

McKinney's Consolidated Laws of New York Annotated Executive Law Chapter Eighteen. Of the Consolidated Laws Article 15-a. Participation by Minority Group Members and Women with Respect to State Contracts [Expires and Deemed Repealed Dec. 31, 2024, Pursuant to L.1988, C. 261, § 121(h)]

McKinney's Executive Law Ch. EIGHTEEN, Art. 15-A, Refs & Annos  
Currentness


McKinney's Executive Law Ch. EIGHTEEN, Art. 15-A, Refs & Annos, NY EXEC Ch. EIGHTEEN, Art. 15-A, Refs & Annos

Current through L.2019, chapter 752. Some statute sections may be more current, see credits for details.

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McKinney's Consolidated Laws of New York Annotated Executive Law (Refs & Annos) Chapter Eighteen. Of the Consolidated Laws Article 15-a. Participation by Minority Group Members and Women with Respect to State Contracts [Expires and Deemed Repealed Dec. 31, 2024, Pursuant to L.1988, C. 261, § 121(h)] (Refs & Annos)

McKinney's Executive Law § 310

§ 310. Definitions

Effective: October 1, 2014

[Currentness](#)

<[Expires and deemed repealed Dec. 31, 2024, pursuant to [L.1988, c. 261, § 121\(h\)](#)>

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) [Eff. until Jan. 11, 2020. See, also, par. (e) below.] 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 three million five hundred thousand dollars, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and
  - (e) [Eff. Jan. 11, 2020. See, also, par. (e) above.] 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 alien 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) [Eff. until Jan. 11, 2020. See, also, par. (b) below.] Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race;
  - (b) [Eff. Jan. 11, 2020. See, also, par. (b) above.] 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. [Eff. until Jan. 11, 2020. See, also, subd. 13 below.] “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, 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.

13. [Eff. Jan. 11, 2020. See, also, subd. 13 above.] “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 aliens 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) [Eff. until Jan. 11, 2020. See, also, par (e) below.] 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 three million five hundred thousand dollars, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and

(e) [Eff. Jan. 11, 2020. See, also, par (e) above.] 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. [Eff. until Jan. 11, 2020. See, also, subd. 16 below.] “Statewide advocate” shall mean the person appointed by the commissioner to serve in the capacity of the minority and women-owned business enterprise statewide advocate.

16. [Eff. Jan. 11, 2020. See, also, subd. 16 above.] “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. [Eff. until Jan. 11, 2020. See, also, subd. 19 below.] “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, or up to five hundred 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.

19. [Eff. Jan. 11, 2020. See, also, subd. 19 above.] “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, 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.

21. [Eff. until Jan. 11, 2020. See, also, subd. 21 below.] “The 2010 disparity study” shall refer to the disparity study commissioned by the empire state development corporation, pursuant to [section three hundred twelve-a](#) of this article, and published on April twenty-nine, two thousand ten.

21. [Eff. Jan. 11, 2020. See, also, subd. 21 above.] “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) [Eff. until Jan. 11, 2020. See, also, par. (a) below.] utilizing certified minority and women-owned business enterprises in contracts awarded by a state agency or other public corporation, as subcontractors and suppliers; and

(a) [Eff. Jan. 11, 2020. See, also, par. (a) above.] 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.

#### **Credits**

(Added L.1988, c. 261, § 63. Amended L.1992, c. 55, § 268; L.1993, c. 686, § 2; L.1994, c. 506, § 9; L.1994, c. 647, § 2; L.1995, c. 195, § 2; L.1995, c. 412, § 13; L.1995, c. 691, § 2; L.1996, c. 130, § 2; L.1998, c. 124, § 7, eff. June 30, 1998; L.1999, c. 605, § 2, eff. March 8, 2000; L.2002, c. 275, § 2, eff. July 30, 2002; L.2003, c. 628, § 2, eff. Sept. 30, 2003; L.2006, c. 59, pt. BB, § 3, eff. Oct. 8, 2006; L.2009, c. 505, § 21, eff. Feb. 9, 2010, repealed by L.2009, c. 506, § 29, eff. March 1, 2010; L.2009, c. 506, §§ 21, 21-a, eff. March 1, 2010; L.2010, c. 175, § 2, eff. Oct. 13, 2010; L.2011, c. 463, § 2, eff. Aug. 17, 2011; L.2014, c. 22, § 3, eff. May 12, 2014; L.2014, c. 399, § 1, eff. Oct. 1, 2014; L.2019, c. 96, § 1, eff. Jan. 11, 2020.)

#### [Notes of Decisions \(16\)](#)

McKinney's Executive Law § 310, NY EXEC § 310

Current through L.2019, chapter 752. Some statute sections may be more current, see credits for details.

## Notes Of Decisions

**Validity**

New York rationally could have concluded, when formulating affirmative action program for contractors without violating equal protection clause, that Hispanics of Latin American origin were in greater need of remedial legislation than persons of Spanish or Portuguese descent who did not also come from Latin America. [Jana-Rock Const., Inc. v. New York State Dept. of Economic Development, C.A.2 \(N.Y.\)2006, 438 F.3d 195](#) . [Constitutional Law 3289](#) ; [Public Contracts 129](#) ; [States 98.4](#)

In adopting an affirmative action plan, a state under the equal protection clause may rationally limit its application to those minority groups in the local work force that are most in need of remedial efforts. [Jana-Rock Const., Inc. v. New York State Dept. of Economic Development, C.A.2 \(N.Y.\)2006, 438 F.3d 195](#) . [Constitutional Law 3289](#)

**Construction with federal law**

Study proffered by construction company, and son of Spanish mother whose parents were born in Spain, as majority owner of company, which found that discrimination against Hispanics as a group was prevalent, did not establish under equal protection clause that New York's definition of "Hispanic" was irrational, as used in certifying minority-owned businesses for possible affirmative action, but excluding people of Spanish or Portuguese descent who did not also come from Latin America, since only 0.6% of persons who identified themselves as "Hispanic" also identified themselves as "Spaniard." [Jana-Rock Const., Inc. v. New York State Dept. of Economic Development, C.A.2 \(N.Y.\)2006, 438 F.3d 195](#) . [Constitutional Law 3289](#) ; [Public Contracts 121](#) ; [States 98.4](#)

Anecdotal evidence of plaintiff's own experience of discrimination on basis of his Spanish ancestry did not establish under equal protection clause that New York's definition of "Hispanic" was irrational, as used in certifying minority-owned businesses for possible affirmative action, but excluding people of Spanish or Portuguese descent who did not also come from Latin America; existence of evidence that might have established existence of discrimination against one person on account of his national origin did not render New York's legislative choice irrational that differentiated between Spanish and Portuguese descendants and other Hispanics. [Jana-Rock Const., Inc. v. New York State Dept. of Economic Development, C.A.2 \(N.Y.\)2006, 438 F.3d 195](#) . [Constitutional Law 3289](#) ; [Public Contracts 121](#) ; [States 98.4](#)

Judicial opinions, federal statutes, and federal regulations, which declared that Hispanics in general had suffered discrimination, did not establish that New York's definition of "Hispanic" was irrational under equal protection clause, which was used in certifying minority-owned businesses for possible affirmative action, but excluded people of Spanish or Portuguese descent who did not also come from Latin America, since those sources did not answer more particular question of whether Spanish persons suffered same kind and degree of discrimination as Hispanics who were included within New York's definition of term. [Jana-Rock Const., Inc. v. New York State Dept. of Economic Development, C.A.2 \(N.Y.\)2006, 438 F.3d 195](#) . [Constitutional Law 3289](#) ; [Public Contracts 121](#) ; [States 98.4](#)

Construction company, and son of Spanish mother whose parents were born in Spain, as majority owner of company, did not demonstrate that alleged underinclusiveness in New York affirmative action program for contractors warranted application of strict scrutiny under equal protection clause on claim that program had been designed to benefit certain included groups of Hispanics and not others, and thus plaintiff's underinclusiveness claim had to be evaluated using rational basis review, where nothing in history of legislation and its enforcement or sequence of events that led up to its enactment supported inference of anti-Spanish animus. [Jana-Rock Const., Inc. v. New York State Dept. of Economic Development, C.A.2 \(N.Y.\)2006, 438 F.3d 195](#) . [Constitutional Law 3078](#) ; [Constitutional Law 3289](#)

Strict scrutiny applied to determine whether harm stemming from particular decision by State of New York to use racial classifications was justified under equal protection clause in implementing affirmative action program for contractors, but not to evaluate correctness of New York's chosen definition of "Hispanic," which allegedly was underinclusive because it excluded persons of Spanish or Portuguese descent who did not also come from Latin America. [Jana-Rock Const., Inc. v. New York State Dept. of Economic Development, C.A.2 \(N.Y.\)2006, 438 F.3d 195](#) . [Constitutional Law 3078](#) ; [Constitutional Law 3289](#)

Construction company, and son of Spanish mother whose parents were born in Spain, as majority owner of company, had to demonstrate that their exclusion from New York affirmative action program for contractors was motivated by discriminatory purpose in order to trigger strict scrutiny on their claim under equal protection clause, since plaintiffs conceded that program was justified by compelling state interest in remedying past discrimination and it was generally narrowly tailored to achieve that end; narrow-tailoring requirement allowed New York to identify which groups it was prepared to prove were in need of affirmative action without demonstrating conclusively that no other groups merited consideration for program. [Jana-Rock Const., Inc. v. New York State Dept. of Economic Development](#), C.A.2 (N.Y.)2006, 438 F.3d 195 . [Constitutional Law](#) 3078 ; [Constitutional Law](#) 3289 ; [Public Contracts](#) 121 ; [States](#) 98.4

State affirmative action programs that employ explicit racial classifications are subject to strict scrutiny under the equal protection clause. [Jana-Rock Const., Inc. v. New York State Dept. of Economic Development](#), C.A.2 (N.Y.)2006, 438 F.3d 195 . [Constitutional Law](#) 3078 ; [Constitutional Law](#) 3252

### Minority-owned business enterprises

Majority shareholder of business was of Hispanic descent but not of Hispanic origin, and thus business was not entitled to certification as a minority-owned business enterprise for purposes of laws affirmatively promoting increased participation by minority business enterprises in state contracts or subcontracts, where shareholder's father was born in Argentina but, though ancestors had Spanish-sounding surnames, Argentine birth certificate described their off-spring, shareholder's paternal grandparents, as "Italian," and shareholder did not offer proof to support assertion that this reflected language fluency rather than nationality. [Marinelli Const. Corp. v. State](#) (3 Dept. 1994) 200 A.D.2d 294, 613 N.Y.S.2d 1000 . [Public Contracts](#) 129 ; [States](#) 98.4

### Women-owned business enterprises

Substantial evidence supported determination that electrical contracting company was family-owned business, and did not qualify as woman-owned business enterprise; although company's majority shareholder and president was a woman, she did not enjoy independent control over the day-to-day business decisions of the company, her son shared control over company's work and some of its essential business functions, she lacked electrical expertise in company's electrical business, and her son and project managers supervised field operations and work sites. [Panko Electrical and Maintenance Corporation v. Zapata](#) (3 Dept. 2019) 172 A.D.3d 1682, 100 N.Y.S.3d 746 . [Public Contracts](#) 129

Department of Economic Development's requirement that certified women-owned business enterprises have woman exercising independent operational control over core business functions was not irrational or unreasonable interpretation of applicable statute, in light of statute's requirement that such businesses have women owners with authority to independently control day-to-day business decisions. [J.C. Smith, Inc. v. New York State Department of Economic Development](#) (4 Dept. 2018) 163 A.D.3d 1517, 83 N.Y.S.3d 770 , leave to appeal denied 32 N.Y.3d 1191, 95 N.Y.S.3d 144, 119 N.E.3d 784 . [Public Contracts](#) 129 ; [States](#) 98.4

Department of Economic Development's determination, denying construction equipment company's application for recertification as women-owned business enterprise, was supported by rational basis and was not arbitrary and capricious; men supervised salespersons, monitored performance of retail locations, met with manufacturers' sales representatives, and oversaw purchase of supplies and inventory, while women were primarily responsible for human resource issues, financial management, accounts receivable, and legal matters. [J.C. Smith, Inc. v. New York State Department of Economic Development](#) (4 Dept. 2018) 163 A.D.3d 1517, 83 N.Y.S.3d 770 , leave to appeal denied 32 N.Y.3d 1191, 95 N.Y.S.3d 144, 119 N.E.3d 784 . [Public Contracts](#) 129 ; [States](#) 98.4


Request for certification as woman-owned business enterprise would be remanded to state Department of Economic Development for reconsideration of denial; it appeared as though Department had concentrated on qualifications of alleged woman owner at time, 20 years previously, when shares of corporation in question had been transferred to her by her father-in-law, without giving regard to her subsequent work experience. [J.A. Marshall Sheet Metal & Roofing Inc. v. State](#) (3 Dept. 1995) 221 A.D.2d 759, 633 N.Y.S.2d 628 . [Public Contracts](#) 167

Denial by Division of Minority and Women's Business Development of certification of general contracting company as woman-owned business enterprise based on woman's ownership of 51% of outstanding shares was supported by evidence that field operations were controlled by woman's husband and another project

manager, with little involvement by woman, that woman and her husband operated business more in the form of family-owned business and evidence that husband earned disproportionate salary as compared to woman and that company's profits were deposited into one account which was shared equally by them. [C.W. Brown Inc. v. Canton \(3 Dept. 1995\) 216 A.D.2d 841, 628 N.Y.S.2d 851](#) . [Public Contracts 129](#)

Evidence was sufficient to support determination that corporation did not qualify as a woman-owned business enterprise; although corporation's sole shareholder and president was a woman, evidence indicated that control of corporation's operations was shared between shareholder, her husband and a male employee, that shareholder had no training or expertise in corporation's stud welding business, and that husband supervised all field operations and trained field workers. [Northeastern Stud Welding Corp. v. Webster \(3 Dept. 1995\) 211 A.D.2d 889, 621 N.Y.S.2d 170](#) . [Public Contracts 129](#)



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Proposed Legislation

McKinney's Consolidated Laws of New York Annotated Executive Law (Refs & Annos) Chapter Eighteen. Of the Consolidated Laws Article 15-a. Participation by Minority Group Members and Women with Respect to State Contracts [Expires and Deemed Repealed Dec. 31, 2024, Pursuant to L.1988, C. 261, § 121(h)] (Refs & Annos)

McKinney's Executive Law § 311

§ 311. Division of minority and women's business development

Effective: August 26, 2009

[Currentness](#)

<[Expires and deemed repealed Dec. 31, 2024, pursuant to [L.1988, c. 261, § 121\(h\)](#)>

1. The head of the division of minority and women's business development shall be the director who shall be appointed by the governor and hold office at the pleasure of the commissioner. It shall be the duty of the director of the division of minority and women's business development to assist the governor in the formulation and implementation of laws and policies relating to minority and women-owned business enterprises.

2. The director may appoint such deputies, assistants, and other employees as may be needed for the performance of the duties prescribed herein subject to the provisions of the civil service law and the rules and regulations of the civil service commission. The director may request and shall receive from any department, division, board, bureau, executive commission or agency of the state such assistance as may be necessary to carry out the provisions of this article.

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

(a) to encourage and assist contracting agencies in their efforts to increase participation by minority and women-owned business enterprises on state contracts and subcontracts so as to facilitate the award of a fair share of such contracts to them;

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

(c) to conduct educational programs consistent with the purposes of this article;

(d) to review periodically the practices and procedures of each contracting agency with respect to compliance with the provisions of this article, and to require them to file periodic reports with the division of minority and women's business development as to the level of minority and women-owned business enterprises participation in the awarding of agency contracts for goods and services;

(d-1) [Eff. Jan. 11, 2020.] to require all contracting state agencies to develop a four-year growth plan to determine a means of promoting and increasing participation by minority-owned and women-owned business enterprises with respect to state

contracts and subcontracts. Every four years, beginning September fifteenth, two thousand twenty, each contracting state agency shall submit a four-year growth plan as part of its annual report to the governor and legislature pursuant to [section one hundred sixty-four](#) of this chapter.

(e) on January first of each year report to the governor and the chairpersons of the senate finance and assembly ways and means committees on the level of minority and women-owned business enterprises participating in each agency's contracts for goods and services and on activities of the office and effort by each contracting agency to promote employment of minority group members and women, and to promote and increase participation by certified businesses with respect to state contracts and subcontracts so as to facilitate the award of a fair share of state contracts to such businesses. The comptroller shall assist the division in collecting information on the participation of certified business for each contracting agency. Such report may recommend new activities and programs to effectuate the purposes of this article;

(f) [Eff. until Jan. 11, 2020. See, also, par. (f) below.] to prepare and update periodically a directory of certified minority and women-owned business enterprises which shall, wherever practicable, be divided into categories of labor, services, supplies, equipment, materials and recognized construction trades and which shall indicate areas or locations of the state where such enterprises are available to perform services;

(f) [Eff. Jan. 11, 2020. See, also, par. (f) above.] to prepare and update, no less than annually, a directory of certified minority and women-owned business enterprises which shall, wherever practicable, be divided into categories of labor, services, supplies, equipment, materials and recognized construction trades and which shall indicate areas or locations of the state where such enterprises are available to perform services;

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

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

(i) [Eff. until Jan. 11, 2020. See, also, par. (i) below.] to streamline the state certification process to accept federal and municipal corporation certifications.

(i) [Eff. Jan. 11, 2020. See, also, par. (i) above.] to streamline the state certification process to accept federal and municipal corporation certifications;

(j) [Eff. Jan. 11, 2020.] to make publicly available records of all waivers of compliance reported pursuant to [paragraph \(b\) of subdivision six of section three hundred thirteen](#) of this article on the division's website.

4. [Eff. until Jan. 11, 2020. See, also, opening par. below.] The director may provide assistance to, and facilitate access to programs serving certified businesses as well as applicants to ensure that such businesses benefit, as needed, from technical, managerial and financial, and general business assistance; training; marketing; organization and personnel skill

development; project management assistance; technology assistance; bond and insurance education assistance; and other business development assistance. In addition, the director may, either independently or in conjunction with other state agencies:

4. [Eff. Jan. 11, 2020. See, also, opening par. above.] The director shall provide assistance to, and facilitate access to programs serving certified businesses as well as applicants to ensure that such businesses benefit, as needed, from technical, managerial and financial, and general business assistance; training; marketing; organization and personnel skill development; project management assistance; technology assistance; bond and insurance education assistance; and other business development assistance. The director shall maintain a toll-free number at the department of economic development to be used to answer questions concerning the MWBE certification process. In addition, the director may, either independently or in conjunction with other state agencies:

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

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

(c) seek to maximize utilization by minority and women-owned business enterprises of available federal resources including but not limited to federal grants, loans, loan guarantees, surety bonding guarantees, technical assistance, and programs and services of the federal small business administration.

(d) [Eff. Jan. 11, 2020.] conduct outreach events, training workshops, seminars, and other such educational programs throughout the state, including all regional offices, to state agencies, external stakeholders, and the public, to promote awareness and utilization of minority and women-owned business enterprises; and

(e) [Eff. Jan. 11, 2020.] identify and establish mentorship opportunities and other business development programs to increase capacity and better prepare MWBEs for bidding on contracts with state agencies upon successful completion of the mentorship opportunity. Such mentorship opportunities shall be intended to ensure that mentor and mentee are connected based on a commercially useful function.


#### **Credits**

(Added L.1988, c. 261, § 63. Amended L.1992, c. 55, §§ 269 to 271; L.2006, c. 59, pt. BB, § 1, eff. Oct. 8, 2006; L.2009, c. 361, § 5, eff. Aug. 26, 2009; L.2019, c. 96, § 2, eff. Jan. 11, 2020.)

McKinney's Executive Law § 311, NY EXEC § 311

Current through L.2019, chapter 752. Some statute sections may be more current, see credits for details.



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Proposed Legislation

McKinney's Consolidated Laws of New York Annotated Executive Law (Refs & Annos) Chapter Eighteen. Of the Consolidated Laws Article 15-a. Participation by Minority Group Members and Women with Respect to State Contracts [Expires and Deemed Repealed Dec. 31, 2024, Pursuant to L.1988, C. 261, § 121(h)] (Refs & Annos)

McKinney's Executive Law § 311-a

§ 311-a. Minority and women-owned business enterprise statewide advocate

Effective: January 11, 2020

Currentness

<[Section effective Jan. 11, 2020. See, also, § 311-a effective until Jan. 11, 2020.  
Expires and deemed repealed Dec. 31, 2024, pursuant to L.1988, c. 261, § 121(h).]>

1. There is hereby established within the division of minority and women's business an office of the minority and women-owned business enterprise statewide advocate. The statewide advocate shall be appointed by the commissioner with the advice of the small business advisory board as established in [section one hundred thirty-three of the economic development law](#) and shall serve in the unclassified service of the director. .

2. The advocate shall act as a liaison for minority and women-owned business enterprises (MWBES) to assist them in obtaining technical, managerial, financial and other business assistance for certified businesses and applicants. The advocate shall receive and investigate complaints brought by or on behalf of MWBES concerning certification delays and instances of violations of the requirements of this article by contractors and by state agencies. The statewide advocate may assist certified businesses and applicants in the certification process. Other functions of the statewide advocate shall be directed by the commissioner. The advocate may request and the director may appoint staff and employees of the division of minority and women business development to support the administration of the office of the statewide advocate.

3. The statewide advocate shall conduct periodic audits of state contracting agencies' compliance with the requirements of [section three hundred fifteen](#) of this article, such audits shall include a review of the books and records of state contracting agencies concerning, among other things, annual agency expenditures, annual participation of minority and women-owned business enterprises as prime contractors and subcontractors in state contracting agencies' state contracts, and documentation of state contracting agencies' good faith efforts to maximize minority and women-owned business enterprise participation in such agencies' contracting.

4. The statewide advocate shall investigate complaints by certified minority-owned business enterprises or women-owned business enterprises concerning a procuring governmental entity's failure to comply with the requirements of [section three hundred fifteen](#) of this article.

5. The statewide advocate shall report to the director and commissioner by November fifteenth on an annual basis on all activities related to fulfilling the obligations of the office of the statewide advocate including, but not limited to: (a) the number of complaints investigated; (b) the resolution of complaints, as applicable; and (c) information regarding audits conducted pursuant

to this subdivision. The director shall include the unedited text of the statewide advocate's report within the reports submitted by the department of economic development to the governor and the legislature.

**Credits**

(Added L.2006, c. 59, pt. BB, § 4, eff. Oct. 8, 2006. Amended L.2019, c. 96, § 3, eff. Jan. 11, 2020.)

McKinney's Executive Law § 311-a, NY EXEC § 311-a

Current through L.2019, chapter 752. Some statute sections may be more current, see credits for details.

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Proposed Legislation

McKinney's Consolidated Laws of New York Annotated Executive Law (Refs & Annos) Chapter Eighteen. Of the Consolidated Laws Article 15-a. Participation by Minority Group Members and Women with Respect to State Contracts [Expires and Deemed Repealed Dec. 31, 2024, Pursuant to L.1988, C. 261, § 121(h)] (Refs & Annos)

### McKinney's Executive Law § 312

#### § 312. Equal employment opportunities for minority group members and women

##### Currentness

<[Expires and deemed repealed Dec. 31, 2024, pursuant to L.1988, c. 261, § 121(h)]>

1. All state contracts and all documents soliciting bids or proposals for state contracts shall contain or make reference to the following provisions:

(a) The contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. For purposes of this article affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

(b) At the request of the contracting agency, the contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein.

(c) The contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the state contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

2. The contractor will include the provisions of subdivision one of this section in every subcontract, except as provided in subdivision six of this section, in such a manner that the provisions will be binding upon each subcontractor as to work in connection with the state contract.

3. The provisions of this section shall not be binding upon contractors or subcontractors in the performance of work or the provision of services or any other activity that are unrelated, separate or distinct from the state contract as expressed by its terms.

4. In the implementation of this section, the contracting agency shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section.

The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such law and if such duplication or conflict exists, the contracting agency shall waive the applicability of this section to the extent of such duplication or conflict.

5. The director shall promulgate rules and regulations to ensure that contractors and subcontractors undertake programs of affirmative action and equal employment opportunity as required by this section. Such rules and regulations as they pertain to any particular agency shall be developed after consultation with contracting agencies. Such rules and regulations may require a contractor, after notice in a bid solicitation, to submit an equal employment opportunity program after bid opening and prior to the award of any contract, and may require the contractor or subcontractor to submit compliance reports relating to the contractor's or subcontractor's operation and implementation of any equal employment opportunity program in effect as of the date the contract is executed. The contracting agency may recommend to the director that the director take appropriate action according to the procedures set forth in [section three hundred sixteen](#) of this article against the contractor for noncompliance with the requirements of this section. The contracting agency shall be responsible for monitoring compliance with this section.


6. The requirements of this section shall not apply to any employment outside this state or application for employment outside this state or solicitations or advertisements therefor, or any existing programs of affirmative action regarding employment outside this state and the effect of contract provisions required by subdivision one of this section shall be so limited.

#### **Credits**

(Added [L.1988, c. 261, § 63.](#))

McKinney's Executive Law § 312, NY EXEC § 312

Current through L.2019, chapter 752. Some statute sections may be more current, see credits for details.

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Proposed Legislation

[McKinney's Consolidated Laws of New York Annotated Executive Law \(Refs & Annos\) Chapter Eighteen. Of the Consolidated Laws Article 15-a. Participation by Minority Group Members and Women with Respect to State Contracts \[Expires and Deemed Repealed Dec. 31, 2024, Pursuant to L.1988, C. 261, § 121\(h\)\] \(Refs & Annos\)](#)

McKinney's Executive Law § 312-a

§ 312-a. Study of minority and women-owned business enterprises

Effective: January 11, 2020

[Currentness](#)

<[Section effective Jan. 11, 2020. See, also, [§ 312-a](#) effective until Jan. 11, 2020.  
Expires and deemed repealed Dec. 31, 2024, pursuant to [L.1988, c. 261, § 121\(h\)](#).]>

1. The director of the division of minority and women-owned business development is authorized and directed to recommission a statewide disparity study regarding the participation of minority and women-owned business enterprises in state contracts since the amendment of this article to be delivered to the governor and legislature no later than August fifteenth, two thousand twenty-three. The study shall be prepared by an entity independent of the department and selected through a request for proposal process. The purpose of such study is:

(a) to determine whether there is a disparity between the number of qualified minority and women-owned businesses ready, willing and able to perform state contracts for commodities, services and construction, and the number of such contractors actually engaged to perform such contracts, and to determine what changes, if any, should be made to state policies affecting minority and women-owned business enterprises;

(b) to determine whether there is a disparity between the number of qualified minorities and women ready, willing and able, with respect to labor markets, qualifications and other relevant factors, to participate in contractor employment, management level bodies, including boards of directors, and as senior executive officers within contracting entities and the number of such group members actually employed or affiliated with state contractors in the aforementioned capacities, and to determine what changes, if any, should be made to state policies affecting minority and women group populations with regard to state contractors' employment and appointment practices relative to diverse group members. Such study shall include, but not be limited to, an analysis of the history of minority and women-owned business enterprise programs and their effectiveness as a means of securing and ensuring participation by minorities and women, and a disparity analysis by market area and region of the state. Such study shall distinguish between minority males, minority females and non-minority females in the statistical analysis; and

(c) such study shall also include an analysis of the utilization on state agency contracts of businesses owned by an Indian nation or tribe, as such term is defined in [section two of the Indian law](#), whether a disparity exists between availability of such businesses to participate on state agency contracts and utilization, and, if so, the feasibility of authorizing an Indian nation or tribe owned businesses to become certified as a participant in the minority and women-owned business enterprise program.

2. The director of the division of minority and women's business development is directed to transmit the disparity study to the governor and the legislature not later than August fifteenth, two thousand twenty-three, and to post the study on the website of the department of economic development.

**Credits**

(Added L.2006, c. 59, pt. BB, § 6, eff. Oct. 8, 2006. Amended L.2010, c. 175, § 4, eff. Oct. 13, 2010; L.2015, c. 58, pt. Q, § 1, eff. April 13, 2015; L.2019, c. 96, § 4, eff. Jan. 11, 2020.)

McKinney's Executive Law § 312-a, NY EXEC § 312-a

Current through L.2019, chapter 752. Some statute sections may be more current, see credits for details.

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Proposed Legislation

McKinney's Consolidated Laws of New York Annotated Executive Law (Refs & Annos) Chapter Eighteen. Of the Consolidated Laws Article 15-a. Participation by Minority Group Members and Women with Respect to State Contracts [Expires and Deemed Repealed Dec. 31, 2024, Pursuant to L.1988, C. 261, § 121(h)] (Refs & Annos)

McKinney's Executive Law § 313

§ 313. Opportunities for minority and women-owned business enterprises

Effective: January 11, 2020

[Currentness](#)

<[Section effective Jan. 11, 2020. See, also, [§ 313](#) effective until Jan. 11, 2020.  
Expires and deemed repealed Dec. 31, 2024, pursuant to [L.1988, c. 261, § 121\(h\)](#).]>

1. Goals and requirements for agencies and contractors. Each agency shall structure procurement procedures for contracts made directly or indirectly to minority and women-owned business enterprises, in accordance with the findings of the disparity study, consistent with the purposes of this article, to attempt to achieve the recommended results with regard to total annual statewide procurement in the following industries:

- (a) construction industry for certified minority-owned business enterprises;
- (b) construction industry for certified women-owned business enterprises;
- (c) construction related professional services industry for certified minority-owned business enterprises;
- (d) construction related professional services industry for certified women-owned business enterprises;
- (e) non-construction related services industry for certified minority-owned business enterprises;
- (f) non-construction related services industry for certified women-owned business enterprises;
- (g) commodities industry for certified minority-owned business enterprises;
- (h) commodities industry for certified women-owned business enterprises;
- (i) overall agency total dollar value of procurement for certified minority-owned business enterprises;

(j) overall agency total dollar value of procurement for certified women-owned business enterprises; and

(k) overall agency total dollar value of procurement for certified minority, women-owned business enterprises.

1-a. The director shall ensure that each state agency has been provided with an electronic copy of the disparity study.

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

1-c. The goals set pursuant to subdivision one of this section shall be consistent with the findings of the disparity study.

2. The director shall promulgate rules and regulations based on subdivision one of this section and the findings of the disparity study that provide measures and procedures to ensure that certified minority and women-owned businesses shall be given the opportunity for maximum feasible participation in the performance of state contracts and to assist in the agency's identification of those state contracts for which minority and women-owned certified businesses may best bid to actively and affirmatively promote and assist their participation in the performance of state contracts so as to facilitate the agency's achievement of the maximum feasible portion of the goals for state contracts to such businesses.

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

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

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

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

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

(iii) the findings of the disparity study;

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

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



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

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

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

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

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

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

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

3. Solely for the purpose of providing the opportunity for meaningful participation by certified businesses in the performance of state contracts as provided in this section, state contracts shall include leases of real property by a state agency to a lessee where: the terms of such leases provide for the construction, demolition, replacement, major repair or renovation of real property and improvements thereon by such lessee; and the cost of such construction, demolition, replacement, major repair or renovation of real property and improvements thereon shall exceed the sum of one hundred thousand dollars. Reports to the director pursuant to [section three hundred fifteen](#) of this article shall include activities with respect to all such state contracts. Contracting agencies shall include or require to be included with respect to state contracts for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon, such provisions as may be necessary to effectuate the provisions of this section in every bid specification and state contract, including, but not limited to: (a) provisions requiring contractors to make a good faith effort to solicit active participation by enterprises identified in the directory of certified businesses; (b) requiring the parties to agree as a condition of entering into such contract, to be bound by the provisions of [section three hundred sixteen](#) of this article; and (c) requiring the contractor to include the provisions set forth in paragraphs (a) and (b) of this subdivision in every subcontract in a manner that the provisions will be binding upon each subcontractor as to work in connection with such contract. Provided, however, that no such provisions shall be binding upon contractors or subcontractors in the performance of work or the provision of services that are unrelated, separate or distinct from the state

contract as expressed by its terms, and nothing in this section shall authorize the director or any contracting agency to impose any requirement on a contractor or subcontractor except with respect to a state contract.

4. In the implementation of this section, the contracting agency shall (a) consult the findings contained within the disparity study evidencing relevant industry specific disparities in the utilization of minority and women-owned businesses relative to their availability;

(b) implement a program that will enable the agency to evaluate each contract to determine the appropriate goal for participation by minority-owned business enterprises and women-owned business enterprises;

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

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

5. (a) Contracting agencies shall administer the rules and regulations promulgated by the director in a good faith effort to achieve the maximum feasible participation by minority and women owned business enterprises adopted pursuant to this article and the regulations of the director. Such rules and regulations: shall require a contractor to submit a utilization plan after bids are opened, when bids are required, but prior to the award of a state contract; shall require the contracting agency to review the utilization plan submitted by the contractor and to post the utilization plan and any waivers of compliance issued pursuant to subdivision six of this section on the website of the contracting agency; shall require the contracting agency to notify the contractor in writing within a period of time specified by the director as to any deficiencies contained in the contractor's utilization plan; shall require remedy thereof within a period of time specified by the director; shall require the contractor to submit periodic compliance reports relating to the operation and implementation of any utilization plan; shall not allow any automatic waivers but shall allow a contractor to apply for a partial or total waiver of the minority and women-owned business enterprise participation requirements pursuant to subdivisions six and seven of this section; shall allow a contractor to file a complaint with the director pursuant to subdivision eight of this section in the event a contracting agency has failed or refused to issue a waiver of the minority and women-owned business enterprise participation requirements or has denied such request for a waiver; and shall allow a contracting agency to file a complaint with the director pursuant to subdivision nine of this section in the event a contractor is failing or has failed to comply with the minority and women-owned business enterprise participation requirements set forth in the state contract where no waiver has been granted.

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

(c) Without limiting other grounds for the disqualification of bids or proposals on the basis of non-responsibility, a contracting agency may disqualify the bid or proposal of a contractor as being non-responsible for failure to remedy notified deficiencies contained in the contractor's utilization plan within a period of time specified in regulations promulgated by the director after receiving notification of such deficiencies from the contracting agency. Where failure to remedy any notified deficiency in the

utilization plan is a ground for disqualification, that issue and all other grounds for disqualification shall be stated in writing by the contracting agency. Where the contracting agency states that a failure to remedy any notified deficiency in the utilization plan is a ground for disqualification the contractor shall be entitled to an administrative hearing, on a record, involving all grounds stated by the contracting agency. Such hearing shall be conducted by the appropriate authority of the contracting agency to review the determination of disqualification. A final administrative determination made following such hearing shall be reviewable in a proceeding commenced under article seventy-eight of the civil practice law and rules, provided that such proceeding is commenced within thirty days of the notice given by certified mail return receipt requested rendering such final administrative determination. Such proceeding shall be commenced in the supreme court, appellate division, third department and such proceeding shall be preferred over all other civil causes except election causes, and shall be heard and determined in preference to all other civil business pending therein, except election matters, irrespective of position on the calendar. Appeals taken to the court of appeals of the state of New York shall be subject to the same preference.

6. (a) Where it appears that a contractor cannot, after a good faith effort, comply with the minority and women-owned business enterprise participation requirements set forth in a particular state contract, a contractor may file a written application with the contracting agency requesting a partial or total waiver of such requirements setting forth the reasons for such contractor's inability to meet any or all of the participation requirements together with an explanation of the efforts undertaken by the contractor to obtain the required minority and women-owned business enterprise participation. In implementing the provisions of this section, the contracting agency shall consider the number and types of minority and women-owned business enterprises available to provide goods or services required under the contract in the region in which the state contract is to be performed, the total dollar value of the state contract, the scope of work to be performed and the project size and term. If, based on such considerations, the contracting agency determines there is not a reasonable availability of contractors on the list of certified business to furnish services for the project, it shall issue a waiver of compliance to the contractor. In making such determination, the contracting agency shall first consider the availability of other business enterprises located in the region and shall thereafter consider the financial ability of minority and women-owned businesses located outside the region in which the contract is to be performed to perform the state contract.

(b) Upon the issuance of all waivers of compliance as provided in paragraph (a) of this subdivision, the contracting agency shall: (i) report the issuance of the waiver to the director; and (ii) publish on the contracting agency's website on a monthly basis, if practicable, but no less than on a quarterly basis: (1) information identifying the contract, including the value of the contract; (2) the name of the contractor receiving the waiver; (3) the date of the waiver; and (4) the specific contract provisions to which the waiver applies.

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

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

(ii) whether certified businesses which have been solicited by the contractor have responded in a timely fashion to the contractor's solicitations for timely competitive bid quotations prior to the contracting agency's bid date; and

(b) whether the contractor provided timely written notification of subcontracting opportunities on the state contract to appropriate certified businesses that appear in the directory of certified businesses prepared pursuant to [paragraph \(f\) of subdivision three of section three hundred eleven](#) of this article; and

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

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

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

#### **Credits**

(Added L.1988, c. 261, § 63. Amended L.2009, c. 429, § 1, eff. Sept. 16, 2009; L.2010, c. 175, § 5, eff. Oct. 13, 2010; L.2019, c. 96, § 5, eff. Jan. 11, 2020.)

#### [Notes of Decisions \(5\)](#)

McKinney's Executive Law § 313, NY EXEC § 313

Current through L.2019, chapter 752. Some statute sections may be more current, see credits for details.

## Notes Of Decisions

### Validity

State did not establish “exceedingly persuasive justification” or “important governmental objective,” as necessary in order to sustain statute calling for women business enterprise set-asides in connection with highway construction contracts against equal protection challenge by general contractor that statute violated contractor's equal protection rights; while there was statistical evidence of low numbers of women that owned enterprises participating in construction industry and receiving construction contracts, there was no evidence that the level was caused by discrimination as opposed to lack of qualified women. [Harrison and Burrowes Bridge Constructors, Inc. v. Cuomo, 1990, 743 F.Supp. 977](#) . [Civil Rights](#) 1422

### Purpose

New York's disadvantaged businesses statutes merely authorize good-faith efforts to solicit minority participation in state contracts, but does not mandate such efforts under all circumstances. [Harrison & Burrowes Bridge Constructors, Inc. v. Cuomo, C.A.2 \(N.Y.\)1992, 981 F.2d 50](#) . [Public Contracts](#) 129 ; [States](#) 98.4


Statutes encouraging participation of women and minority-owned businesses in acquisition and performance of contracts with state agencies and public authorities affect only relationship between state and would-be contractors; they have no bearing on commercial dealings between private businesses, such as would-be contractors and suppliers. [West v. Mohawk Commercial Carpets \(3 Dept. 1992\) 183 A.D.2d 182, 589 N.Y.S.2d 218](#) . [Action](#) 3 ; [Public Contracts](#) 129 ; [States](#) 98.4

Successful bidder on public improvement contract could not be disqualified as nonresponsive, on ground that bidder did not comply with good-faith effort requirements of program designed to increase participation of minority-owned enterprises (MBEs) and women-owned enterprises (WBEs) in contracts awarded by the state and its agencies; although bid documents distributed by agency referred to MBE/WBE participation in accordance with statute, and contained goals set by agency for MBE/WBE participation, participation was not mandatory at time award was made. [Martin Associates, Inc. v. New York City Health and Hospitals Corp., 1993, 160 Misc.2d 58, 607 N.Y.S.2d 841](#) . [Public Contracts](#) 134 ; [States](#) 98.4

### Review

Supreme Court, Appellate Division, lacked original jurisdiction to review determination of contracting agency to dismiss contractor's request for an administrative hearing following contracting agency's denial of a contracting bid to contractor for its failure to comply with certain utilization requirements; contracting agency's determination was not made following a hearing as required under statute relied upon by contracting agency to commence proceeding. [Accadia Site Contracting, Inc. v. Erie County Medical Center Corporation \(N.Y.A.D. 3 Dept. 2019\) 174 A.D.3d 1172, 104 N.Y.S.3d 789](#) . [Courts](#) 207.2



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Proposed Legislation

McKinney's Consolidated Laws of New York Annotated Executive Law (Refs & Annos) Chapter Eighteen. Of the Consolidated Laws Article 15-a. Participation by Minority Group Members and Women with Respect to State Contracts [Expires and Deemed Repealed Dec. 31, 2024, Pursuant to L.1988, C. 261, § 121(h)] (Refs & Annos)

McKinney's Executive Law § 313-a

§ 313-a. Diversity practices of state contractors

Effective: October 13, 2010

[Currentness](#)

<[Expires and deemed repealed Dec. 31, 2024, pursuant to [L.1988, c. 261, § 121\(h\)](#)]>

The director shall promulgate rules and regulations setting forth measures and procedures to require all contracting agencies, where practicable, feasible and appropriate, to assess the diversity practices of contractors submitting bids or proposals in connection with the award of a state contract. Such rules and regulations shall take into account: the nature of the labor, services, supplies, equipment or materials being procured by the state agency; the method of procurement required to be used by a state agency to award the contract and minority and women-owned business utilization plans required to be submitted pursuant to [sections three hundred twelve](#) and [three hundred thirteen](#) of this article; and such other factors as the director deems appropriate or necessary to promote the award of state contracts to contractors having sound diversity practices. Such assessment shall not in any way permit the automatic rejection of a bid or procurement contract proposal based on lack of adherence to diversity practices. Each bid or proposal shall be analyzed on an individual per bid or per proposal basis with the contractor's diversity practices considered as only a part of a wider consideration of several factors when deciding to award or decline to award a bid or proposal. The director shall develop the rules and regulations required hereunder only after consultation with the state procurement council established by [section one hundred sixty-one of the state finance law](#).

**Credits**

(Added [L.2010, c. 175, § 6, eff. Oct. 13, 2010](#).)

McKinney's Executive Law § 313-a, NY EXEC § 313-a

Current through L.2019, chapter 752. Some statute sections may be more current, see credits for details.

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McKinney's Consolidated Laws of New York Annotated Executive Law (Refs & Annos) Chapter Eighteen. Of the Consolidated Laws Article 15-a. Participation by Minority Group Members and Women with Respect to State Contracts [Expires and Deemed Repealed Dec. 31, 2024, Pursuant to L.1988, C. 261, § 121(h)] (Refs & Annos)

McKinney's Executive Law § 314

§ 314. Statewide certification program

Effective: January 11, 2020

[Currentness](#)

<[Section effective Jan. 11, 2020. See, also, [§ 314](#) effective until Jan. 11, 2020.  
Expires and deemed repealed Dec. 31, 2024, pursuant to [L.1988, c. 261, § 121\(h\)](#).]>

1. The director shall promulgate rules and regulations providing for the establishment of a statewide certification program including rules and regulations governing the approval, denial or revocation of any such certification including revocations for convictions for fraudulently misrepresenting the status of minority or women-owned business enterprises. Such rules shall set forth the maximum personal net worth of a minority group member or woman who may be relied upon to certify a business as a minority-owned business enterprise or women-owned business enterprise with a minimum personal net worth threshold of fifteen million dollars, and may thereafter establish different maximum levels of personal net worth for minority group members and women on an industry-by-industry basis for such industries as the director shall determine. Such regulations relating to the classification of the industry-by-industry personal net worth thresholds above the fifteen million dollar threshold shall consider the personal net worth of the owners of both certified and non-certified businesses, including but not limited to, prime contractors and subcontractors, as well as any such other factors needed to establish such thresholds. Such rules and regulations shall include, but not be limited to, such matters as may be required to ensure that the established procedures thereunder shall at least be in compliance with the code of fair procedure set forth in [section seventy-three of the civil rights law](#).

2. For the purposes of this article, the office shall be responsible for verifying businesses as being owned, operated, and controlled by minority group members or women and for certifying such verified businesses. The director shall prepare a directory of certified businesses for use by contracting agencies and contractors in carrying out the provisions of this article. The director shall periodically, but no less than annually, update the directory.

2-a. (a) The director shall establish a procedure enabling the office to accept New York municipal corporation certification verification for minority and women-owned business enterprise applicants in lieu of requiring the applicant to complete the state certification process. The director shall promulgate rules and regulations to set forth criteria for the acceptance of municipal corporation certification. All eligible municipal corporation certifications shall require business enterprises seeking certification to meet the following standards:

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



- (ii) be an enterprise in which the minority and/or womenownership interest is real, substantial and continuing;
- (iii) be an enterprise in which the minority and/or womenownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise;
- (iv) be an enterprise authorized to do business in this state;
- (v) be subject to a physical site inspection to verify the fifty-one percent ownership requirement;
- (vi) be 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 for inflation according to the consumer price index; and
- (vii) be an enterprise that is a small business pursuant to [subdivision twenty of section three hundred ten](#) of this article.

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

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

2-b. The director shall establish a procedure enabling an applicant who was a military service member to prove his or her race or ethnicity, date of birth, place of birth and verification of address for purposes of certification of the applicant's business as a minority-owned business by submission of the DD Form 214 issued to the applicant by the United States department of defense upon such applicant's retirement, separation, or discharge from active duty in the armed forces of the United States, provided the DD Form 214 contains such information, in lieu of requiring the applicant to otherwise prove his or her race or ethnicity. The director shall promulgate rules and regulations to set forth criteria for the acceptance of the DD Form 214 by the office.

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

(b) Such information provided pursuant to paragraph (a) of this subdivision shall be kept confidential by the division as such information is kept by the department of taxation and finance or the department of labor and use of such information shall be limited to the certification application process, or other uses approved or consented to by the business enterprise or applicant.

3. Following application for certification pursuant to this section, the director shall provide the applicant with written notice of the status of the application, including notice of any outstanding deficiencies, within twenty-one days. Within forty-five days of

submission of a final completed application, the director shall provide the applicant with written notice of a determination by the office approving or denying such certification and, in the event of a denial a statement setting forth the reasons for such denial. Upon a determination denying or revoking certification, the business enterprise for which certification has been so denied or revoked shall, upon written request made within thirty days from receipt of notice of such determination, be entitled to a hearing before an independent hearing officer designated for such purpose by the director. In the event that a request for a hearing is not made within such thirty day period, such determination shall be deemed to be final. The independent hearing officer shall conduct a hearing and upon the conclusion of such hearing, issue a written recommendation to the director to affirm, reverse or modify such determination of the director. Such written recommendation shall be issued to the parties. The director, within thirty days, by order, must accept, reject or modify such recommendation of the hearing officer and set forth in writing the reasons therefor. The director shall serve a copy of such order and reasons therefor upon the business enterprise by personal service or by certified mail return receipt requested. The order of the director shall be subject to review pursuant to article seventy-eight of the civil practice law and rules.

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

5. With the exception of provisional MWBE certification, as provided for in [subdivision twenty-three of section three hundred ten](#) of this article, all minority and women-owned business enterprise certifications shall be valid for a period of five years.

#### **Credits**

(Added L.1988, c. 261, § 63. Amended L.2006, c. 59, pt. BB, § 2, eff. Oct. 8, 2006; L.2010, c. 175, § 8, eff. Oct. 13, 2010; L.2014, c. 399, § 2, eff. Oct. 1, 2014; L.2018, c. 409, § 1, eff. March 21, 2019; L.2019, c. 96, § 6, eff. Jan. 11, 2020.)

McKinney's Executive Law § 314, NY EXEC § 314

Current through L.2019, chapter 752. Some statute sections may be more current, see credits for details.



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Proposed Legislation

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McKinney's Executive Law § 315

§ 315. Responsibilities of contracting agencies

Effective: January 11, 2020

Currentness

<[Section effective Jan. 11, 2020. See, also, § 315 effective until Jan. 11, 2020.  
Expires and deemed repealed Dec. 31, 2024, pursuant to L.1988, c. 261, § 121(h).]>

1. Each contracting agency shall be responsible for monitoring state contracts under its jurisdiction, and recommending matters to the office respecting non-compliance with the provisions of this article so that the office may take such action as is appropriate to ensure compliance with the provisions of this article, the rules and regulations of the director issued hereunder and the contractual provisions required pursuant to this article. All contracting agencies shall comply with the rules and regulations of the office and are directed to cooperate with the office and to furnish to the office such information and assistance as may be required in the performance of its functions under this article.
  
2. Each contracting agency shall provide to prospective bidders a current copy of the directory of certified businesses, and a copy of the regulations required pursuant to [sections three hundred twelve](#) and [three hundred thirteen](#) of this article at the time bids or proposals are solicited.
  - 2-a. To the extent practicable, upon completion of the restrictive period of a procurement, each contracting agency when notifying a contractor of a winning bid award shall also notify any minority or women-owned business enterprise identified in the contractor's submitted utilization plan of such contractor's receipt of the winning bid award.
  
3. Each contracting agency shall report to the director with respect to activities undertaken to promote employment of minority group members and women and promote and increase participation by certified businesses with respect to state contracts and subcontracts. Such reports shall be submitted no later than May fifteenth of every year and shall include such information as is necessary for the director to determine whether the contracting agency and any contractor to the contracting agency have complied with the purposes of this article, including, without limitation, a summary of all waivers of the requirements of [subdivisions six](#) and [seven of section three hundred thirteen](#) of this article allowed by the contracting agency during the period covered by the report, including a description of the basis of the waiver request and the rationale for granting any such waiver and any instances in which the contract agency has deemed a contractor to have committed a violation pursuant to [section three hundred sixteen](#) of this article and such other information as the director shall require. Each agency shall also include in such annual report whether or not it has been required to prepare a remedial plan, and, if so, the plan and the extent to which the agency has complied with each element of the plan.

4. The division of minority and women's business development shall issue an annual report which: (a) summarizes the report submitted by each contracting agency pursuant to subdivision three of this section; (b) contains such comparative or other information as the director deems appropriate, including but not limited to goals compared to actual participation of minority and women-owned business enterprises in state contracting and a listing of annual participation rates for each agency, the total number of certified minority and women-owned businesses for that reporting year, and the total dollar value of state expenditures on certified minority and women-owned business contracts and subcontracts for that reporting year, to evaluate the effectiveness of the activities undertaken by each such contracting agency to promote increased participation by certified minority or women-owned businesses with respect to state contracts and subcontracts; (c) contains a summary of all waivers of the requirements of [subdivisions six and seven of section three hundred thirteen](#) of this article allowed by each contracting agency during the period covered by the report, including a description of the basis of the waiver request and the contracting agency's rationale for granting any such waiver; (d) describes any efforts to create a database or other information storage and retrieval system containing information relevant to contracting with minority and women-owned business enterprises; and (e) contains a summary of (i) all determinations of violations of this article by a contractor or a contracting agency made during the period covered by the annual report pursuant to [section three hundred sixteen-a](#) of this article and (ii) the penalties or sanctions, if any, assessed in connection with such determinations and the rationale for such penalties or sanctions. Copies of the annual report shall be provided to the commissioner, the governor, the comptroller, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate, the minority leader of the assembly and shall also be made widely available to the public via, among other things, publication on a website maintained by the division of minority and women's business development.

5. Each agency shall include in its annual report to the governor and legislature pursuant to [section one hundred sixty-four](#) of this chapter: (a) its annual goals for contracts with minority-owned and women-owned business enterprises; (b) the number of actual contracts issued to minority-owned and women-owned business enterprises; (c) a summary of all waivers of the requirements of [subdivisions six and seven of section three hundred thirteen](#) of this article allowed by the reporting agency during the preceding year, including a description of the basis of the waiver request and the rationale for granting such waiver; (d) whether or not it has been required to prepare a remedial plan, and, if so, the plan and the extent to which the agency has complied with each element of the plan; (e) which expenditures are exempt from participation goals and the rationale for such exemption; and (f) every four years, beginning September fifteenth, two thousand twenty, each agency shall include in such annual report its four-year growth plan pursuant to [section three hundred eleven](#) of this article.

6. Each contracting agency that substantially fails to make a good faith effort as defined by regulation of the director, to achieve the maximum feasible participation of minority and women-owned business enterprises in such agency's contracting shall be required to submit to the director a remedial action plan to remedy such failure.

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

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

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

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

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


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

**Credits**

(Added L.1988, c. 261, § 63. Amended L.2010, c. 175, § 7, eff. Oct. 13, 2010; L.2019, c. 96, § 7, eff. Jan. 11, 2020.)

McKinney's Executive Law § 315, NY EXEC § 315

Current through L.2019, chapter 752. Some statute sections may be more current, see credits for details.

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Proposed Legislation

McKinney's Consolidated Laws of New York Annotated Executive Law (Refs & Annos) Chapter Eighteen. Of the Consolidated Laws Article 15-a. Participation by Minority Group Members and Women with Respect to State Contracts [Expires and Deemed Repealed Dec. 31, 2024, Pursuant to L.1988, C. 261, § 121(h)] (Refs & Annos)

McKinney's Executive Law § 316

§ 316. Enforcement

Effective: October 13, 2010

[Currentness](#)

<[Expires and deemed repealed Dec. 31, 2024, pursuant to [L.1988, c. 261, § 121\(h\)](#)]>

Upon receipt by the director of a complaint by a contracting agency that a contractor has violated the provisions of a state contract which have been included to comply with the provisions of this article or of a contractor that a contracting agency has violated such provisions or has failed or refused to issue a waiver where one has been applied for pursuant to [subdivision six of section three hundred thirteen](#) of this article or has denied such application, the director shall attempt to resolve the matter giving rise to such complaint. If efforts to resolve such matter to the satisfaction of all parties are unsuccessful, the director shall refer the matter, within thirty days of the receipt of the complaint, to the division's hearing officers. Upon conclusion of the administrative hearing, the hearing officer shall submit to the director his or her decision regarding the alleged violation of the contract and recommendations regarding the imposition of sanctions, fines or penalties. The director, within ten days of receipt of the decision, shall file a determination of such matter and shall cause a copy of such determination along with a copy of this article to be served upon the contractor by personal service or by certified mail return receipt requested. The decision of the hearing officer shall be final and may only be vacated or modified as provided in article seventy-eight of the civil practice law and rules upon an application made within the time provided by such article. The determination of the director as to the imposition of any fines, sanctions or penalties shall be reviewable pursuant to article seventy-eight of the civil practice law and rules. The penalties imposed for any violation which is premised upon either a fraudulent or intentional misrepresentation by the contractor or the contractor's willful and intentional disregard of the minority and women-owned participation requirement included in the contract may include a determination that the contractor shall be ineligible to submit a bid to any contracting agency or be awarded any such contract for a period not to exceed one year following the final determination; provided however, if a contractor has previously been determined to be ineligible to submit a bid pursuant to this section, the penalties imposed for any subsequent violation, if such violation occurs within five years of the first violation, may include a determination that the contractor shall be ineligible to submit a bid to any contracting agency or be awarded any such contract for a period not to exceed five years following the final determination. The division of minority and women's business development shall maintain a website listing all contractors that have been deemed ineligible to submit a bid pursuant to this section and the date after which each contractor shall once again become eligible to submit bids.

**Credits**

(Added [L.1988, c. 261, § 63](#). Amended [L.2010, c. 175, § 9](#), eff. Oct. 13, 2010.)

[Notes of Decisions \(1\)](#)

McKinney's Executive Law § 316, NY EXEC § 316

Current through L.2019, chapter 752. Some statute sections may be more current, see credits for details.

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Notes Of Decisions

**Immunity**

Government officials were entitled to qualified immunity for their enforcement of New York set-aside program following United States Supreme Court decision in Croson ; New York's program, even post-Croson, was not clearly unconstitutional. [Harrison & Burrowes Bridge Constructors, Inc. v. Cuomo, C.A.2 \(N.Y.\)1992, 981 F.2d 50 . Civil Rights 1376\(3\)](#)





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McKinney's Executive Law § 316-a

§ 316-a. Prohibitions in contracts; violations

Effective: January 11, 2020

[Currentness](#)

<[Section effective Jan. 11, 2020. See, also, [§ 316-a](#) effective until Jan. 11, 2020.  
Expires and deemed repealed Dec. 31, 2024, pursuant to [L.1988, c. 261, § 121\(h\)](#).]>

Every contracting agency shall include a provision in its state contracts expressly providing that any contractor who willfully and intentionally fails to comply with the minority and women-owned participation requirements of this article as set forth in such state contract shall be liable to the contracting agency for liquidated or other appropriate damages and shall provide for other appropriate remedies on account of such breach. A contracting agency that elects to proceed against a contractor for breach of contract as provided in this section shall be precluded from seeking enforcement pursuant to [section three hundred sixteen](#) of this article; provided however, that the contracting agency shall include a summary of all enforcement actions undertaken pursuant to this section in its annual report submitted pursuant to [subdivision three of section three hundred fifteen](#) of this article.

**Credits**

(Added [L.2010, c. 175, § 10, eff. Oct. 13, 2010](#). Amended [L.2019, c. 96, § 8, eff. Jan. 11, 2020](#).)


McKinney's Executive Law § 316-a, NY EXEC § 316-a

Current through L.2019, chapter 752. Some statute sections may be more current, see credits for details.

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McKinney's Executive Law § 317

§ 317. Superseding effect of article with respect to state law

Currentness

<[Expires and deemed repealed Dec. 31, 2024, pursuant to L.1988, c. 261, § 121(h)]>

The provisions of this article shall supersede any other provision of state law, which expressly implements or mandates an equal employment opportunity program or a program for securing participation by minority and women-owned business enterprises, concerning action to be taken by any party to a state contract, to which the provisions of this article apply; provided, however, that the provisions of any state law, not as hereinabove superseded, which expressly implement or mandate such programs shall remain unimpaired by the provisions of this article, except that the provisions of any such law shall be construed as if the provisions of subdivisions five, six, seven and eight of section three hundred thirteen and section three hundred sixteen of this article were fully set forth therein and made applicable only to complaints of violations under such provisions of law occurring on or after September first, nineteen hundred eighty-eight; provided, further, that nothing contained in this article shall be construed to limit, impair, or otherwise restrict any state agency's authority or discretionary power in effect prior to the enactment of this article<sup>1</sup> to establish or continue, by rule, regulation or resolution, an equal opportunity program or a program for securing participation of minority and women-owned business enterprises with regard to banking relationships, the issuance of insurance policies or contracts for the sale of bonds, notes or other securities; and, provided further, that nothing contained in the immediately preceding proviso shall be construed to create, impair, alter, limit, modify, enlarge, abrogate or restrict any agency's authority or discretionary power with respect to an equal opportunity program or a program for securing participation of minority and women-owned enterprises.

**Credits**

(Added L.1988, c. 261, § 63.)

**Footnotes**

<sup>1</sup> Enacted July 19, 1988.

McKinney's Executive Law § 317, NY EXEC § 317

Current through L.2019, chapter 752. Some statute sections may be more current, see credits for details.

McKinney's Consolidated Laws of New York Annotated Executive Law (Refs & Annos) Chapter Eighteen. Of the Consolidated Laws Article 15-a. Participation by Minority Group Members and Women with Respect to State Contracts [Expires and Deemed Repealed Dec. 31, 2024, Pursuant to L.1988, C. 261, § 121(h)] (Refs & Annos)

McKinney's Executive Law § 318

§ 318. Severability

Currentness

<[Expires and deemed repealed Dec. 31, 2024, pursuant to L.1988, c. 261, § 121(h)]>

If any clause, sentence, paragraph, section or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this article directly involved in the controversy in which the judgment shall have been rendered.

**Credits**

(Added L.1988, c. 261, § 63.)

McKinney's Executive Law § 318, NY EXEC § 318

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