

STATE OF NEW YORK

7673

2023-2024 Regular Sessions

IN ASSEMBLY

June 1, 2023

Introduced by M. of A. BICHOTTE HERMELYN -- read once and referred to the Committee on Cities

AN ACT to amend the New York city charter, the education law, the public housing law and the New York city health and hospitals corporation act, in relation to construction and mentoring programs

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

1 Section 1. The New York city charter is amended by adding a new
2 section 1309 to read as follows:

3 § 1309. Mentoring program. a. As used in this section, the following
4 terms shall have the following meanings:

5 1. The term "mentoring program" means a program established pursuant
6 to this section:

7 (i) to provide mentee businesses with the opportunity for up to four
8 years, to compete for and, where awarded, to perform certain contracts
9 designated for inclusion in the mentoring program, with the assistance
10 of a competitively selected mentor firm that has extensive management
11 and mentoring experience, with the mentor providing the mentee business
12 with advice and assistance in competing for and managing contracts; and

13 (ii) to provide to a mentee business that the mentoring program agency
14 has determined has successfully completed the program under subparagraph
15 (i) of this paragraph, for up to four additional years: (A) additional
16 opportunities to compete with other designated mentee businesses in the
17 program for certain contracts to be designated for inclusion under this
18 subparagraph and, where awarded, to perform such contracts, with the
19 further assistance of a competitively selected mentor firm that has
20 extensive management and mentoring experience, with the mentor providing
21 the mentee with advice and technical assistance in competing for and
22 managing contracts; and (B) assistance, as determined by the mentoring
23 program agency, for such a mentee business to obtain bonding for

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

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1 contracts that are competitively awarded pursuant to any other provision
2 of law.

3 2. The term "mentoring program agency" means an agency that has estab-
4 lished a mentoring program pursuant to this section.

5 3. The term "mentoring program contract" means a contract designated
6 by the mentoring program agency, in an estimated amount of not more than
7 one million five hundred thousand dollars for contracts under subpara-
8 graph (i) of paragraph one of this subdivision and five million dollars
9 for contracts under subparagraph (ii) of such paragraph, for which bids
10 or proposals are to be invited and accepted only from businesses that
11 are enrolled in a mentoring program and have been selected by the
12 mentoring program to compete for the contract.

13 4. The term "small business" means a business that: is independently
14 owned and operated; and has annual revenues that do not exceed an aver-
15 age of five million dollars for the three preceding fiscal years, as
16 calculated at the end of each fiscal year, or such lesser amount as
17 established by the mentoring program agency pursuant to this section.

18 b. Any agency may establish a mentoring program for small businesses
19 in the construction trades.

20 c. Notwithstanding any other law, including section two thousand five
21 hundred four of the insurance law, except as otherwise provided in
22 subdivision g of this section, a mentoring program agency shall have the
23 authority to:

24 1. Determine the criteria pursuant to which a small business shall be
25 eligible for and selected as a mentee business participating in the
26 components of its mentoring program, as set forth in subparagraphs (i)
27 and (ii) of paragraph one of subdivision a of this section, the number
28 of mentee businesses to participate in each such component of such a
29 program, the criteria for the competitive selection of the firms that
30 will provide mentoring services, and the assignment of a mentor to a
31 specific mentee business;

32 2. Designate which eligible contracts shall be mentoring program
33 contracts;

34 3. Establish standards for qualifying mentee businesses to compete for
35 a mentoring program contract, consistent with subdivision d of this
36 section;

37 4. Determine when bids or proposals for a mentoring program contract
38 should be restricted to mentee businesses that, prior to the receipt of
39 bids or proposals, have been qualified for such competition;

40 5. Competitively select, designate, and contract with one or more
41 experienced firms that, under the general supervision of the mentoring
42 program agency, will provide mentoring services to the mentee busi-
43 nesses, and assign such mentors to one or more designated mentee busi-
44 nesses;

45 6. Assist mentee businesses that have been awarded mentoring program
46 contracts to obtain any surety bond or contract of insurance required of
47 them in connection with such contract only; and

48 7. Provide mentee businesses technical assistance in obtaining bid,
49 payment, and performance bonding for contracts that are not mentoring
50 program contracts, for which such businesses are otherwise qualified.

51 d. If the total number of qualified mentee businesses that respond to
52 a competition and are considered capable of meeting the specifications
53 and terms of the invitation to compete is less than two, or if the
54 mentoring program agency determines that acceptance of the best offer
55 will result in the payment of an unreasonable price, the agency shall
56 reject all offers and withdraw the designation of the contract as a

1 mentoring program contract. If the agency withdraws the designation of
2 such contract as a mentoring program contract, the mentee businesses, if
3 any, that made offers shall be notified.

4 4. A mentor shall provide construction management services to a
5 mentoring program agency in relation to a mentoring program contract and
6 services and assistance to a mentee business, as designated by the
7 mentoring program agency, including but not limited to the following:

8 1. providing business training in the skills necessary to operate a
9 successful business and to compete for and perform a contract;

10 2. providing technical assistance to the mentee business to assess the
11 outcome if the mentee business competes for but is not awarded a
12 contract;

13 3. if the mentoring program contract is awarded to the mentee busi-
14 ness, providing guidance, advice, and technical assistance to the mentee
15 business in the performance of the contract; and

16 4. providing other technical assistance to the mentee business to
17 facilitate learning, training, and resolution of other issues that may
18 arise.

19 f. Except as provided in subdivision g of this section, any mentoring
20 program agency may promulgate rules implementing the provisions of this
21 section.

22 g. 1. Notwithstanding any other subdivision of this section, the mayor
23 may authorize any office of the mayor or any department the head of
24 which is appointed by the mayor to promulgate rules implementing the
25 provisions of subparagraphs one, three, five, six and seven of paragraph
26 one of subdivision C of this section; authorizing such office or depart-
27 ment to exercise any power set forth under subparagraphs one, three,
28 five, six and seven of paragraph one of subdivision C of this section;
29 authorizing such office or department and the mentoring program agency
30 to jointly manage the performance of any mentoring program contract,
31 with the assistance of the mentor firm providing services pursuant to
32 subdivision e of this section; or combining two or more mentoring
33 programs, which may include the program established under section twelve
34 hundred six of this charter, into a single centralized mentoring
35 program, provided that no provision of this subdivision shall limit the
36 authority of a mentoring program agency to exercise the authority set
37 forth in subparagraph two or four of paragraph one of subdivision c or
38 subdivision d of this section or otherwise limit an agency's authority
39 to establish the specifications for a contract or to award a contract,
40 and provided further that if the program established pursuant to section
41 twelve hundred six of this charter is centralized pursuant to this
42 subdivision, any such rules promulgated pursuant to this paragraph shall
43 apply to such program.

44 2. If the mayor authorizes an office or department to promulgate rules
45 combining two or more mentoring programs into a single centralized
46 mentoring program pursuant to paragraph one of this subdivision:

47 (i) such office or department shall by rule establish a goal for the
48 aggregate value of mentoring program contracts awarded by mentoring
49 program agencies participating in such centralized program, which, to
50 the extent consistent with the budget adopted pursuant to chapter ten of
51 this charter, shall be calculated as follows:

52 (A) for the first full fiscal year following the establishment of such
53 centralized program, fifteen million dollars in contract value; and

54 (B) for each year of such centralized program following the first full
55 fiscal year of the centralized program, a goal that is twenty-five
56 percent greater than the goal established pursuant to this subparagraph

1 for the preceding year, provided that such annual goal shall not exceed
2 one hundred fifty million dollars in aggregate contract value;

3 (ii) all mentees participating in a mentoring program that is combined
4 into such centralized program shall be deemed selected for participation
5 in such centralized program;

6 (iii) all mentees participating in a mentoring program established
7 pursuant to section twelve hundred six of this charter that are small
8 businesses shall be deemed selected for participation in such central-
9 ized program, provided that such program established pursuant to section
10 twelve hundred six of this charter is designated as combined into the
11 centralized mentoring program by a rule promulgated pursuant to para-
12 graph one of this subdivision; and

13 (iv) all mentoring program contracts and contracts let pursuant to
14 section twelve hundred six of this charter for which an invitation to
15 compete is released prior to the effective date of rules promulgated
16 pursuant to paragraph one of this subdivision shall not be subject to
17 such rules.

18 h. Commencing on October first, two thousand twenty-four, the depart-
19 ment shall submit an annual report to the governor, the temporary presi-
20 dent of the senate, and the speaker of the assembly that contains the
21 following information for the preceding city fiscal year:

22 1. the total number and total dollar value of mentoring program
23 contracts from each mentoring program established under this section;

24 2. mentoring program participation rates; and

25 3. the degree to which a centralized mentoring program, established
26 pursuant to subdivision g of this section, has achieved a goal estab-
27 lished pursuant to such subdivision.

28 § 2. Subparagraph (iii) of paragraph (a) of subdivision 36 of section
29 2590-h of the education law, as amended by chapter 98 of the laws of
30 2019, is amended to read as follows:

31 (iii) measures to enhance the ability of minority and women owned
32 business enterprises pursuant to section thirteen hundred four of the
33 New York city charter and a certified business as defined in section
34 three hundred ten of the executive law, including firms certified pursu-
35 ant to article fifteen-A of the executive law and firms certified as
36 minority and women owned business enterprises pursuant to section thir-
37 teen hundred four of the New York city charter, to compete for contracts
38 and to ensure their meaningful participation in the procurement process.
39 The [school] city district shall have the authority to use the same
40 measures[7] to enhance minority and women owned business enterprise and
41 small business participation as are available to the city of New York
42 pursuant to article five-A of the general municipal law, [section]
43 sections thirteen hundred four and thirteen hundred nine of the New York
44 city charter, paragraphs one and two of subdivision i of section three
45 hundred eleven of the New York city charter, and section 6-129 of the
46 administrative code of the city of New York, provided that these poli-
47 cies may establish that the city district is subject to the rules and
48 goal authorized under subdivision g of section thirteen hundred nine of
49 such charter with respect to a mentoring program established pursuant to
50 this subparagraph, and provided further that, if such policies subject-
51 ing the city district to such rules and goal are adopted, the chancellor
52 and the city, acting by the mayor, may enter into a memorandum of under-
53 standing relating to mentoring opportunities authorized under this
54 subparagraph;

55 § 3. The public housing law is amended by adding a new section 402-g
56 to read as follows:

1 § 402-g. Contracting with minority and women owned enterprises and
2 small businesses. Notwithstanding any provision of article eight of this
3 chapter or any other provision of law, the authority is authorized to
4 establish and implement reasonable procedures to secure the meaningful
5 participation of minority and women owned enterprises and small busi-
6 nesses in its procurement process, and may use the same measures to
7 enhance small business participation as are available to the city of New
8 York pursuant to section thirteen hundred nine of the New York city
9 charter, except to the extent inconsistent with federal law and any
10 funding requirements that preclude the authority from implementing the
11 provisions of this section. Upon written consent of the authority, the
12 authority shall be subject to the rules and goal authorized under subdivi-
13 vision g of section thirteen hundred nine of such charter with respect
14 to a mentoring program established pursuant to this section, provided
15 that after execution of such written consent, the NYCHA CEO, as such
16 term is defined in subdivision fifteen of section six hundred twenty-
17 seven of this chapter, and the city, acting by the mayor, may enter into
18 a memorandum of understanding relating to mentoring opportunities
19 authorized under this section.

20 § 4. Section 8 of section 1 of chapter 1016 of the laws of 1969,
21 constituting the New York city health and hospitals corporation act, is
22 amended by adding a new subdivision 7 to read as follows:

23 7. The corporation shall have the authority to use the same measures
24 to enhance mentoring opportunities for small businesses as are available
25 to the city of New York pursuant to section thirteen hundred nine of the
26 New York city charter. Upon the written consent of the corporation, the
27 corporation shall be subject to the rules and the goal authorized under
28 subdivision g of section thirteen hundred nine of such charter with
29 respect to a mentoring program established pursuant to this subdivision,
30 provided that after execution of such written consent, a duly authorized
31 officer of the corporation and the city, acting by the mayor, may enter
32 into a memorandum of understanding relating to mentoring opportunities
33 authorized under this subdivision.

34 § 5. If any clause, sentence, paragraph, or section of this act is
35 declared invalid or unconstitutional by any court of competent jurisdic-
36 tion, after exhaustion of all further judicial review, such portion
37 shall be deemed severable, and the court's judgment shall not affect,
38 impair or invalidate the remainder of this act, but shall be confined in
39 its operation to the clause, sentence, paragraph, or section of this act
40 directly involved in the controversy in which the judgment was rendered.

41 § 6. This act shall take effect on the one hundred twentieth day after
42 it shall have become a law; provided, however, that the amendments to
43 paragraph (a) of subdivision 36 of section 2590-h of the education law
44 made by section two of this act shall not affect the expiration of such
45 section and subdivision and shall expire and be deemed repealed there-
46 with.