STATE OF NEW YORK

9544

IN ASSEMBLY

March 20, 2024

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

AN ACT to amend the state finance law, in relation to preferred source status for entities that provide employment and services to certain persons

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

Section 1. Subdivision 1 of section 162 of the state finance law, as added by chapter 83 of the laws of 1995, is amended to read as follows:

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**, assembled or fulfilled** 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. Paragraph d of subdivision 2 of section 162 of the state finance law, as amended by chapter 565 of the laws of 2022, is amended to read as follows:

d. Commodities and services produced by any qualified charitable nonprofit-making agency for other disabled persons **and/or formerly incarcerated 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;

§ 2-a. Paragraph d of subdivision 2 of section 162 of the state finance law, as amended by chapter 501 of the laws of 2002, is amended to read as follows:

d. Commodities and services produced by any qualified charitable nonprofit-making agency for other severely disabled persons **and/or formerly incarcerated persons** approved for such purposes by the commissioner of

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

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education, or incorporated under the laws of this state and approved for such purposes by the commissioner of education;

§ 3. Subparagraph (iii) of paragraph a of subdivision 4 of section 162 of the state finance law, as amended by chapter 565 of the laws of 2022, is amended to read as follows:

(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 disabled persons **and/or formerly incarcerated persons**, a qualified special employment program for mentally ill persons, or a qualified veterans' entity; provided, however, the preferred source shall perform fifty percent or more of the work;

§ 3-a. Subparagraph (iii) of paragraph a of subdivision 4 of section 162 of the state finance law, as added by chapter 83 of the laws of 1995, is amended to read as follows:

(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 **and/or formerly incarcerated persons**, a qualified special employment program for mentally ill persons, or a qualified veterans' workshop;

§ 4. The opening paragraph of paragraph b of subdivision 4 of section 162 of the state finance law, as amended by chapter 565 of the laws of 2022, is amended to read as follows:

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 disabled **persons and/or formerly incarcerated persons**, by qualified special employment programs for mentally ill persons and by qualified veterans' entities; provided, however, the preferred source shall perform fifty percent or more of the work. In the case of services:

§ 4-a. The opening paragraph of paragraph b of subdivision 4 of section 162 of the state finance law, as added by chapter 83 of the laws of 1995, is amended to read as follows:

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 **persons and/or formerly incarcerated persons**, by qualified special employment programs for mentally ill persons and by qualified veterans' workshops. In the case of services:

§ 5. Subdivision 5 of section 162 of the state finance law is amended by adding a new paragraph c to read as follows:

c. Such qualified charitable non-profit-making agencies for the blind and other disabled persons and/or formerly incarcerated persons may make purchases of services from a responsible sub-contractor so long as said purchase is de minimis to the overall contract. For purposes of this paragraph, "de minimis" means not to exceed eight percent of the overall contract value.

§ 6. Subdivision 6 of section 162 of the state finance law, as amended by chapter 565 of the laws of 2022, is amended to read as follows:

6. Prices charged by agencies for the blind, other disabled **persons and/or formerly incarcerated persons** and veterans' 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 one hundred 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 for the same or equivalent commodities or services.

c. Such qualified charitable non-profit-making agencies for the blind and other disabled **persons and/or formerly incarcerated persons** 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 disabled **persons and/or formerly incarcerated persons** shall accept sole responsibility for any payment due the vendor.

d. Such qualified charitable non-profit-making agencies for the blind and other disabled **persons and/or formerly incarcerated persons** 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 disabled **persons and/or formerly incarcerated persons** 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 disabled **persons and/or formerly incarcerated persons**, 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 disabled **persons and/or formerly incarcerated persons** and the veterans' 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 disabled **persons and/or formerly incarcerated persons**, any special employment program for mentally ill

persons or any veterans' 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' 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. This act shall take effect immediately; provided, however, that:

(a) the amendment to paragraph d of subdivision 2 of section 162 of the state finance law made by section two of this act shall be subject to the expiration and reversion of such paragraph pursuant to section 4 of chapter 565 of the laws of 2022, as amended, when upon such date the provisions of section two-a of this act shall take effect;

(b) the amendment to subparagraph (iii) of paragraph a of subdivision 4 of section 162 of the state finance law made by section three of this act shall be subject to the expiration and reversion of such subparagraph pursuant to section 4 of chapter 565 of the laws of 2022, as amended, when upon such date the provisions of section three-a of this act shall take effect; and

(c) the amendments to the opening paragraph of paragraph b of subdivision 4 of section 162 of the state finance law made by section four of this act shall be subject to the expiration and reversion of such paragraph pursuant to section 4 of chapter 565 of the laws of 2022, as amended, when upon such date the provisions of section four-a of this act shall take effect.