S T A T E O F N E W Y O R K

2349

2009-2010 Regular Sessions

I N A S S E M B L Y

January 15, 2009

Introduced by M. of A. GOTTFRIED, DINOWITZ, PAULIN, GALEF, JOHN, COOK, BRADLEY, JACOBS, PEOPLES -- Multi-Sponsored by -- M. of A. BING, CAHILL, COLTON, FARRELL, GLICK, JAFFEE, KELLNER, KOON, LAVINE, MAISEL, McENENY, MILLMAN, PHEFFER, SWEENEY -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the state finance law, in relation to granting a preference in state contracts for contractors which provide their employees with employer-sponsored health coverage

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 165 of the state finance law is amended by adding a new subdivision 9 to read as follows:

9. PREFERENCE IN STATE CONTRACTS FOR CONTRACTORS WHO PROVIDE EMPLOYEES WITH EMPLOYER-SPONSORED HEALTH COVERAGE.

A. FOR THE PURPOSES OF THIS SUBDIVISION, "EMPLOYER-SPONSORED HEALTH COVERAGE" SHALL MEAN A HEALTH INSURANCE POLICY, COMPREHENSIVE HEALTH SERVICES PLAN, OR A SELF-FUNDED PLAN OR TRUST, AS DEFINED BY THE SUPERINTENDENT OF INSURANCE, IN CONSULTATION WITH THE COMMISSIONER OF HEALTH, WHICH, AT A MINIMUM, MEETS THE FOLLOWING STANDARDS:

(I) IS AVAILABLE TO ALL ELIGIBLE EMPLOYEES OF AN EMPLOYER REGARDLESS OF AGE, SEX, HEALTH STATUS OR OCCUPATION;

(II) INCLUDES BENEFITS WHICH ARE EQUIVALENT TO THE BENEFITS PROVIDED TO STATE OFFICERS AND EMPLOYEES PURSUANT TO ARTICLE ELEVEN OF THE CIVIL SERVICE LAW; AND

(III) PROVIDES FOR EMPLOYEE COST-SHARING THAT IS NO MORE THAN THE COST-SHARING PROVISIONS OF A TYPICAL EMPLOYER-SPONSORED HEALTH COVERAGE PLAN.

IN DEFINING SUCH COVERAGE, THE SUPERINTENDENT OF INSURANCE MAY VARY THE STANDARDS OF A PLAN BASED ON EMPLOYER SIZE.

B. (I) EXCEPT AS PROVIDED IN THIS SUBDIVISION, THE STATE AND ANY STATE AGENCY, PUBLIC BENEFIT CORPORATION OR PUBLIC AUTHORITY OF THE STATE

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

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SHALL GRANT A PREFERENCE IN ANY CONTRACT FOR THE SUPPLY OF COMMODITIES, SERVICES OR CONSTRUCTION TO ANY CONTRACTOR THAT PROVIDES ITS EMPLOYEES WITH EMPLOYER-SPONSORED HEALTH COVERAGE.

(II) IN THE CASE OF CONTRACTS LET BY A COMPETITIVE PROCESS, WHENEVER THE RESPONSIVE AND RESPONSIBLE OFFERER HAVING THE LOWEST PRICE OR BEST VALUE OFFER DOES NOT PROVIDE ITS EMPLOYEES WITH EMPLOYER-SPONSORED HEALTH COVERAGE AND ANOTHER RESPONSIVE AND RESPONSIBLE OFFERER THAT DOES PROVIDE ITS EMPLOYEES SUCH COVERAGE HAS SUBMITTED AN OFFER WITHIN FIFTEEN PERCENT OF THE LOWEST PRICE OR BEST VALUE OFFER FOR A CONTRACT TO SUPPLY COMMODITIES, SERVICES OR CONSTRUCTION OF COMPARABLE QUALITY, THE CONTRACTING ENTITY SHALL REFER SUCH OFFERS TO THE COMMISSIONER WHO MAY DETERMINE, IN ACCORDANCE WITH APPLICABLE LAW AND RULES, THAT IT IS IN THE BEST INTERESTS OF THE STATE THAT THE CONTRACT BE AWARDED TO OTHER THAN THE LOWEST PRICE OR BEST VALUE OFFER.

(III) IN THE CASE OF CONTRACTS LET BY OTHER THAN A COMPETITIVE PROCESS FOR GOODS OR SERVICES INVOLVING AN EXPENDITURE OF AN AMOUNT GREATER THAN THE DISCRETIONARY BUYING THRESHOLD AS SPECIFIED IN SECTION ONE HUNDRED SIXTY-THREE OF THIS ARTICLE, OR FOR CONSTRUCTION INVOLVING AN AMOUNT GREATER THAN FIFTEEN THOUSAND DOLLARS, THE CONTRACTING ENTITY SHALL NOT AWARD TO A PROPOSED CONTRACTOR THAT DOES NOT PROVIDE EMPLOYER-SPONSORED HEALTH COVERAGE TO ITS EMPLOYEES UNLESS THE ENTITY SEEKING TO USE THE COMMODITIES, SERVICES OR CONSTRUCTION DETERMINES THAT THE COMMODITIES, SERVICES OR CONSTRUCTION ARE NECESSARY FOR THE ENTITY TO PERFORM ITS FUNCTIONS AND THERE IS NO OTHER RESPONSIBLE CONTRACTOR THAT WILL SUPPLY COMMODITIES, SERVICES OR CONSTRUCTION OF COMPARABLE QUALITY AT A COMPARABLE PRICE. SUCH DETERMINATIONS SHALL BE MADE IN WRITING AND SHALL BE PUBLIC DOCUMENTS.

C. UPON RECEIVING INFORMATION THAT A CONTRACTOR THAT HAS INDICATED THAT IT PROVIDES ITS EMPLOYEES EMPLOYER-SPONSORED HEALTH COVERAGE IN ACCORDANCE WITH THE PROVISIONS OF THIS SUBDIVISION IS IN VIOLATION THEREOF, THE CONTRACTING ENTITY SHALL REVIEW SUCH INFORMATION AND OFFER THE CONTRACTOR AN OPPORTUNITY TO RESPOND. IF THE CONTRACTING ENTITY FINDS THAT A VIOLATION HAS OCCURRED, IT SHALL TAKE SUCH ACTION AS MAY BE APPROPRIATE AND PROVIDED FOR BY LAW, RULE OR CONTRACT, INCLUDING, BUT NOT LIMITED TO, IMPOSING SANCTIONS, SEEKING COMPLIANCE, RECOVERING DAMAGES OR DECLARING THE CONTRACTOR IN DEFAULT.

D. A RESPONSIVE AND RESPONSIBLE OFFERER NOT IN COMPLIANCE WITH THE PROVISIONS OF THIS SUBDIVISION MAY COME INTO COMPLIANCE UPON A COMMITMENT THAT THE PROVISION OF EMPLOYER-SPONSORED HEALTH COVERAGE WILL COMMENCE FOR EMPLOYEES OF THE CONTRACTOR NO LATER THAN THE EFFECTIVE DATE OF THE PROPOSED CONTRACT.

E. AS USED IN THIS SUBDIVISION, THE TERM "CONTRACT" SHALL NOT INCLUDE CONTRACTS WITH GOVERNMENTAL AND NON-PROFIT ORGANIZATIONS, CONTRACTS AWARDED PURSUANT TO EMERGENCY PROCUREMENT PROCEDURES OR CONTRACTS, RESOLUTIONS, INDENTURES, DECLARATIONS OF TRUST OR OTHER INSTRUMENTS AUTHORIZING OR RELATING TO THE AUTHORIZATION, ISSUANCE, AWARD, SALE OR PURCHASE OF BONDS, CERTIFICATES OF INDEBTEDNESS, NOTES OR OTHER FISCAL OBLIGATIONS, PROVIDED, HOWEVER, THAT A CONTRACT TO PROVIDE FINANCIAL OR LEGAL ADVICE OR MANAGING UNDERWRITER SERVICES IN CONNECTION WITH SUCH ACTIVITIES SHALL BE INCLUDED IN THE TERM "CONTRACT".

S 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.