STATE OF NEW YORK

7578

2021-2022 Regular Sessions

IN SENATE

December 8, 2021

Introduced by Sen. MANNION -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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:

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

d. Commodities and services produced by any qualified charitable nonprofit-making agency for other [~~severely~~] disabled persons approved for such purposes by the commissioner of education, or incorporated under the laws of this state and approved for such purposes by the commissioner of education;

e. Commodities and services produced by a qualified veterans' [~~workshop~~] **entity** providing job and employment-skills training to veterans where such a [~~workshop~~] **entity** is operated by the United States department of veterans affairs and is manufacturing products or performing services within this state and where such [~~workshop~~] **entity** is approved for such purposes by the commissioner of education; or

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

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

(iii) When commodities are available, in the form, function and utility required by, a state agency or political subdivision or public benefit corporation having their own purchasing agency, and such commodities are not available pursuant to subparagraphs (i) and (ii) of this paragraph, said commodities shall then be purchased from a qualified non-profit-making agency for other [~~severely~~] disabled persons, a qualified special employment program for mentally ill persons, or a qualified veterans' [~~workshop~~] **entity; provided, however, the preferred source shall perform fifty percent or more of the work**;

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

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

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

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

c. Such qualified charitable non-profit-making agencies for the blind and other [~~severely~~] disabled may make purchases of materials, equipment or supplies, except printed material, from centralized contracts for commodities in accordance with the conditions set by the office of general services; 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 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.

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

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

10. For purposes of this section the term "political subdivision" shall have the same meaning as set forth in subdivision one of section one hundred of the general municipal law and shall include all "municipal corporations" as such term is defined in the opening paragraph of section two of the general municipal law.

11. The provisions of this section shall apply to any grants issued by the workforce development initiative and shall require utilization of at least fifteen percent of preferred sources for projects receiving such grants.

§ 2. This act shall take effect immediately.