

Overview of New York State Equal Employment and Minority and Women-owned Businesses Opportunity Laws and Regulations*

Article 15-A of the Executive Law was enacted on July 19, 1988. The law created a Division of Minority and Women's Business Development (DMWBD) within the New York State Empire Development Corporation and gave it the right and responsibility to issue regulations and to oversee two types of State agency contracting responsibilities:

- Equal Employment Opportunity; and
- Minority and Women-Owned Businesses.

These DMWBD responsibilities relate solely to contracts entered into by New York State agencies. Agencies may have similar other legal responsibilities separate from their contract requirements -- for example, agencies are required by other laws to avoid discrimination in their hiring practices. However, this overview concerns only the Article 15-A contractual requirements.

Also, please note these statutory and regulatory requirements are minimums. State law does not prevent State agencies from requiring more of their contractors.

Equal Employment Opportunity (EEO)

State agencies and the Director of the Division of Minority and Women's Business Development are required by law to *"ensure and promote equal employment on state contracted projects."*

State agencies must include specific EEO contract provisions in all state "contracts" where the work under the contract will be performed within New York State. The types of State contracts to which these EEO rules apply are specifically defined, and include any written agreements or purchase orders expending more than \$25,000 by a contracting agency in return for labor, services, supplies, equipment and/or materials.

State agencies must monitor contractor compliance with New York State EEO law. If contractors refuse to comply with EEO requirements, state agencies must report non-compliance and may recommend corrective action to DMWBD.

Finally, under DMWBD regulations contractors must also submit a plan of efforts to use minority group members and women prior to the award of contracts, and may be required by State agencies to submit periodic compliance reports on their equal employment activities.

Minority and Women-Owned Businesses (MWBE)

This is a separate set of requirements, and for the most part, applicable to the same types of "contracts" as discussed above. Minority and Women-Owned business enterprises are specifically defined in the statutes, and must be certified as such by DMWBD.

For selected contracts, agencies establish MWBE participation goals. For those contracts:

Contractors:

- must show they've made best efforts to meet the established goal;
- must submit an MWBE utilization plan for the contract;
- must correct any deficiencies or request a waiver of compliance with goal requirements; and

- may submit a complaint to DMWBD when an agency fails to issue a requested waiver.

Agencies:

- must review contractor utilization plans for compliance and notify contractors of deficiencies;
- must allow contractors time to correct deficiencies;
- must decide whether to grant or deny waiver requests by evaluating the contractor's "good faith" efforts to comply;
- must include an arbitration consent clause in bid specifications;
- may disqualify a bid or proposal for the contractor's failure to correct noted deficiencies in a utilization plan;
- may submit a complaint to DMWBD for contractor noncompliance; and
- may refer their complaints to arbitration, but only after allowing DMWBD to first attempt to resolve non-compliance complaints.

Enforcement

The law requires State agencies and the DMWBD to oversee a contractor's EEO and MWBE efforts.

In addition to the responsibilities noted above, in general State agencies must:

- monitor contracts and recommend corrective action to DMWBD when appropriate;
- comply with rules and regulations promulgated by DMWBD;
- provide copies of the directory of certified MWBE firms to prospective bidders and to contractors;
- report to DMWBD their activities to promote M/WBE contract participation and equal employment opportunities; and
- generally provide such information and assistance as necessary to carry out the intent of the statute.

DMWBD must:

- promote participation by minority and women-owned firms on state contracts;
- attempt to resolve complaints made by either a contractor denied a waiver, or an agency against a contractor for noncompliance;
- ensure the contractor receives an on-the-record State hearing on any State agency action to disqualify the contractor for EEO or MWBE noncompliance;
- refer unresolved complaints to the American Arbitration Association for recommendations; and
- adopt, reject or modify arbitration determinations (but not impose greater sanctions, penalties or fines than recommended by the arbitrator).

* This overview is provided to the convenience of our vendor community, and should not substitute for consultation with the Division of Minority and Women Owned Business Development and the vendors' own legal counsel.