

STATE OF NEW YORK

7673--A

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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; and providing for the repeal of certain provisions upon the expiration thereof

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

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

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1 program agency, for such a mentee business to obtain bonding for
2 contracts that are competitively awarded pursuant to any other provision
3 of law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

55 (B) for each year of such centralized program following the first full
56 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. a brief description of (i) each project, (ii) agency compliance with mentoring program contract designation procedures, (iii) the type of assistance provided to obtain any surety bond or contract of insurance, and (iv) the type of technical assistance provided in obtaining a bid, payment, or performance bonding for mentoring program contracts from each mentoring program established under this section;

3. mentoring program participation rates;

4. the participation rate of and total dollar value of monies paid to businesses certified as minority or women-owned business enterprises or emerging business enterprises pursuant to section thirteen hundred four of this chapter or those certified as disadvantaged business enterprises pursuant to part twenty-six of title forty-nine of the code of federal regulations or any successor provisions; and

5. 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~~[7]~~ 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. For the purposes of this act, the following terms shall have the following meanings:

1 a. "mentoring program contract" shall have the same meaning set forth
2 in section 1309 of the New York city charter, as added by section one of
3 this act, and also includes any such contract let pursuant to section
4 402-g of the public housing law or subdivision 7 of section 8 of section
5 1 of chapter 1016 of the laws of 1969, constituting the New York city
6 health and hospitals corporation act, as added by sections three and
7 four of this act, respectively; and

8 b. "school district mentoring program contract" shall mean a contract
9 let pursuant to the terms of section 1309 of the New York city charter
10 and pursuant to the authority set forth in subparagraph (iii) of para-
11 graph a of subdivision 36 of section 2590-h of the education law, as
12 amended by section two of this act.

13 § 7. This act shall take effect on the one hundred twentieth day after
14 it shall have become a law; provided, however:

15 a. sections one, three and four of this act shall expire and be deemed
16 repealed ten years after such date; provided, however, that such expira-
17 tion and repeal shall not affect the solicitation, award, or performance
18 of any mentoring program contract, or any extensions or amendments ther-
19 eto, or the authority to provide any assistance in conjunction with such
20 a mentoring program contract; and

21 b. the amendments to paragraph (a) of subdivision 36 of section 2590-h
22 of the education law made by section two of this act shall not affect
23 the expiration of such section and subdivision and shall expire and be
24 deemed repealed therewith or ten years after such effective date, which-
25 ever shall occur earlier, provided that such expiration and repeal shall
26 not affect the solicitation, award, or performance of any school
27 district mentoring program contract, or any extensions or amendments
28 thereto, or the authority to provide any assistance in conjunction with
29 such a school district mentoring program contract.