STATE OF NEW YORK

9801

IN ASSEMBLY

April 18, 2022

Introduced by M. of A. EPSTEIN -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the state finance law and the legislative law, in relation to the preferred status and sources for commodities produced by certain organizations and agencies; and to amend chapter 83 of the laws of 1995 amending the state finance law and other laws relating to bonds, notes, and revenues, in relation to extending the expiration date of certain provisions thereof

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

Section 1. Section 162 of the state finance law, as added by chapter 83 of the laws of 1995, subdivision 2 as amended by chapter 501 of the laws of 2002, paragraph b of subdivision 2 as amended by chapter 519 of the laws of 2003, paragraph a of subdivisions 2, 3 and 6, paragraph b of subdivision 3, subparagraph (i) of paragraph a of subdivision 4, subdivision 5, and paragraph d of subdivision 6 as amended by section 164 of subpart B of part C of chapter 62 of the laws of 2011, subparagraph (iii) of paragraph b of subdivision 4 as amended by chapter 430 of the laws of 1997, 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, is amended to read as follows:

§ 162. Preferred sources. 1. Purpose. To advance special social and economic goals, selected providers shall have preferred source status for the purposes of procurement in accordance with the provisions of this section. Procurement from these providers shall be exempted from the competitive procurement provisions of section one hundred sixty-three of this article and other competitive procurement statutes. Such exemption shall apply to commodities produced, manufactured or assembled, including those repackaged to meet the form, function and utility required by state agencies, in New York state and, where so designated, services provided by those sources in accordance with this section.

2. Preferred status. Preferred status as prescribed in this section shall be accorded to:

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

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a. [~~Commodities produced by the correctional industries program of the department of corrections and community supervision and provided to the state pursuant to subdivision two of section one hundred eighty-four of the correction law;~~

~~b.~~] Commodities and services produced by any qualified charitable non-profit-making agency for the blind approved for such purposes by the commissioner of the office of children and family services;

[~~c.~~] **b.** Commodities and services produced by any special employment program serving mentally ill persons, which shall not be required to be incorporated and which is operated by facilities within the office of mental health and is approved for such purposes by the commissioner of mental health;

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

[~~f.~~] **e.** Commodities and services produced by any qualified charitable non-profit-making workshop 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.

3. Public list of services and commodities provided by preferred sources.

a. By December thirty-first, nineteen hundred ninety-five, the commissioner, in consultation with the commissioners of [~~corrections and community supervision,~~] the office of children and family services, the office of temporary and disability assistance, mental health and education, shall prepare a list of all commodities and services that are available and are being provided as of said date, for purchase by state agencies, public benefit corporations or political subdivisions from those entities accorded preference or priority status under this section. Such list may include references to catalogs and other descriptive literature which are available directly from any provider accorded preferred status under this section. The commissioner shall make this list available to prospective vendors, state agencies, public benefit corporations, political subdivisions and other interested parties. Thereafter, new or substantially different commodities or services may only be made available by preferred sources for purchase by more than one state agency, public benefit corporation or political subdivision after addition to said list.

b. After January first, nineteen hundred ninety-six, upon the application of [~~the commissioner of corrections and community supervision,~~] the commissioner of the office of children and family services, the office of temporary and disability assistance, the commissioner of mental health or the commissioner of education, or a non-profit-making facilitating agency designated by one of the said commissioners pursuant to paragraph e of subdivision [~~six~~] **five** of this section, the state procurement council may recommend that the commissioner: (i) add commodities or services to, or (ii) in order to insure that such list reflects current production and/or availability of commodities and services,

delete at the request of a preferred source, commodities or services from, the list established by paragraph a of this subdivision. The council may make a non-binding recommendation to the relevant preferred source to delete a commodity or service from such list. Additions may be made only for new services or commodities, or for services or commodities that are substantially different from those reflected on said list for that provider. The decision to recommend the addition of services or commodities shall be based upon a review of relevant factors as determined by the council including costs and benefits to be derived from such addition and shall include an analysis by the office of general services conducted pursuant to subdivision [~~six~~] **five** of this section. Unless the state procurement council shall make a recommendation to the commissioner on any such application within one hundred twenty days of receipt thereof, such application shall be deemed recommended. In the event that the state procurement council shall deny any such application, the commissioner or non-profit-making agency which submitted such application may, within thirty days of such denial, appeal such denial to the commissioner of general services who shall review all materials submitted to the state procurement council with respect to such application and who may request such further information or material as is deemed necessary. Within sixty days of receipt of all information or materials deemed necessary, the commissioner shall render a written final decision on the application which shall be binding upon the applicant and upon the state procurement council.

c. The list maintained by the office of general services pursuant to paragraph a of this subdivision shall be revised as necessary to reflect the additions and deletions of commodities and services approved by the state procurement council.

4. Priority accorded preferred sources. Except as provided in the New York state printing and public documents law, priority among preferred sources shall be accorded as follows:

a. (i) When commodities are available, in the form, function and utility required by a state agency, public authority, commission, public benefit corporation or political subdivision, said commodities must be purchased first from [~~the correctional industries program of the department of corrections and community supervision~~] **approved charitable non-profit-making agencies for the blind**;

(ii) 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 subparagraph (i) of this paragraph, said commodities shall then be purchased from [~~approved charitable non-profit-making agencies for the blind~~] **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**;

[~~(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;~~]

b. 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. In the case of services:

(i) state agencies or political subdivisions or public benefit corporations having their own purchasing agency shall make reasonable efforts to provide a notification describing their requirements to those preferred sources, or to the facilitating entity identified in paragraph e of subdivision [~~six~~] five of this section, which provide the required services as indicated on the official public list maintained by the office of general services pursuant to subdivision three of this section;

(ii) if, within ten days of the notification required by subparagraph (i) of this paragraph, one or more preferred sources or facilitating entities identified in paragraph e of subdivision [~~six~~] five of this section submit a notice of intent to provide the service in the form, function and utility required, said service shall be purchased in accordance with this section. If more than one preferred source or facilitating entity identified in paragraph e of subdivision [~~six~~] five of this section submits notification of intent and meets the requirements, costs shall be the determining factor for purchase among the preferred sources;

(iii) if, within ten days of the notification required by subparagraph (i) of this paragraph, no preferred source or facilitating entity identified in paragraph e of subdivision [~~six~~] five of this section indicates intent to provide the service, then the service shall be procured in accordance with section one hundred sixty-three of this article. If, after such period, a preferred source elects to bid on the service, award shall be made in accordance with section one hundred sixty-three of this article or as otherwise provided by law.

c. For the purposes of commodities and services produced by special employment programs operated by facilities approved or operated by the office of mental health, facilities within the office of mental health shall be exempt from the requirements of subparagraph (i) of paragraph a of this subdivision. When such requirements of the office of mental health cannot be met pursuant to subparagraph (ii) [~~or (iii)~~] of paragraph a of this subdivision, or paragraph b of this subdivision, the office of mental health may purchase commodities and services which are competitive in price and comparable in quality to those which could otherwise be obtained in accordance with this article, from special employment programs operated by facilities within the office of mental health or other programs approved by the office of mental health.

5. [~~Prices charged by the department of corrections and community supervision. The prices to be charged for commodities produced by the correctional industries program of the department of corrections and community supervision shall be established by the commissioner of corrections and community supervision in accordance with section one hundred eighty-six of the correction law.~~

~~a. The prices established by the commissioner of corrections and community supervision shall be based upon costs as determined pursuant to this subdivision, but shall not exceed a reasonable fair market price determined at or within ninety days before the time of sale. Fair market price as used herein means the price at which a vendor of the same or similar product or service who is regularly engaged in the business of selling such product or service offers to sell such product or service under similar terms in the same market. Costs shall be determined in~~

~~accordance with an agreement between the commissioner of corrections and community supervision and the director of the budget.~~

~~b. A purchaser of any such product or service may, at any time prior to or within thirty days of the time of sale, appeal the purchase price in accordance with section one hundred eighty-six of the correction law, on the basis that it unreasonably exceeds fair market price. Such an appeal shall be decided by a majority vote of a three-member price review board consisting of the director of the budget, the commissioner of corrections and community supervision and the commissioner or their representatives. The decision of the review board shall be final.~~

~~6.~~] Prices charged by agencies for the blind, other severely disabled and veterans' workshops**, and the department of corrections and community supervision**.

a. [~~Except with respect to the correctional industries program of the department of corrections and community supervision, it~~] **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 **the department of corrections and community supervision and** preferred sources as specified in this section offered to state agencies, political subdivisions or public benefit corporations having their own purchasing office.

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. 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 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 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.~~] **6.** Partnering with preferred sources. The commissioner of the appropriate appointing agency as identified in paragraph e of subdivision [~~six~~] **five** 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 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 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 preferred source.

[~~8.~~] **7.** 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~~] **six** 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.

[~~9.~~] **8.** The provisions of this section shall supersede inconsistent provisions of any general, special or local law, or the provisions of any charter.

§ 2. Subparagraph 9 of paragraph a of subdivision 3 of section 139-j of the state finance law, as amended by chapter 265 of the laws of 2013, is amended to read as follows:

(9) Any communications relating to a governmental procurement made under section one hundred sixty-two of the state finance law undertaken by (i) the non-profit-making agencies appointed pursuant to paragraph e

of subdivision [~~six~~] five of section one hundred sixty-two of the state finance law by the commissioner of the office of children and family services, the commission for the blind, or the commissioner of education, and (ii) the qualified charitable non-profit-making agencies for the blind, and qualified charitable non-profit-making agencies for other severely disabled persons as identified in subdivision two of section one hundred sixty-two of this chapter; provided, however, that any communications which attempt to influence the issuance or terms of the specifications that serve as the basis for bid documents, requests for proposals, invitations for bids, or solicitations of proposals, or any other method for soliciting a response from offerers intending to result in a procurement contract with a state agency, the state legislature, the unified court system, a municipal agency or local legislative body shall not be exempt from the provisions of this paragraph;

§ 3. Subparagraph (G) of the second undesignated paragraph of subdivision (c) of section 1-c of the legislative law, as amended by chapter 265 of the laws of 2013, is amended to read as follows:

(G) Any activity relating to governmental procurements made under section one hundred sixty-two of the state finance law undertaken by (i) the non-profit-making agencies appointed pursuant to paragraph e of subdivision [~~six~~] five of section one hundred sixty-two of the state finance law by the commissioner of the office of children and family services, the commission for the blind, or the commissioner of education, and (ii) the qualified charitable non-profit-making agencies for the blind, and qualified charitable non-profit-making agencies for other severely disabled persons as identified in subdivision two of section one hundred sixty-two of the state finance law; provided, however, that any attempt to influence the issuance or terms of the specifications that serve as the basis for bid documents, requests for proposals, invitations for bids, or solicitations of proposals, or any other method for soliciting a response from offerers intending to result in a procurement contract with a state agency, the state legislature, the unified court system, a municipal agency or local legislative body shall not be exempt from the definition of "lobbying" or "lobbying activities" under this subparagraph;

§ 4. Subdivision 5 of section 362 of chapter 83 of the laws of 1995 amending the state finance law and other laws relating to bonds, notes and revenues, as amended by section 1 of part F of chapter 57 of the laws of 2016, is amended to read as follows:

5. Sections thirty-one through forty-two of this act shall take effect on the thirtieth day after it shall have become a law and shall be deemed to have been in full force and effect on and after April 1, 1995; provided that section 163 of the state finance law, as added by section thirty-three of this act shall remain in full force and effect until June 30, [~~2021~~] 2026 at which time it shall expire and be deemed repealed. Contracts executed prior to the expiration of such section 163 shall remain in full force and effect until the expiration of any such contract notwithstanding the expiration of certain provisions of this act.

§ 5. This act shall take effect immediately; provided, however, that the amendments to subparagraph 9 of paragraph a of subdivision 3 of section 139-j of the state finance law made by section two of this act shall not affect the repeal of such section and shall be deemed to be repealed therewith.