

STATE OF NEW YORK

8549--B

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, SIMON -- 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 -- again reported from said committee with amendments, 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; and providing for the repeal of certain provisions upon the expiration thereof

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 of section 162 of the state finance law, paragraphs d and e of subdivi-
4 sion 2 as amended and paragraph f of subdivision 2 as added by chapter
5 501 of the laws of 2002, subparagraph (iii) of paragraph a and the open-
6 ing paragraph of paragraph b of subdivision 4 as added by chapter 83 of
7 the laws of 1995, are amended to read as follows:
8 d. Commodities and services produced by any qualified charitable non-
9 profit-making agency for other [~~severely~~] disabled persons approved for
10 such purposes by the commissioner of education, or incorporated under
11 the laws of this state and approved for such purposes by the commission-
12 er of education;
13 e. Commodities and services produced by a qualified veterans' [~~work-~~
14 ~~shop~~] entity providing job and employment-skills training to veterans
15 where such a [~~workshop~~] entity is operated by the United States depart-

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

LBD13840-04-2

1 ment of veterans affairs and is manufacturing products or performing
2 services within this state and where such [workshop] entity is approved
3 for such purposes by the commissioner of education; or

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

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

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

26 § 2. Subdivisions 6, 7 and 8 of section 162 of the state finance law,
27 subdivisions 6 and 8 as added by chapter 83 of the laws of 1995,
28 paragraphs a and d of subdivision 6 as amended by section 164 of subpart
29 B of part C of chapter 62 of the laws of 2011, paragraph e of subdivi-
30 sion 6 as amended by chapter 265 of the laws of 2013, subdivision 7 as
31 amended by chapter 426 of the laws of 2002 and paragraph a of subdivi-
32 sion 8 as amended by chapter 95 of the laws of 2000, are amended to read
33 as follows:

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

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

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

54 c. Such qualified charitable non-profit-making agencies for the blind
55 and other [severely] disabled may make purchases of materials, equipment
56 or supplies, except printed material, from centralized contracts for

1 commodities in accordance with the conditions set by the office of
2 general services; provided that the qualified charitable non-profit-making
3 agency for the blind or other [severely] disabled shall accept sole
4 responsibility for any payment due the vendor.

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

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

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

39 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
48 to a soliciting agency for commodities or services includes a binding
49 agreement with one or more of the entities accorded preferred source
50 status under this section. The binding agreement shall provide that:

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

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

1 (iii) The partnering proposal offers the solicited services or commod-
2 ities at a price less than the price that otherwise would be charged by
3 [a] the preferred source.

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

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

18 § 3. The state procurement council shall submit a report by December
19 31, 2024, to the governor, the speaker of the assembly, and the tempo-
20 rary president of the senate on the direct labor workforce employed in
21 the provision of preferred source commodities and services, including
22 but not limited to objectives for direct labor to be provided under a
23 preferred source agreement by persons who are blind or by people with
24 disabilities, participation levels of persons who are blind or by people
25 with disabilities in preferred source contracts, and recommendations for
26 improving partnering with preferred sources.

27 § 4. This act shall take effect immediately; provided that section one
28 of this act shall expire and be deemed repealed three years after such
29 effective date; and provided further that this act shall not apply to
30 any contracts or requests for proposals issued by government entities
31 before such date.