

To: Kathy Hochul, New York State Governor at the New York State Executive Chamber  
From: 90832F Counsel to the Governor  
Date: September 13,2022  
Subject: New York State Minority and Women-Owned Business Enterprise, Article 15-A Executive law

The Executive Chamber has determined that the NYS MWBE policy needs extreme revisions to reflect the growth of the state. NYS MWBE has a 30% participation goal and although New York's utilization rate for Minority- and Women-Owned Businesses surpassed 30 percent, the state's MWBE program remains severely under-resourced relative to its demand and as a result faces several steep challenges (Hochul, 2021). Although New York has nation-leading support for MWBE's, through Governor Hochul's Equity Agenda, less than 3 percent of the MWBE utilization are black minority business owners. As an approach to enhance the Hochul Equity Agenda, it is clear that the Article 15-A needs tender care and meticulous revisions. Article 15-A suggest state agencies be charged with establishing employment and business participation goals for minorities and women. However similar to most legislation without a specific action or request, there becomes room for various forms of ethical misconduct or deceitful practices that are unjust for the intended groups (i.e., minorities and women). This created the problem that companies receiving government contracts are assigning 51 percent of their companies to women in their network in order to receive and reap the benefits of MWBE status. In addition, there is a lack of diversity in amongst the MWBE businesses responsible for the 30 percent participation goal. Top policy makers need to advocate for more transparency and eliminate fraudulent practices. This Policy Analysis will be dedicated to using top decision makers in government agencies to connect with minority businesses through a seamless platform. The most efficient approach to connecting minority business owners to government contracts through Article 15-A must to be tracked by a system. This system should specifically focus on maintaining a line-item budget to hold government agencies accountable for growth within the economy. The following assessment has chosen the NYS Comptroller, President of the Empire State Development, EVP of the Division of Minority and Women's Business Development, President of the Office of General Services, Commissioner, the 100<sup>th</sup> Speaker of the New York State Assembly & Majority Leader of the Assembly to ensure the correct policymakers utilize their formattable abilities to create significant change to the policy's core need for expansion of local contracting.

### **Assessment of the Problem**

Some of the most significant obstacles in this situation include the lack of equity, poor distribution of wealth, need for diversity in contracting, absence of guidance in accessing funding, and mistrust and increased need for specificity in policy creation. Black Businesses have zero equity in the New York State economy and this is evident in the lack of diversity in the type of businesses that tend to receive the contracts that justify the increase in utilization. Most black local businesses need more administrative support than their ethnic and female counterparts but the environment is not set up to support these businesses in need. Transparent numerical data is essential in proving the vast numbers of minority business owners of the black community, ultimately improving their opportunities of diversifying the businesses receiving

contracts. The problem stands in the way of several opportunities for business growth and financial success in true minority owned companies.

The Fund has direct allocations with 15 MWBEs in the Private Equity asset class, including both active and legacy commitments. 6 MWBE’s have both active and legacy allocations.

**Active Allocations, Commitment Values**

Firm	MWBE Status	M/W Ownership	Commitment
Asia Alternatives Private Equity Partners	Asian-American/Women	60%	\$ 500,000,000
Avance Investment Partners	Hispanic	75%	250,000,000
Clearlake Capital Partners	Hispanic	51%	305,000,000
Francisco Partners	Women	100%	200,000,000
GenNx360 Capital Partners	African-American / Women	67%	150,000,000
ICV Partners	African-American / Asian- American / Women	100%	75,000,000
Palladium Equity Partners	African-American / Asian-American / Hispanic / Women	63%	150,000,000
Vista Equity Partners	African-American / Asian-American / Women	65%	3,750,000,000
<b>Private Equity MWBE Total</b>			<b>\$ 5,380,000,000</b>

Firm	MWBE Status	Substantially Owned and/or Operated MWBE	Commitment
ACON Funds Management	Asian-American / Hispanic / Women	36%	\$ 213,029,417
Primary Venture Partners (FKA High Peaks)	Asian-American	49%	75,000,000
Siris Capital Partners	African-American	50%	225,000,000
<b>Private Equity Substantially Owned and/or Operated MWBE Total</b>			<b>\$ 513,029,417</b>

The data listed above is derived from the Asset Management and Financial Institution Strategy Report of FY 2020-2021 in which direct investments were made to private equity leaders. This chart represents the core issue in many ways as it depicts the commitment disparity when the MWBE status includes African-American business owners which essentially positive impacts on their communities. The solution in our policy is to have advocates in different top agencies to speak out against the corruption especially since there is a clear order of operations or top-down approach of systems in place in New York State agencies. The initial policy has been very clear as it was stated in the New York State Senate Legislative site in chapter 18 section 313-A discussing diversity practices of state contractors. Policy 313-B was created as a solution to 313-A, helping to address the areas in which corruption or misleading MWBE candidates can misrepresent the numbers behind contracting percentage with the government (NYS Senate, Executive Chapter 18, Article 15-A, 2019).

This system has been an ongoing issue since Article A-15 was created and signed into executive law July 19, 1988. Fast Forward 30 years and black business owners are trapped in a cycle riddled with poor systems without the capital and resources or people to enhance their brands, putting these businesses at a disadvantage before even starting. The consistency of the unspoken rule of don’t ask don’t tell or look the other way in New York government has allowed misappropriation of funds and nepotism to take place in professional settings in business. With that, there must be change to this policy in Article 15-A that holds to extend an olive branch to

minority business owners. “Legislation (A.9259-A/S.3390-A) will prevent fraud and abuse within the MWBE Program and creates a framework for a fund that will investigate and audit misconduct within the program. Legislation (A.10459/S.9351) allows NYC to award contracts up to \$1M to MWBES without a formal competitive process” (ESD, 2021) The policy that exists must have a concerted effort to help communities that consistently fall under the participation goals by 2055; there is no way for policy to be considered equitable in 2022 without equality among the contracting sector. Article A-15 needs added measures to promote wealth growth by decades of 2030, 2040 and 2050, guaranteed contracting with businesses that can create better opportunity in government functions throughout New York state and better businesses to help society advance. MWBE policy exists within every state agency so finding the MWBE policy or goals are very simple but it's ensuring fair distribution amongst the contracting opportunities that need much more transparency on a quarterly basis starting in FY 2025. Future projections can help with a foundational level of strategy input to focus on specific issues that exist.

### **Literature Review**

According to the State Fiscal Year 2022-2023 Enacted Budget Analysis published in May of 2022, the New York State Budget for State Fiscal Year (SFY) was adopted after the Executive and the Assembly Ways and Means Committee have indicated that All Funds spending will total \$220.5 billion in SFY 2022-2023.(Comptroller, 2022) The budget represents the projected spending power for New York State for 2022 through 2023 based on an assessment calculated from the previous two extraordinary years of volatility in finance that began with unprecedented economic disruptions caused by the COVID-19 pandemic and the immense revenue falls. This action works negatively against minority business owners that did not do to well during the pandemic. There is also a false representation of MWBE candidates that are fraudulent because they would like to get more contracts that are being offered so they disguise themselves as MWBE candidates. In reference to the NYS Empire State Development: Division of Minority and Women’s Business Development Annual Report FY 2020-2021 New York lead the nation in Economic empowerment through contracting opportunities for MWBE firms. In 2021 NYS surpassed the nation’s 30 percent MWBE utilization (Knight, 2021). The reports may state that New York has surpassed the 30 percent goal but there is a true issue of diversity within the policy intended to help minority groups obtain contracts with government agencies. There Must be some metric or measure that aids the state to having a better system to allocate the funds.

In the past there have been line items budgets set aside internally for major organizations to execute their project. In the case of Article 15-A it seems that the line-item budget may be the best way to combat any fraudulent behavior on the parts of the business owners that are pretending to be MWBE candidates. Line-Item budgets may have significant impact on the state’s ability to seek progress, the representation of the Line-Item Budget has transitioned into being called traditional budgeting as of today. The very essence of creating a budget derives from an anti-corruption measure enforced to ensure progress in administration integration, centralized purchasing, standardized accounting and auditing. From the federal level all the way to the local level, the Bureau of budget exists to maintain efficiency in the General accounting office. In reference to the policy paper by an academic scholar there have been several iterations of budgeting over the years from Line-Item budget, Performance budget, Program Planning budget and even Zero-Base budget, the consistent objective is placed on an equitable distribution system. In this assessment, the budgetary process in government is highlighted to ensure that the

budgets are going to MWBE candidates that are truly deserving of the contracts. The government has come a long way in the budget process but unfortunately still uses a very flawed based approach to ensuring budget allocation is meeting the intended recipient in the distribution process. At the core a budget is a series of goals with price tags attached and an attempt to translate financial resources into human purposes, project and plans to help towards a specific goal (CSULB, Public Policy, 2002). The Budget process is very important in this policy assessment because an organized budget can help expand minority business owners in the government contracting process and allow everyone participating to assure that there is a diverse group of minorities receiving the contracts and it is not going to a misrepresented MWBE or the same MWBEs that have not circulated the opportunities within the minority business owner’s community.

In addition to this report the stated objective for Article 15-A is to promote equality of economic opportunities for MWBE and have an emphasis on eliminating barriers to their participation in state contracting. “The functions of this Division contain three primary goals; to encourage and assist state agencies that are engaged in contracting activities to award a fair share of state contracts to MWBEs, to review applications by businesses seeking certification as a MWBE and to maintain a directory of certified MWBEs and lastly to promote the Business development of MWBEs through education and outreach to agencies and MWBEs.” (NYS ESD, 2022) In terms of allocation of funding the numbers are alarming as a whole and unfortunately there are no line items within the reports or projections for MWBEs which make the demographics extremely hard to account for on a state level. For instance, the recently announced Equity Agenda details an equal access to reduce-rate loans for MWBE business which is the Linked Deposit Program<sup>182</sup>. This is a reduced rate financing program to assist MWBE firms – this program has a budget of \$2 Billion but only saw a participation of \$116.5 million which is less than 6 percent. These short coming exist within several instances of the MWBE utilization metrics. Instances like the linked deposit program sheds a light on the need for monitoring and specificity in allocation or tracking the budget. There needs to be a clear statement of the MWBE utilization in the budget line item and there needs to be a breakdown of diversity within each minority group. Without concise clarification the progress being made falls victim to corruption and deception in the policy. When the former Comptroller of NYC Scott Stringer decided to grade each agency for the city MWBE each organization had to look at the numbers and reevaluate their process. A program that grades state agencies and the state overall with a filter of each category of the MWBE metrics would be a great addition.

**Stakeholder Analysis**

<b>Stakeholder Analysis</b>					
<b>Stakeholder</b>	Thomas P. DiNapoli	Hope Knight	Jerome A. DuVal	Jeanette M. Moy	Carl E. Heastie
<b>Title/Function</b>	NYS Comptroller	President, Head of Empire State Development	EVP of Division of Minority and Women’s Business Development	Head of Office of General Services, Commissioner	100 <sup>th</sup> Speaker of the New York State Assembly

<b>Source of Influence</b>	Oversee \$272.1 billion in retirement funds. Service \$16.7 billion in payroll. Auditing, financing and management for 20.2 million state residents.	State Economy, Business investments and job creation. Provides, grants, loans and other products.	Contract utilization percentage, \$21+ billion in contracts, businesses certified in the MWBE system or eligible.	Provide support services of the operation of state government.	Oversee the creation of laws and establishment of a state budget of over \$226.4 Billion.
<b>Explanation of the Problem</b>	Thomas P. DiNapoli wants to increase access to funding for minorities but even with \$7 billion dollars of growth the need for increased capacity still exists.	Hope Knight needs legislation that will prevent mismanagement of contracting systems.	Jerome A Duval believes that NY should be proud of leading the nation in MWBE utilization.	Jeanette Moy wants people of color to succeed.	Heastie believes in building a strong economic small business ecosystem.
<b>Perception of Crisis</b>	NYS Comptroller operates \$200 billion and understands the importance of expansion within the MWBE sector.	The agency has a vested interest in the development of the MWBE division.	Duval has a very clear understanding of the intricate details in this sort of crisis.	Commissioner Moy shows a proven ability to recognize a flaw in a system and offer solutions.	Heastie says that New Yorkers are still recovering from the impact of COVID-19.
<b>Proximity to Problem</b>	Very close to the issue, controls the budget, the policy and tracks the spending.	Extremely close to the problem. Has major influence over agencies.	Center of the problem. Manages the MWBE division.	Close to the problem and works with other agencies to assist.	Closest to the problem in terms of legislative control.
<b>Ability to Fix Problem</b>	Strong ability to implement stronger fiscal policy to reflect specific minority group needs.	Strong ability to fix the problem and needs to be direct about the groups that suffer.	The immediate action that can be taken is creating an accurate data base that contains an enhanced itemized report every year.	Commissioner Moy brings a technology, infrastructure and people sourcing background.	Strong ability to fix the problem by prioritizing good policy and economic solutions.
<b>Ends Desired</b>	NYS Comptroller wants to ensure the funds are managed correctly and accurately distributed.	There is a duty to ensure that progress is made in every industry.	Keep the numbers of MWBE utilization high.	A need to streamline the procurement process and become hyper focused on data driven results.	To restore the equity within state procurement for MWBEs.
<b>Definition/Measure of Success</b>	Bringing in the most money, while spending it with specific groups to make significant impact.	Number of jobs created, number of businesses enhanced and focus on continued growth.	Increased specificity, create a line item to help specific minority groups, create infrastructure.	Focused on connecting all agencies to increase efficiency in the contracting process.	Successful once there are measures put in place to enhance the number of contracts executed.

<b>Essential to Solution?</b>	yes	yes	yes	More yes but maybe	Yes, most important in regards to state legislation.
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It is crucial that the next steps must involve the comptroller’s office, the state assembly senate majority and the head of Empire State Development to ensure efficiency in legislative change. The leaders of these agencies can truly help ensure that there are equitable solutions for the MWBE contracting processes. These leaders can impart a sense of self on the people that may not understand how the economy can grow from these administrative issues and disparities that exist in government. New York state has a reputation on being the first to lead in legislative growth, so these are the individuals that can help with administrative integration, technological integration and most importantly policy change to legislation that can help minority business owners succeed. As Governor, the next steps to implementing these changes would be to have insight as addressed above on each stakeholder’s position and introducing the policy changes that will ultimately shift the state’s economy for the better. This table should be the framework for understanding the specific needs in the MWBE sector. The challenge has been creating enough support to make a difference in a short enough time span. In 2020 racial disparity and awareness was very high which allowed for specific actions to be administered. As society turns down the intensity of the alarming disparity faced, let NYS be the change agent needed to sustain a powerful message that was sought in dark times. When \$50 Billion dollars was pledged toward Black owned businesses specifically that was an indication that the nation is truly in need of help (Johnson, 2021). NYS has always had a pioneer spirit so with your help you can be the change the world needs to see and provide that level of consistency and forwardness needed to help black businesses with real monetary change.

**Options Specification**

<b>Options Specification</b>			
<b>Options</b>	Add section 316-B	Add section 313-B	Add section 315-A
<b>Description of Policy Change</b>	Mandate that each agency reports their letter grade each quarter.	Generate/ maintain an updated list of all line item budgets for specific minority groups.  Enforce a data tracking system that encourages an even distribution of contracting.  Eliminate net worth Caps.	Display a tracking system for the quantity of contracts confirmed with minority or disadvantaged business owners  Enforce a system that allows for transparent contract navigation  Enhance technology around the numbers, systems, transparency, accuracy and scale  Enhance pairing, measurability and execution of committed funds.
<b>Source of Option Idea</b>	Under the enforcement section of the original policy Article 15-A.	In the section entitled opportunities for minority and women-owned business	Sourced from feedback of the respective contracting agency.

		enterprises.	
<b>Implementation Responsibility</b>	Governor and Comptroller	Comptroller, President of ESD, Commission of OGS	Governor, Comptroller, President of ESD, Commission of OGS
<b>Mechanism of Effect</b>	This option allows for accountability from each agency and the governing agency for funding.	This option will specifically give Black, Brown and Latin x Business owners a guaranteed balanced budget for those under represented businesses.	This option solves the problem for the client and the consumer. This option brings in a systematic, technological framework and a data solving method. This helps the agency and the business owner solve their needs using technology and a pairing mechanism to enhance the contracting experience. But will receive pushback for expenses.
<b>Cost</b>	\$0	\$10-\$100 million	\$100 million - \$500million
<b>Legal Requirements</b>	Addition to existing Article-15A	Addition to existing Article-15A	Addition to existing Article-15A
<b>Position of Thomas P. DiNapoli</b>	Has ability to get the policy passed through legislation.	In support and will take a lot of management and collaboration to get the job done.	In support but may need a significant amount of evidence for total completion, along with the correct amount of specialist support.
<b>Position of Hope Knight</b>	In support and has the ability to directly aid.	In support and encourages the agency to target black communities for real development.	In support but will need tons of guidance on the tech side data side and this method can dramatically increase roles in the job.
<b>Position of Jerome A. DuVal</b>	Believes it can make job much easier.	In support and will have to hire more staff and create more exciting initiatives.	In support along with the collaborative upper-level management engagement.
<b>Position of Jeanette M. Moy</b>	In support, but may not have much involvement until after the legislation passes but will need grades to help with the office functions.	In support and has a ton of experience in ensuring there is real change in these office structure.	In support and has the experience to guide the agencies through the right infrastructure and technology integrations that will satisfy client and consumer.
<b>Position of Carl E. Heastie</b>	In support, with heavy influence to pass this initiative.	In support, needs support to complete legislative action.	In support, needs support but can rely on a bigger support group and platform for aid.
<b>Degree of Consensus</b>	affirmative	affirmative	affirmative

Each fiscal policy provides a different aspect to expanding the range of change in the system. Policy option 316-B will mandate a letter grade to each agency which is a simple system but proven to give positive feedback loops on a local municipal level of government in New York. This option will provide a metric system to keep all agencies very honest about their stance on contract work with MWBE and the grading system will be used by an outsourced tool to avoid any bias in the process. Policy option number two, section 313-B will generate and maintain a line-item budget specifically for the minority groups within the MWBE that are still underserved through bureaucratic systems, so Black business owners, Latin X business owners and Minority

Women Business owners should specifically have untouched funds that are allocated to them every year on the entire budget which can help be a deterrent to the existing fraudulent behavior and misuse of the MWBE contracting system. Additionally enforcing fair distribution is a better system to generating the economy and the elimination of net worth caps can encourage a scaling business process for Black and Latin X business owners which doesn't limit their ability to enter the market and sustain their business growth. Lastly policy option 315-A will emphasize all pillars for every government agency in which New York State can be the first example of truly investing into Data integration, financial technology and having external systems move the economy forward to a place of true progress. In this policy having a tracking system of the quantity of contracts confirmed with MWBE that derives from the line-item budget is the close to a legislative fiscal policy working at an efficiently high metric. This completes having the projected numbers in conjunction with the actual numbers to support the needs of the minority community. This will enforce a transparent contract navigation system with new technology integrated with financial numbers, systems, transparency, accuracy and scale of businesses. Once the pairing, measurability, and execution of committed funds are complete then 99% of the legislative issues are sorted which solves process for the agencies and the Black and Latin X business owners which can truly stimulate these communities. New York State is a financial hub in the world so when policy is effectively carried out then the rest of the world follows.

**Options Assessment**

Below are the policy options carefully created to be implemented within Article 15-A which impacts MWBE certified business owners. There is a certain level of responsibility that government may need to take in order to ensure that policies are being adjusted to fit with the times of present day. The options displayed were strategically designed to impact business owners in small legislative to its largest legislative impact.

<b>Options</b>	316-B	313-B	315-A
<b>Description of policy change</b>	Mandate that each agency reports their letter grade each quarter.	Generate/ maintain an updated list of all line item budgets for specific minority groups.  Enforce a data tracking system that encourages an even distribution of contracting.  Eliminate net worth Caps.	Display a tracking system for the quantity of contracts confirmed with minority or disadvantaged business owners  Enforce a system that allows for transparent contract navigation  Enhance technology around the numbers, systems, transparency, accuracy and scale  Enhance pairing, measurability and execution of committed funds.
<b>Political Feasibility</b>	High	High	High
<b>Administrative Feasibility</b>	Moderate	High	High
<b>Financial Feasibility</b>	High	High	Moderate
<b>Equity</b>	High	High	High
<b>Effectiveness</b>	High	High	High
<b>Summary Ranking</b>	2	1	3



In doing this assessment the findings support that the most robust policy will have the hardest time being passed by legislators but it will have the most positive effectiveness. Then we look at the one ranked second because it is the easiest to pass but maybe not the most impact associated. Finally looking at the middle policy being ranked number one because it has policy implementations from both options so the most compromising policy will likely be the policy needed to be passed throughout this process. If these policies can get passed then all agencies will need to configure the best way to make the adjustment in their respective agency. These options are used to alert policymakers that can help answer this continued daunting question of creating a platform or infrastructure to help enhance the navigation of the contracting process in New York State. Throughout each policy option there is a calculated layer to passing each option that works as a progressive interconnected machine. For instance, 316-B is intentionally made to be the first step to grading each agency, 313-B is more comprehensive but the specification of generating a line item specifically for minority groups is emphasizing the need in the community which will be a bit harder to get passed because of some controversy among exclusively helping groups by race and not only socio-economic status but overall provides the best opportunity for compromise. 315-A is a wholistic approach because there is a direct call to action from minority groups to be involved in helping agencies carry out their metrics, both groups will help each other to satisfy technological advances, financial goals, services, products needed and promote a transparent and measurable system around financial well-being. Intentionality was the most important factor for all of this policy initiatives and it is the reason that collaborating with the community can help bring government issues further along because of the direct involvement from day-to-day business owners. 315-A would be the best option but because it is so robust it will have the hardest time getting passed and may take the longest to get approved so unfortunately that places it towards the end because of the components attached to seeing this legislation passed. Finally, 313-B is the best policy addition because it makes much more sense financially, it requires less legislative hassle to getting passed and it still provides a level of transparency that will combat the initial problem of fraud and misrepresented participation goals that show progress within the MWBE community while minority business owners are still facing challenges in obtaining contracts with the state government.

## **Recommendation**

I would recommend policy option 313-B as the best option because it encompasses all needs and leaves room for more expansion. I chose the New York State Comptroller as the most impactful Policymaker because he controls the budget ultimately. I support this policy because it cultivates all of the intangibles when building efficient policy, which includes entrepreneurs in their specific area of expertise and it requires agencies to do their due diligence. Government can embrace innovation and look for the best technological advancements, best data integration systems, best financial fiduciaries and seek to contract with minority groups. Minority business owners can help their own interest with guided supervision of the government.

Article 15-A is about integrating the Latin X, Black and Women owned business community to contracting opportunities with the great state of New York. As a result of recommended policy additions, it is in the government's best interest to enforce an even distribution of contracting opportunities in which contracts are being executed by minority owners. This policy will allow

external resources to integrate better technology for the government contracting system and promote transparency. The concern of moving forward would be watching how money is allocated in large amounts and potential opportunities for fraud at each stage because of the nuances in the policy. A new navigation platform and technology being introduced which means everyone must trust each other on both parties. Once this new legislation is passed then the integrated platforms can generate further advancements and developments, prevent fraud and increase the trust in the community when working with government officials. Finally, the problem of a lack of government contracting for minority business owners can be achieved with option 313-B because it directly advocates for a better system that will account for true minority business owners and ensure that the contracts that are processed will properly vet the business owners and be completely transparent for the future. If New York state sets the precedent for financial behavior on the state level, then the local level will also improve their contract navigation process with the same equitable approach.

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