

Alert | New York Government Law & Policy



October 2022

New Laws Increase Oversight of New York State’s Minority- and Women-Owned Business Enterprise (MWBE) Program, Reinforce NYC’s Commitment to MWBE Procurement Program

New York Governor Kathy Hochul signed into law a package of three bills that will increase oversight of the Minority- and Women-Owned Business Enterprise (MWBE) infrastructure in New York state (NYS). The first bill is aimed at preventing fraud and abuse in the MWBE program while also creating a framework for a fund to investigate and audit fraud. The second bill will allow businesses to use MWBE development and lending program funds to refinance existing debts. The third bill, which may be the most impactful, allows New York City to award contracts up to \$1 million to MWBEs without a formal competitive process.

Preventing Fraud and Abuse in NYS contracts by entities falsely claiming to be MWBEs (A.9259-A/S.3390-A)

This legislation aims to root out businesses that fraudulently claim to be minority- or women-owned. The NYS MWBE program is intended to provide minority- and women-owned businesses with opportunities to participate in state contracts by generally requiring that at least 30% of the work done on those contracts be performed by business enterprises the NYS Division of Minority and Women’s Business Development has certified as MWBEs. Fraudulent MWBEs hurt legitimate MWBEs by taking work away from them and defeat the purpose of the program. In certain cases, **fraudulent “minority” businesses were contracted** as fronts or pass throughs for non-MWBE-owned businesses that ultimately performed the work. Furthermore, a 2014 report by a New York State Supreme Court grand jury **revealed** that over \$10

million intended for honest MWBEs had instead gone to fraudulent non-MWBEs, cheating legitimate MWBEs out of contracts.

To increase accountability and prevent fraud, this legislation imposes new regulatory requirements on MWBEs and state contractors, including i) requiring both the contractor and the MWBE to complete a post-completion certification, under penalty of perjury, that the MWBE performed the work, performed the services, or delivered the materials; ii) creation of a searchable, centralized state registry containing all the relevant documents, etc. relating to certification and performance of the contractor; and iii) requiring the Director of the Division of Minority and Women's Business Development to perform inspections of MWBEs to weed out fraud and abuse.

Use of MWBE Development and Lending Program Funds to Refinance Existing Debts Legislation (A.6420/S.571)

This legislation will allow businesses to use funds from the NYS business development and lending program to refinance existing debt. The goal is to expand access to credit for business owners beyond using high-interest rate credit cards.

Prior to this legislation, the Minority and Women-Owned Business Development and Lending Program did not allow MWBEs to refinance their debt. Because MWBEs traditionally have experienced a lack of financial savings and less access to capital, commercial credit cards were (and continue to be) the first and only means to access credit, which often led to higher interest rates on debt. Combined with the added challenges COVID-19-mandated closures brought on at the height of the pandemic, **MWBEs have found it difficult** to stay afloat, manage debt, and cover business expenses. Allowing businesses to refinance their debt under one of the state's existing micro-loan programs could reduce interest payments and allow MWBEs greater freedom from debt.

NYC Now Can Award Contracts Up to \$1 Million to MWBEs Without a Formal Competitive Process (A.10459/S.9351)

This legislation will allow NYC to double its individual award amounts to minority- and women-owned businesses for non-competitive contracts from \$500,000 to \$1 million. This change, advanced by NYC Mayor Eric Adams, creates opportunity and increases access to capital for MWBEs to enter into contracts with NYC. Awarding MBWEs higher-value contracts through this non-competitive process may help demonstrate and increase the ability of MWBEs to manage larger contracts and create better opportunities when vying for traditional competitive solicitations. Although this is now NYS law, NYC has not yet announced the process to implement it.

Simultaneously with the governor's signing the foregoing legislation, she announced that NYS MWBE utilization rates are the highest in the nation for two years in a row. These new laws should help further strengthen New York's MWBE community.

Authors

This GT Alert was prepared by:

- **Mark F. Glaser** | +1 518.689.1413 | Mark.Glaser@gtlaw.com
- **John L. Mascialino** | +1 212.801.9355 | mascialinoj@gtlaw.com
- **India L. Sneed** | +1 212.801.9378 | sneedi@gtlaw.com

Albany. Amsterdam. Atlanta. Austin. Boston. Charlotte. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Germany. [~]Houston. Las Vegas. London. ^{*}Long Island. Los Angeles. Mexico City. ⁺Miami. Milan. [»]Minneapolis. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Portland. Sacramento. Salt Lake City. San Francisco. Seoul. [∞]Shanghai. Silicon Valley. Tallahassee. Tampa. Tel Aviv. [^]Tokyo. [≠]Warsaw. ⁻Washington, D.C.. West Palm Beach. Westchester County.

This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. [~]Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ^{}Operates as a separate UK registered legal entity. ⁺Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. [»]Greenberg Traurig's Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. [∞]Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. [^]Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. [≠]Greenberg Traurig's Tokyo Office is operated by GT Tokyo Horitsu Jimusho and Greenberg Traurig Gaikokuhojimbengoshi Jimusho, affiliates of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ⁻Greenberg Traurig's Warsaw office is operated by GREENBERG TRAURIG Nowakowska-Zimoch Wysokiński sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in GREENBERG TRAURIG Nowakowska-Zimoch Wysokiński sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2022 Greenberg Traurig, LLP. All rights reserved.*