

# BUSINESS AND TRANSACTIONS

## INFORMATION MEMO

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## New York State's MWBE Program: New Updates and Continuing Complexities

On May 9, 2025, New York State enacted legislation, as part of the FY 2025-26 New York State budget, extending and adding certain provisions to the New York State Minority and Women-Owned Business Enterprise ("MWBE") program. Although program eligibility and requirements for participants remain the same—maintaining consistency for businesses, at least, for now—some of the added provisions may lead to significant program adjustments in the future.

### New Updates

The recently enacted updates to the MWBE program are as follows:

- Program Extension: The MWBE program was set to expire July 1, 2025 but has been extended to July 1, 2028.
- Discretionary Threshold Increase: The state agency discretionary purchasing threshold for MWBEs, which allows state agencies to make purchases from MWBEs up to a certain amount without a formal competitive bid process, has increased from \$750,000 to \$1,500,000.
- Annual Report: State agency annual reports to the director of the Division of Minority and Women's Business Development (the "Division") must now include, among other things, the total number of contracts awarded to MWBEs each year, the total value of contracts awarded to MWBEs each year, the participation rate, and the percentage of contracts awarded to MWBEs over the total contracts for all commodities, services and services purchases, all in comparison to various measurements from the prior year.
- Policy Study: The director of the Division is required to commission a policy study analyzing potential ways to improve the effectiveness of the MWBE program. The study must be prepared by an entity independent of the Department of Economic Development and the purpose is to provide recommendations to further strengthen and increase the effectiveness of the MWBE program. The policy study is due by May 1, 2027 and must be made publicly available.

### Overview of Continuing Requirements

Despite these updates, MWBE program eligibility and requirements for participants remain unchanged. As a brief reminder, some of the general requirements for the program are:

- Ownership: The minority group members or women upon which certification relies must have real, substantial, and continuing majority ownership of the business enterprise. In evaluating this requirement, the Division looks at, among other things, the minority group members' or women's percentage ownership, capital contribution, and risk and profit sharing of the business enterprise.

- Operation: The minority group members or women upon which certification relies must make day-to-day decisions concerning the operation of the business enterprise. In evaluating this requirement, the Division looks at, among other things, the minority group members' or women's experience in the industry, operational decision-making, and time devoted to the business enterprise.
- Control: The minority group members or women upon which certification relies must have the power to control the business enterprise. In evaluating this requirement, the Division looks at, among other things, the minority group members' or women's control of business management and control of business negotiations.
- Independence: The business enterprise must operate independently. In evaluating this requirement, the Division looks at, among other things, whether the business enterprise shares resources with another entity, transacts business primarily with only one other entity, and receives tangible benefits as a result of a connection to another entity and, if so, if those benefits are consistent with industry practice.

That said, even if a business enterprise meets the above-described requirements, below are a few limitations, among others, to keep in mind that may affect the ability to obtain MWBE status:

- Personal Net Worth: The minority group members' or women's personal net worth must not exceed fifteen million dollars, adjusted for inflation, subject to certain exclusions.
- Small Business: The business enterprise must have no more than 300 total employees, calculated as an average of the immediately preceding four calendar quarters.
- Time of Operation: The business enterprise must be in operation for at least one year.
- Doing Business in New York State: The business enterprise must have the authority to conduct business in the State of New York and actually conduct business in the State of New York.

## Moving Forward

Navigating the MWBE program can be complex despite the seemingly simple rules. Businesses seeking MWBE status should carefully consider application of the rules to the particular facts at hand when applying for initial certification, re-certification, or an appeal of a denial of either.

Bond will be closely monitoring for any further changes to the MWBE program.

If you have any questions, please reach out to **Jessica M. Blanchette**, **Lyndon E. Hall**, or the attorney at the firm with whom you are most regularly in contact.

