighty-five thousand dollars
11 without a formal competitive process; state agencies may purchase
12 services and commodities in an amount not exceeding fifty thousand
13 dollars without a formal competitive process; and state agencies may
14 purchase commodities or services from small business concerns or those
15 certified pursuant to articles fifteen-A and seventeen-B of the execu-
16 tive law, or commodities or technology that are recycled or remanufac-
17 tured, or commodities that are food, including milk and milk products,
18 grown, produced or harvested in New York state in an amount not exceed-
19 ing [two] four hundred thousand dollars without a formal competitive
20 process.

21 § 10. Subparagraph (i) of paragraph (b) of subdivision 3 of section
22 2879 of the public authorities law, as amended by chapter 174 of the
23 laws of 2010, is amended to read as follows:

24 (i) for the selection of such contractors on a competitive basis, and
25 provisions relating to the circumstances under which the board may by
26 resolution waive competition, including, notwithstanding any other
27 provision of law requiring competition, the purchase of goods or
28 services from small business concerns or those certified as minority or

1 women-owned business enterprises, or goods or technology that are recy-
2 cled or remanufactured, in an amount not to exceed [two] four hundred
3 thousand dollars without a formal competitive process;

4 § 11. Paragraph a of subdivision 3 of section 139-j of the state
5 finance law is amended by adding two new subparagraphs 10 and 11 to read
6 as follows:

7 (10) Complaints by minority-owned business enterprises or women-owned
8 business enterprises, certified as such by the division of minority and
9 women's business development, to the minority and women-owned business
10 enterprise statewide advocate concerning the procuring governmental
11 entity's failure to comply with the requirements of section three
12 hundred fifteen of the executive law;

13 (11) Communications between the minority and women-owned business
14 enterprise statewide advocate and the procuring governmental entity in
15 furtherance of an investigation of the minority and women-owned business
16 enterprise statewide advocate pursuant to section three hundred twelve-a
17 of the executive law;

18 § 12. Subdivision 6 of section 8 of the public buildings law, as
19 amended by chapter 840 of the laws of 1980, is amended to read as
20 follows:

21 6. All contracts for amounts in excess of five thousand dollars for
22 the work of construction, reconstruction, alteration, repair or improve-
23 ment of any state building, whether constructed or to be constructed
24 must be offered for public bidding and may be awarded to the lowest
25 responsible and reliable bidder, as will best promote the public inter-
26 est, by the said department or other agency with the approval of the
27 comptroller for the whole or any part of the work to be performed, and,
28 in the discretion of the said department or other agency, such contracts

1 may be sublet; provided, however, that no such contract shall be awarded
2 to a bidder other than the lowest responsible and reliable bidder,
3 except for certain contracts awarded to minority or women-owned business
4 enterprises as provided herein, without the written approval of the
5 comptroller. When a proposal consists of unit prices of items specified
6 to be performed, the lowest bid shall be deemed to be that which specif-
7 ically states the lowest gross sum for which the entire work will be
8 performed, except for certain contracts awarded to minority or women-
9 owned business enterprises as provided herein, including all the items
10 specified in the proposal thereof. The lowest bid shall be determined by
11 the commissioner of general services on the basis of the gross sum for
12 which the entire work will be performed, arrived at by a correct compu-
13 tation of all the items specified in the proposal therefor at the unit
14 prices contained in the bid. Provided, however, that where a responsible
15 and reliable bidder certified as a minority-owned business enterprise or
16 women-owned business enterprise pursuant to article fifteen-A of the
17 executive law submits a bid of one million four hundred thousand dollars
18 or less, as adjusted annually for inflation beginning January first, two
19 thousand nineteen, the bid of the minority or women-owned business
20 enterprise shall be deemed the lowest bid unless it exceeds the bid of
21 any other bidder by more than ten percent.

22 § 13. The penal law is amended by adding a new article 181 to read as
23 follows:

24 ARTICLE 181

25 MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISE FRAUD

26 Section 181.00 Definitions.

1 181.10 Minority or women-owned business enterprise fraud in the
2 third degree.

3 181.20 Minority or women-owned business enterprise fraud in the
4 second degree.

5 181.30 Minority or women-owned business enterprise fraud in the
6 first degree.

7 § 181.00 Definitions.

8 1. "Minority-owned business enterprise" means a business enterprise
9 certified as such pursuant to article fifteen-A of the executive law.

10 2. "State contract" shall have the same meaning as in article
11 fifteen-A of the executive law.

12 3. "Women-owned business enterprise" means a business enterprise
13 certified as such pursuant to article fifteen-A of the executive law.

14 § 181.10 Minority or women-owned business enterprise fraud in the third
15 degree.

16 A person is guilty of minority or women-owned business enterprise
17 fraud in the third degree when he or she knowingly provides materially
18 false information or omits material information concerning the use or
19 identification of a minority or women-owned business enterprise for the
20 purpose of being awarded, or demonstrating compliance with the minority
21 and women-owned business participation requirements of, a state
22 contract.

23 Minority or women-owned business enterprise fraud in the third degree
24 is a class A misdemeanor.

25 § 181.20 Minority or women-owned business enterprise fraud in the second
26 degree.

27 A person is guilty of minority or women-owned business enterprise
28 fraud in the second degree when he or she knowingly provides materially

1 false information or omits material information concerning the use or
2 identification of a minority or women-owned business enterprise for the
3 purpose of being awarded, or demonstrating compliance with the minority
4 and women-owned business participation requirements of, a state
5 contract, and the state contract is valued in excess of fifty thousand
6 dollars.

7 Minority or women-owned business enterprise fraud in the second degree
8 is a class E felony.

9 § 181.30 Minority or women-owned business enterprise fraud in the first
10 degree.

11 A person is guilty of minority or women-owned business enterprise
12 fraud in the first degree when he or she knowingly provides materially
13 false information or omits material information concerning the use or
14 identification of a minority or women-owned business enterprise for the
15 purpose of being awarded, or demonstrating compliance with the minority
16 and women-owned business participation requirements of, a state
17 contract, and the state contract is valued in excess of one million
18 dollars.

19 Minority or women-owned business enterprise fraud in the first degree
20 is a class D felony.

21 § 14. The opening paragraph of subdivision (h) of section 121 of chap-
22 ter 261 of the laws of 1988, amending the state finance law and other
23 laws relating to the New York state infrastructure trust fund, as
24 amended by section 1 of part CCC of chapter 59 of laws of 2017, is
25 amended to read as follows:

26 The provisions of sections sixty-two through sixty-six of this act
27 shall expire [April fifteenth, two thousand eighteen, provided, however,
28 that if the statewide disparity study regarding the participation of

1 minority and women-owned business enterprises in state contracts
2 required pursuant to subdivision one of section three hundred twelve-a
3 of the executive law is completed and delivered to the governor and the
4 legislature on or before June thirtieth, two thousand seventeen, then
5 the provisions of sections sixty-two through sixty-six of this act shall
6 expire] and be deemed repealed on December thirty-first, two thousand
7 [eighteen] twenty-three, except that:

8 § 15. The executive law is amended by adding a new article 28 as
9 follows:

10 ARTICLE 28

11 WORKFORCE DIVERSITY PROGRAM

12 Section 821. Definitions.

13 822. Workforce participation goals.

14 823. Reporting.

15 824. Enforcement.

16 825. Powers and responsibilities of the division.

17 826. Severability.

18 § 821. Definitions. As used in this article, the following terms shall
19 have the following meanings:

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

25 2. "Department" shall mean the department of labor.

1 3. "Director" shall mean the director of the division of minority and
2 women's business development.

3 4. "Disparity study" shall mean the most recent study of disparities
4 between the utilization of minority group members and women in the
5 performance of state contracts and the availability of minority group
6 members and women to perform such work by the director pursuant to arti-
7 cle fifteen-A of this chapter.

8 5. "Division" shall mean the department of economic development's
9 division of minority and women's business development.

10 6. "List of non-compliant contractors" shall mean a list of contrac-
11 tors and subcontractors, maintained by the division and published on the
12 website of the division, that are ineligible to participate as contrac-
13 tors or subcontractors in the performance of state contracts for a term
14 determined by the director.

15 7. "Minority group member" shall mean a United States citizen or
16 permanent resident alien who is and can demonstrate membership in one of
17 the following groups:

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

20 (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban,
21 Central or South American of either Indian or Hispanic origin, regard-
22 less of race;

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

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

1 8. "Non-compliant contractor" shall mean a contractor or subcontractor
2 that has failed to make a good faith effort to meet the workforce
3 participation goal established by a state agency on a state contract,
4 and has been listed by the division on its list of non-compliant
5 contractors.

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

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

18 Albany County Airport Authority;

19 Albany Port District Commission;

20 Alfred, Almond, Hornellsville Sewer Authority;

21 Battery Park City Authority;

22 Cayuga County Water and Sewer Authority;

23 (Nelson A. Rockefeller) Empire State Plaza Performing Arts Center
24 Corporation;

25 Industrial Exhibit Authority;

26 Livingston County Water and Sewer Authority;

27 Long Island Power Authority;

28 Long Island Rail Road;

- 1 Long Island Market Authority;
- 2 Manhattan and Bronx Surface Transit Operating Authority;
- 3 Metro-North Commuter Railroad;
- 4 Metropolitan Suburban Bus Authority;
- 5 Metropolitan Transportation Authority;
- 6 Natural Heritage Trust;
- 7 New York City Transit Authority;
- 8 New York Convention Center Operating Corporation;
- 9 New York State Bridge Authority;
- 10 New York State Olympic Regional Development Authority;
- 11 New York State Thruway Authority;
- 12 Niagara Falls Public Water Authority;
- 13 Niagara Falls Water Board;
- 14 Port of Oswego Authority;
- 15 Power Authority of the State of New York;
- 16 Roosevelt Island Operating Corporation;
- 17 Schenectady Metroplex Development Authority;
- 18 State Insurance Fund;
- 19 Staten Island Rapid Transit Operating Authority;
- 20 State University Construction Fund;
- 21 Syracuse Regional Airport Authority;
- 22 Triborough Bridge and Tunnel Authority;
- 23 Upper Mohawk valley regional water board;
- 24 Upper Mohawk valley regional water finance authority;
- 25 Upper Mohawk valley memorial auditorium authority;
- 26 Urban Development Corporation and its subsidiary corporations.

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

4 Dormitory Authority of the State of New York;

5 Facilities Development Corporation;

6 New York State Energy Research and Development Authority;

7 New York State Science and Technology Foundation.

8 10. "State contract" shall mean: (a) a written agreement or purchase
9 order instrument, providing for a total expenditure in excess of fifty
10 thousand dollars, whereby a state agency is committed to expend or does
11 expend or grant funds in return for labor, services including but not
12 limited to legal, financial and other professional services, supplies,
13 equipment, materials or any combination of the foregoing, to be
14 performed on behalf of, for, or rendered or furnished to the state agen-
15 cy; (b) a written agreement in excess of two hundred thousand dollars
16 whereby a state agency is committed to expend or does expend or grant
17 funds for the acquisition, construction, demolition, replacement, major
18 repair or renovation of real property and improvements thereon; and (c)
19 a written agreement in excess of two hundred thousand dollars whereby
20 the owner of a state assisted housing project is committed to expend or
21 does expend funds for the acquisition, construction, demolition,
22 replacement, major repair or renovation of real property and improve-
23 ments thereon for such project.

24 11. "Subcontractor" shall mean any individual or business enterprise
25 that provides goods or services to any individual or business for use in
26 the performance of a state contract, whether or not such goods or
27 services are provided to a party to a state contract.

1 § 822. Workforce participation goals. 1. The director, in consulta-
2 tion with the department, shall develop aspirational goals for the
3 utilization of minority group members and women in construction trade,
4 profession, and occupation.

5 (a) Aspirational goals for the utilization of minority group members
6 and women must set forth the expected participation of minority group
7 members and women in each construction trade, profession, and occupa-
8 tion, and shall be expressed as a percentage of the total hours of work
9 to be performed by each trade, profession, and occupation based on the
10 availability of minority group members and women within each trade,
11 profession, and occupation.

12 (i) The aspirational goals shall set forth separate levels of expected
13 participation by men and women for each minority group, and for Cauca-
14 sian women, in each construction trade, profession, and occupation.

15 (ii) Aspirational goals for the expected participation of minority
16 group members and women shall be established for each county of the
17 state. The director may establish aspirational goals for the expected
18 participation of minority group members and women for municipalities
19 where the director deems feasible and appropriate.

20 (iii) The director shall, in establishing the aspirational goals,
21 consider the findings of the most recent disparity study and any rele-
22 vant data published by the United States Census Bureau.

23 (b) The director shall update the aspirational goals on a periodic
24 basis, no less than annually.

25 2. State agencies shall, for each invitation for bids, request for
26 proposals, or other solicitation that will result in the award of a
27 state contract, set forth the expected degree of workforce participation
28 by minority group members and women.

1 (a) Each workforce participation goal established by a state agency
2 shall set forth the expected level of participation by minority group
3 members and women in the performance of each trade, profession, and
4 occupation required in the performance of the contract.

5 (b) Goals for the participation of minority group members and women
6 shall set forth separate goals for each of the following groups in each
7 trade, profession, and occupation:

8 (i) Black men;

9 (ii) Black women;

10 (iii) Hispanic men;

11 (iv) Hispanic women;

12 (v) Native American men;

13 (vi) Native American women;

14 (vii) Asian men;

15 (viii) Asian women;

16 (ix) Caucasian women.

17 (c) In establishing workforce participation goals, state agencies
18 shall consider factors including, but not limited to:

19 (i) the findings of the disparity study;

20 (ii) any relevant data published by the United States Census Bureau;

21 and

22 (iii) if applicable, any aspirational goal established by the divi-
23 sion.

24 (d) In any case where a state agency establishes a workforce partic-
25 ipation goal on an invitation for bids, request for proposals, or other
26 solicitation that will result in the award of a state contract for
27 construction that deviates from the aspirational goal for construction
28 work in the county or municipality in which the work will be performed,

1 the state agency shall document numerical evidence demonstrating that
2 the application of the aspirational goal would not be practical, feasi-
3 ble, or appropriate.

4 3. Every contractor responding to an invitation for bids, request for
5 proposals, or other solicitation that will result in the award of a
6 state contract subject to workforce participation goals pursuant to this
7 section shall agree to make a good faith effort to achieve such work-
8 force participation goal or request a waiver of such goal.

9 (a) A contractor that certifies that it will make a good faith effort
10 to achieve a workforce participation goal shall provide with its
11 response to the applicable invitation for bids, request for proposals,
12 or other solicitation:

13 (i) A certification stating that the contractor will make a good faith
14 effort to achieve the applicable workforce participation goal and will
15 contractually require any subcontractors to the contractor to make a
16 good faith effort to achieve the applicable workforce participation goal
17 in any subcontracted work, which certification shall acknowledge that
18 failure by the contractor or any of its subcontractors to make a good
19 faith effort to achieve the applicable workforce participation goal may
20 result in a determination by the contracting state agency that the
21 contractor or its subcontractor is a non-compliant contractor;

22 (ii) The level of anticipated participation by minority group members
23 and women as employees to the contractor, or, if the state agency has
24 specifically indicated that such documentation is not required as part
25 of the response to the invitation for bids, request for proposals, or
26 other solicitation, a date certain for the submission of such documenta-
27 tion after the award of the state contract;

1 (iii) A list of all subcontractors anticipated to perform work on the
2 state contract and the level of anticipated participation by minority
3 group members and women as employees to each subcontractor, or, if the
4 state agency has specifically indicated that such documentation is not
5 required as part of the response to the invitation for bids, request for
6 proposals, or other solicitation, a date certain for the submission of
7 such documentation after the award of the state contract; and

8 (iv) Such other information as the contracting state agency shall
9 require.

10 (b) A contractor that requests a waiver of a workforce participation
11 goal shall provide with its response to the applicable invitation for
12 bids, request for proposals, or other solicitation:

13 (i) Numerical evidence setting forth why the achievement of the work-
14 force participation goal is not practical, feasible, or appropriate in
15 light of the trades, professions, and occupations required to perform
16 the work of the state contract;

17 (ii) Documentation of the contractor's efforts, and any efforts by
18 subcontractors to the contractor, to promote the inclusion of minority
19 group members and women in trades, professions, and occupations required
20 in the performance of the state contract;

21 (iii) The maximum feasible level of participation by minority group
22 members and women in each of the trades, professions, and occupations
23 required in the performance of the work of the state contract;

24 (iv) The level of anticipated participation by minority group members
25 and women as employees to the contractor;

26 (v) A list of all subcontractors anticipated to perform work on the
27 state contract and the level of anticipated participation by minority
28 group members and women as employees to each subcontractor; and

1 (vi) Any other relevant information evidencing that the contractor's
2 achievement of the workforce participation goal would not be practical,
3 feasible, or appropriate.

4 4. A state agency shall not award a state contract to a contractor
5 unless the contractor has (i) certified that it will make a good faith
6 effort to achieve the applicable workforce participation goal and
7 provided documentation of the workforce anticipated to perform the work
8 of the state contract or (ii) submitted a waiver request which the state
9 agency deems to reflect the maximum feasible participation of minority
10 group members and women in each of the trades, professions, and occupa-
11 tions required in performance of the work of the state contract.

12 (a) In the event that a contractor submits a certification or waiver
13 request that is accepted by the state agency, the state agency shall
14 establish in the state contract the expected level of participation by
15 minority group members and women in each of the trades, professions, and
16 occupations required in performance of the work of the state contract,
17 require that the contractor make good faith efforts to achieve such
18 workforce participation goals, require that the contractor require any
19 subcontractors to make a good faith effort to achieve the applicable
20 workforce participation goal in any subcontracted work, and indicate
21 that the failure of the contractor or any of its subcontractors to make
22 a good faith effort to achieve the workforce participation goal may
23 result in the contractor or subcontractor being deemed a non-compliant
24 contractor.

25 (b) In the event that a contractor fails to submit a certification,
26 waiver request, or any other information required by the state agency,
27 or the state agency determines that a contractor's waiver request does
28 not demonstrate that the applicable workforce participation goal is

1 impractical, unfeasible, or inappropriate, the state agency shall notify
2 the contractor of the deficiency in writing and provide the contractor
3 five business days to remedy the noticed deficiency. A state agency
4 shall reject any bid or proposal of a contractor that fails to timely
5 respond to a notice of deficiency or to provide documentation remedying
6 the deficiency to the satisfaction of the state agency.

7 (i) Where failure to remedy any notified deficiency in the workforce
8 utilization plan is a ground for disqualification, that issue and all
9 other grounds for disqualification shall be stated in writing by the
10 contracting state agency. The contractor shall be entitled to an admin-
11 istrative hearing, on a record, involving all grounds stated by the
12 contracting state agency in its notice of the contractor's disqualifica-
13 tion. Such hearing shall be conducted by the appropriate authority of
14 the contracting agency to review the determination of disqualification.
15 A final administrative determination made following such hearing shall
16 be reviewable in a proceeding commenced under article seventy-eight of
17 the civil practice law and rules, provided that such proceeding is
18 commenced within thirty days of the notice given by certified mail
19 return receipt requested rendering such final administrative determi-
20 nation. Such proceeding shall be commenced in the supreme court, appel-
21 late division, third department and such proceeding shall be preferred
22 over all other civil causes except election causes, and shall be heard
23 and determined in preference to all other civil business pending there-
24 in, except election matters, irrespective of position on the calendar.
25 Appeals taken to the court of appeals of the state of New York shall be
26 subject to the same preference.

27 § 823. Reporting. 1. State contracts shall require contractors to
28 submit, and to require any subcontractors to submit, to the contracting

1 state agency reports documenting the hours worked by employees of the
2 contractor and any subcontractors in the performance of the work of the
3 state contract. Such reports shall be submitted no less frequently than
4 monthly for state contracts for construction and quarterly for all other
5 state contracts. Such reports shall identify the race, ethnicity,
6 gender, and trade, profession, or occupation of each employee performing
7 work on a state contract.

8 2. State agencies shall submit periodic reports to the director, or
9 the designee of the director, concerning the participation of minority
10 group members and women in state contracts let by such agencies and such
11 state agencies' compliance with this article. Such reports shall be
12 submitted at such time, and include such information, as the director
13 shall require in regulations. State agencies shall make available their
14 facilities, books, and records for inspection, upon reasonable notice,
15 by the director or the director's designee.

16 3. The department shall provide such assistance as the director shall
17 require in carrying out the requirements of this section.

18 § 824. Enforcement. 1. Where it appears that a contractor cannot,
19 after a good faith effort, meet the workforce participation goals set
20 forth in a particular state contract, a contractor may file a written
21 application with the contracting state agency requesting a partial or
22 total waiver of such requirements. Such request shall set forth the
23 reasons for such contractor's inability to meet the workforce partic-
24 ipation goal, specifically describe the reasons for any deviations from
25 the anticipated workforce participation set forth in the contractor's
26 bid or proposal leading to the award of the state contract, and describe
27 the efforts by the contractor and any subcontractors to achieve the
28 maximum feasible participation of minority group members and women in

1 the performance of the work of the state contract. Where the contrac-
2 tor's inability to achieve the workforce participation goal on a state
3 contract is attributable to the failure of one or more subcontractors to
4 make good faith efforts to achieve the maximum feasible participation of
5 minority group members and women in the performance of the work of the
6 state contract, the contractor shall identify such subcontractor or
7 subcontractors to the contracting state agency.

8 2. A state agency shall grant a request for a waiver of workforce
9 participation goals on a state contract where:

10 (a) The contractor demonstrates that the contractor and its subcon-
11 tractors made good faith efforts to achieve the workforce participation
12 goal on the state contract, and that insufficient minority group members
13 or women were available in the trades, professions, and occupations
14 required to perform the work of the state contract; or,

15 (b) The contractor contractually required each of its subcontractors
16 to make a good faith effort to achieve the maximum feasible partic-
17 ipation of minority group members and women in the performance of the
18 subcontracted work, periodically monitored such subcontractors' deploy-
19 ment of minority group members and women in the performance of the
20 subcontracted work, provided notice to such subcontractors of any defi-
21 ciencies in their deployment of minority group members and women in the
22 performance of such subcontracted work, and could not achieve the work-
23 force participation goal for one or more trades, professions, or occupa-
24 tions without the good faith efforts of such subcontractors.

25 3. Where a state agency denies a contractor's request for a waiver of
26 workforce participation goals pursuant to this section, the state agency
27 shall recommend to the director and the department that the contractor
28 be deemed a non-compliant contractor.

1 4. Where a state agency grants a request for a waiver of workforce
2 participation goals pursuant to this section based on one or more
3 subcontractors' failure to make good faith efforts to achieve the maxi-
4 mum feasible participation of minority group members and women in the
5 performance of the subcontracted work, the state agency shall recommend
6 to the director and the department that the subcontractor be deemed a
7 non-compliant contractor.

8 5. Upon receipt of a recommendation from a state agency that a
9 contractor or subcontractor should be deemed a non-compliant contractor,
10 the director shall, with the assistance of the department, review the
11 facts and circumstances forming the basis of the recommendation and
12 issue a determination as to whether or not the contractor or subcontrac-
13 tor should be deemed a non-compliant contractor and, if so, the duration
14 of such status as a non-compliant contractor. In determining the dura-
15 tion of a contractor's or subcontractor's status as a non-compliant
16 contractor, the director shall consider:

17 (i) whether the contractor or subcontractor has previously been deemed
18 a non-compliant contractor;

19 (ii) the number of hours of expected participation by minority group
20 members and women lost as a result of the contractor's or subcontrac-
21 tor's failure to make good faith efforts to include minority group
22 members or women in the performance of one or more state contracts; and

23 (iii) whether the contractor or subcontractor has offered to provide
24 employment opportunities, training, or other remedial benefits to minor-
25 ity group members or women in relevant trades, professions, or occupa-
26 tions.

27 6. A contractor or subcontractor deemed a non-compliant contractor by
28 the director may request an administrative hearing before an independent

1 hearing officer to appeal the determination of the director. The deci-
2 sion of the hearing officer shall be final and may only be vacated or
3 modified as provided in article seventy-eight of the civil practice law
4 and rules upon an application made within the time provided by such
5 article.

6 7. Upon a final determination that a contractor or subcontractor is a
7 non-compliant contractor, the director shall list the contractor or
8 subcontractor as such on its website and indicate the term of such
9 contractor's or subcontractor's status as a non-compliant contractor. A
10 non-compliant contractor shall be ineligible to participate as a
11 contractor or subcontractor on any state contract.

12 § 825. Powers and responsibilities of the division. 1. The director
13 shall post to the website of the division on or before April first of
14 each year the aspirational goals for the utilization of minority group
15 members and women in construction required pursuant to section eight
16 hundred twenty-two of this article.

17 2. The director shall promulgate rules and regulations for the imple-
18 mentation of this article, including, but not limited to, procedures for
19 the submission of certifications and workforce utilization plans by
20 contractors, criteria for granting waivers of workforce participation
21 goals, and the contents of reports by state agencies concerning their
22 implementation of the requirements of this article.

23 3. The division shall, from time to time, review the facilities,
24 books, and records of state agencies to ascertain the accuracy of their
25 reports and their compliance with the requirements of this article. The
26 department shall provide such assistance as the director shall require
27 in carrying out the requirements of this section.

