

STATE OF NEW YORK

8549--A

2021-2022 Regular Sessions

IN ASSEMBLY

December 13, 2021

Introduced by M. of A. BURDICK, GALLAGHER, MEEKS, SEAWRIGHT, SANTABARBARA, ENGLEBRIGHT, J. M. GIGLIO, HEVESI, SAYEGH, LAWLER, WOERNER, GONZALEZ-ROJAS, SILLITTI, STERN, RA, DeSTEFANO, J. A. GIGLIO -- Multi-Sponsored by -- M. of A. COOK -- read once and referred to the Committee on Governmental Operations -- recommitted to the Committee on Governmental Operations in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the state finance law, in relation to preferred source status for entities that provide employment to certain persons

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraphs d, e and f of subdivision 2, subparagraph (iii)
2 of paragraph a and the opening paragraph of paragraph b of subdivision 4
3 and subdivisions 6, 7 and 8 of section 162 of the state finance law,
4 paragraphs d and e of subdivision 2 as amended and paragraph f of subdivi-
5 sion 2 as added by chapter 501 of the laws of 2002, subparagraph (iii)
6 of paragraph a and the opening paragraph of paragraph b of subdivision 4
7 and subdivisions 6 and 8 as added by chapter 83 of the laws of 1995,
8 paragraphs a and d of subdivision 6 as amended by section 164 of subpart
9 B of part C of chapter 62 of the laws of 2011, paragraph e of subdivi-
10 sion 6 as amended by chapter 265 of the laws of 2013, subdivision 7 as
11 amended by chapter 426 of the laws of 2002 and paragraph a of subdivi-
12 sion 8 as amended by chapter 95 of the laws of 2000, are amended to read
13 as follows:

14 d. Commodities and services produced by any qualified charitable non-
15 profit-making agency for other [~~severely~~] disabled persons approved for
16 such purposes by the commissioner of education, or incorporated under
17 the laws of this state and approved for such purposes by the commission-
18 er of education;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 e. Commodities and services produced by a qualified veterans' [~~work-~~
2 ~~shop~~] entity providing job and employment-skills training to veterans
3 where such a [~~workshop~~] entity is operated by the United States depart-
4 ment of veterans affairs and is manufacturing products or performing
5 services within this state and where such [~~workshop~~] entity is approved
6 for such purposes by the commissioner of education; or

7 f. Commodities and services produced by any qualified charitable non-
8 profit-making [~~workshop~~] entity for veterans approved for such purposes
9 by the commissioner of education, or incorporated under the laws of this
10 state and approved for such purposes by the commissioner of education.

11 (iii) When commodities are available, in the form, function and utili-
12 ty required by, a state agency or political subdivision or public bene-
13 fit corporation having their own purchasing agency, and such commodities
14 are not available pursuant to subparagraphs (i) and (ii) of this para-
15 graph, said commodities shall then be purchased from a qualified non-
16 profit-making agency for other [~~severely~~] disabled persons, a qualified
17 special employment program for mentally ill persons, or a qualified
18 veterans' [~~workshop~~] entity; provided, however, the preferred source
19 shall perform fifty percent or more of the work;

20 When services are available, in the form, function and utility
21 required by, a state agency or political subdivision or public benefit
22 corporation having their own purchasing agency, equal priority shall be
23 accorded the services rendered and offered for sale by qualified non-
24 profit-making agencies for the blind and those for the other [~~severely~~]
25 disabled, by qualified special employment programs for mentally ill
26 persons and by qualified veterans' [~~workshops~~] entities; provided,
27 however, the preferred source shall perform fifty percent or more of the
28 work. In the case of services:

29 6. Prices charged by agencies for the blind, other [~~severely~~] disabled
30 and veterans' [~~workshops~~] entity.

31 a. Except with respect to the correctional industries program of the
32 department of corrections and community supervision, it shall be the
33 duty of the commissioner to determine, and from time to time review, the
34 prices of all commodities and to approve the price of all services
35 provided by preferred sources as specified in this section offered to
36 state agencies, political subdivisions or public benefit corporations
37 having their own purchasing office. The commissioner's price review and
38 approval shall not be required for any purchases below two hundred fifty
39 thousand dollars.

40 b. In determining and revising the prices of such commodities or
41 services, consideration shall be given to the reasonable costs of labor,
42 materials and overhead necessarily incurred by such preferred sources
43 under efficient methods of procurement, production, performance and
44 administration; however, the prices of such products and services shall
45 be as close to prevailing market price as practicable, but in no event
46 greater than fifteen percent above[~~7~~] the prevailing market prices
47 [~~among responsive offerors~~] for the same or equivalent commodities or
48 services.

49 c. Such qualified charitable non-profit-making agencies for the blind
50 and other [~~severely~~] disabled may make purchases of materials, equipment
51 or supplies, except printed material, from centralized contracts for
52 commodities in accordance with the conditions set by the office of
53 general services; provided that the qualified charitable non-profit-mak-
54 ing agency for the blind or other [~~severely~~] disabled shall accept sole
55 responsibility for any payment due the vendor.

d. Such qualified charitable non-profit-making agencies for the blind and other [severely] disabled may make purchases of materials, equipment and supplies directly from the correctional industries program administered by the commissioner of corrections and community supervision, subject to such rules as may be established from time to time pursuant to the correction law; provided that the qualified charitable non-profit-making agency for the blind or other [severely] disabled shall accept sole responsibility for any payment due the department of corrections and community supervision.

e. The commissioner of the office of children and family services shall appoint the New York state commission for the blind, or other non-profit-making agency, other than the agency representing the other [severely] disabled, to facilitate the distribution of orders among qualified non-profit-making charitable agencies for the blind. The state commissioner of education shall appoint a non-profit-making agency, other than the agency representing the blind, to facilitate the distribution of orders among qualified non-profit-making charitable agencies for the other [severely] disabled and the veterans' [workshops] entities. The state commissioner of mental health shall facilitate the distribution of orders among qualified special employment programs operated or approved by the office of mental health serving mentally ill persons.

f. The commissioner may request the state comptroller to conduct audits and examinations to be made of all records, books and data of any agency for the blind or the other [severely] disabled, any special employment program for mentally ill persons or any veterans' [workshops] entity qualified under this section to determine the costs of manufacture or the rendering of services and the manner and efficiency of production and administration of such agency or special employment program or veterans' [workshop] entity with relation to any product or services purchased by a state agency or political subdivision or public benefit corporation and to furnish the results of such audit and examination to the commissioner for such action as he or she may deem appropriate under this section.

7. Partnering with preferred sources. ~~[The commissioner of the appropriate appointing agency as identified in paragraph e of subdivision six of this section, shall conduct one or more pilot studies whereby a private vendor may be accorded preferred source status for purposes of this section. The pilot studies shall seek to ascertain the benefits of partnerships between private industry and those entities accorded preferred source status as specified in this section. Preferred source status under a partnering arrangement may]~~ Private vendors may be accorded preferred source status but only ~~[be accorded]~~ when a proposal to a soliciting agency for commodities or services includes a binding agreement with one or more of the entities accorded preferred source status under this section. The binding agreement shall provide that:

(i) The preferred source shall perform the majority of the work necessary to such offering, and

(ii) The partnering proposal includes bona fide long term employment opportunities for persons who ~~[could otherwise be new clients]~~ are clients of an entity ~~[previously]~~ accorded preferred source status herein, and

(iii) The partnering proposal offers the solicited services or commodities at a price less than the price that otherwise would be charged by ~~[a]~~ the preferred source.

1 8. ~~[a. The commissioner of the appropriate appointing agency shall~~
2 ~~report by December thirty first, two thousand four, to the governor, the~~
3 ~~chairperson of the senate finance committee, the chairperson of the~~
4 ~~assembly ways and means committee and the director of the budget, the~~
5 ~~results and findings of each pilot study conducted, pursuant to subdivi-~~
6 ~~sion seven of this section, and include recommendations for improving~~
7 ~~partnering with preferred sources.~~

8 ~~b.]~~ The council shall report to the governor, legislative fiscal
9 committees and the director of the budget by December thirty-first,
10 nineteen hundred ninety-five and thereafter annually, a separate list
11 concerning the denial of any application made pursuant to paragraph (b)
12 of subdivision three of this section, the reasons for such denial,
13 whether such denial was appealed to the commissioner, and the final
14 decision by the commissioner on such application.

15 § 2. This act shall take effect immediately and shall not apply to any
16 contracts or requests for proposals issued by government entities before
17 such date.