

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:

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

3 1. Purpose. To advance special social and economic goals, selected
4 providers shall have preferred source status for the purposes of
5 procurement in accordance with the provisions of this section. Procure-
6 ment from these providers shall be exempted from the competitive
7 procurement provisions of section one hundred sixty-three of this arti-
8 cle and other competitive procurement statutes. Such exemption shall
9 apply to commodities produced, manufactured or assembled, including
10 those repackaged, assembled or fulfilled to meet the form, function and
11 utility required by state agencies, in New York state and, where so
12 designated, services provided by those sources in accordance with this
13 section.

14 § 2. Paragraph d of subdivision 2 of section 162 of the state finance
15 law, as amended by chapter 565 of the laws of 2022, is amended to read
16 as follows:

17 d. Commodities and services produced by any qualified charitable non-
18 profit-making agency for other disabled persons and/or formerly incar-
19 cerated persons approved for such purposes by the commissioner of educa-
20 tion, or incorporated under the laws of this state and approved for such
21 purposes by the commissioner of education;

22 § 2-a. Paragraph d of subdivision 2 of section 162 of the state
23 finance law, as amended by chapter 501 of the laws of 2002, is amended
24 to read as follows:

25 d. Commodities and services produced by any qualified charitable non-
26 profit-making agency for other severely disabled persons and/or formerly
27 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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1 education, or incorporated under the laws of this state and approved for
2 such purposes by the commissioner of education;

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

6 (iii) When commodities are available, in the form, function and utili-
7 ty required by, a state agency or political subdivision or public bene-
8 fit corporation having their own purchasing agency, and such commodities
9 are not available pursuant to subparagraphs (i) and (ii) of this para-
10 graph, said commodities shall then be purchased from a qualified non-
11 profit-making agency for other disabled persons and/or formerly incar-
12 cerated persons, a qualified special employment program for mentally ill
13 persons, or a qualified veterans' entity; provided, however, the
14 preferred source shall perform fifty percent or more of the work;

15 § 3-a. Subparagraph (iii) of paragraph a of subdivision 4 of section
16 162 of the state finance law, as added by chapter 83 of the laws of
17 1995, is amended to read as follows:

18 (iii) When commodities are available, in the form, function and utili-
19 ty required by, a state agency or political subdivision or public bene-
20 fit corporation having their own purchasing agency, and such commodities
21 are not available pursuant to subparagraphs (i) and (ii) of this para-
22 graph, said commodities shall then be purchased from a qualified non-
23 profit-making agency for other severely disabled persons and/or formerly
24 incarcerated persons, a qualified special employment program for mental-
25 ly ill persons, or a qualified veterans' workshop;

26 § 4. The opening paragraph of paragraph b of subdivision 4 of section
27 162 of the state finance law, as amended by chapter 565 of the laws of
28 2022, is amended to read as follows:

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

38 § 4-a. The opening paragraph of paragraph b of subdivision 4 of
39 section 162 of the state finance law, as added by chapter 83 of the laws
40 of 1995, is amended to read as follows:

41 When services are available, in the form, function and utility
42 required by, a state agency or political subdivision or public benefit
43 corporation having their own purchasing agency, equal priority shall be
44 accorded the services rendered and offered for sale by qualified non-
45 profit-making agencies for the blind and those for [~~the~~] other severely
46 disabled persons and/or formerly incarcerated persons, by qualified
47 special employment programs for mentally ill persons and by qualified
48 veterans' workshops. In the case of services:

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

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

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

3 6. Prices charged by agencies for the blind, other disabled persons
4 and/or formerly incarcerated persons and veterans' entity.

5 a. Except with respect to the correctional industries program of the
6 department of corrections and community supervision, it shall be the
7 duty of the commissioner to determine, and from time to time review, the
8 prices of all commodities and to approve the price of all services
9 provided by preferred sources as specified in this section offered to
10 state agencies, political subdivisions or public benefit corporations
11 having their own purchasing office. The commissioner's price review and
12 approval shall not be required for any purchases below one hundred thou-
13 sand dollars.

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

22 c. Such qualified charitable non-profit-making agencies for the blind
23 and other disabled persons and/or formerly incarcerated persons may make
24 purchases of materials, equipment or supplies, except printed material,
25 from centralized contracts for commodities in accordance with the condi-
26 tions set by the office of general services; provided that the qualified
27 charitable non-profit-making agency for the blind or other disabled
28 persons and/or formerly incarcerated persons shall accept sole responsi-
29 bility for any payment due the vendor.

30 d. Such qualified charitable non-profit-making agencies for the blind
31 and other disabled persons and/or formerly incarcerated persons may make
32 purchases of materials, equipment and supplies directly from the correc-
33 tional industries program administered by the commissioner of
34 corrections and community supervision, subject to such rules as may be
35 established from time to time pursuant to the correction law; provided
36 that the qualified charitable non-profit-making agency for the blind or
37 other disabled persons and/or formerly incarcerated persons shall accept
38 sole responsibility for any payment due the department of corrections
39 and community supervision.

40 e. The commissioner of the office of children and family services
41 shall appoint the New York state commission for the blind, or other
42 non-profit-making agency, other than the agency representing [~~the~~] other
43 disabled persons and/or formerly incarcerated persons, to facilitate the
44 distribution of orders among qualified non-profit-making charitable
45 agencies for the blind. The state commissioner of education shall
46 appoint a non-profit-making agency, other than the agency representing
47 the blind, to facilitate the distribution of orders among qualified
48 non-profit-making charitable agencies for [~~the~~] other disabled persons
49 and/or formerly incarcerated persons and the veterans' entities. The
50 state commissioner of mental health shall facilitate the distribution of
51 orders among qualified special employment programs operated or approved
52 by the office of mental health serving mentally ill persons.

53 f. The commissioner may request the state comptroller to conduct
54 audits and examinations to be made of all records, books and data of any
55 agency for the blind or [~~the~~] other disabled persons and/or formerly
56 incarcerated persons, any special employment program for mentally ill

1 persons or any veterans' entity qualified under this section to deter-
2 mine the costs of manufacture or the rendering of services and the
3 manner and efficiency of production and administration of such agency or
4 special employment program or veterans' entity with relation to any
5 product or services purchased by a state agency or political subdivision
6 or public benefit corporation and to furnish the results of such audit
7 and examination to the commissioner for such action as he or she may
8 deem appropriate under this section.

9 § 7. This act shall take effect immediately; provided, however, that:

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

15 (b) the amendment to subparagraph (iii) of paragraph a of subdivision
16 4 of section 162 of the state finance law made by section three of this
17 act shall be subject to the expiration and reversion of such subpara-
18 graph pursuant to section 4 of chapter 565 of the laws of 2022, as
19 amended, when upon such date the provisions of section three-a of this
20 act shall take effect; and

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