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:

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

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

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

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

(ii) to provide to a mentee business that the mentoring program agency has determined has successfully completed the program under subparagraph (i) of this paragraph, for up to four additional years: (A) additional opportunities to compete with other designated mentee businesses in the program for certain contracts to be designated for inclusion under this subparagraph and, where awarded, to perform such contracts, with the further assistance of a competitively selected mentor firm that has extensive management and mentoring experience, with the mentor providing the mentee with advice and technical assistance in competing for and managing contracts; and (B) assistance, as determined by the mentoring 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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contracts that are competitively awarded pursuant to any other provision of law.

2. The term "mentoring program agency" means an agency that has established a mentoring program pursuant to this section.

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

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

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

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

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

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

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

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

5. Competitively select, designate, and contract with one or more experienced firms that, under the general supervision of the mentoring program agency, will provide mentoring services to the mentee businesses, and assign such mentors to one or more designated mentee businesses;

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

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

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

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

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

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

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

3. if the mentoring program contract is awarded to the mentee business, providing guidance, advice, and technical assistance to the mentee business in the performance of the contract; and

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

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

g. 1. Notwithstanding any other subdivision of this section, the mayor may authorize any office of the mayor or any department the head of which is appointed by the mayor to promulgate rules implementing the provisions of subparagraphs one, three, five, six and seven of paragraph one of subdivision C of this section; authorizing such office or department to exercise any power set forth under subparagraphs one, three, five, six and seven of paragraph one of subdivision C of this section; authorizing such office or department and the mentoring program agency to jointly manage the performance of any mentoring program contract, with the assistance of the mentor firm providing services pursuant to subdivision e of this section; or combining two or more mentoring programs, which may include the program established under section twelve hundred six of this charter, into a single centralized mentoring program, provided that no provision of this subdivision shall limit the authority of a mentoring program agency to exercise the authority set forth in subparagraph two or four of paragraph one of subdivision c or subdivision d of this section or otherwise limit an agency's authority to establish the specifications for a contract or to award a contract, and provided further that if the program established pursuant to section twelve hundred six of this charter is centralized pursuant to this subdivision, any such rules promulgated pursuant to this paragraph shall apply to such program.

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

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

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

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

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

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

(iii) all mentees participating in a mentoring program established pursuant to section twelve hundred six of this charter that are small businesses shall be deemed selected for participation in such centralized program, provided that such program established pursuant to section twelve hundred six of this charter is designated as combined into the centralized mentoring program by a rule promulgated pursuant to paragraph one of this subdivision; and

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

h. Commencing on October first, two thousand twenty-four, the department shall submit an annual report to the governor, the temporary president of the senate, and the speaker of the assembly that contains the following information for the preceding city fiscal year:

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

2. mentoring program participation rates; and

3. the degree to which a centralized mentoring program, established pursuant to subdivision g of this section, has achieved a goal established pursuant to such subdivision.

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

(iii) measures to enhance the ability of minority and women owned business enterprises pursuant to section thirteen hundred four of the New York city charter and a certified business as defined in section three hundred ten of the executive law, including firms certified pursuant to article fifteen-A of the executive law and firms certified as minority and women owned business enterprises pursuant to section thirteen hundred four of the New York city charter, to compete for contracts and to ensure their meaningful participation in the procurement process. The [~~school~~] city district shall have the authority to use the same measures[~~,~~] to enhance minority and women owned business enterprise and small business participation as are available to the city of New York pursuant to article five-A of the general municipal law, [~~section~~] sections thirteen hundred four and thirteen hundred nine of the New York city charter, paragraphs one and two of subdivision i of section three hundred eleven of the New York city charter, and section 6-129 of the administrative code of the city of New York, provided that these policies may establish that the city district is subject to the rules and goal authorized under subdivision g of section thirteen hundred nine of such charter with respect to a mentoring program established pursuant to this subparagraph, and provided further that, if such policies subjecting the city district to such rules and goal are adopted, the chancellor and the city, acting by the mayor, may enter into a memorandum of understanding relating to mentoring opportunities authorized under this subparagraph;

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

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

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

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

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

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