STATE OF NEW YORK

6161

2023-2024 Regular Sessions

IN SENATE

March 31, 2023

Introduced by Sen. ASHBY -- read twice and ordered printed, and when printed to be committed to the Committee on Veterans, Homeland Security and Military Affairs

AN ACT to amend the veterans' services law, the cannabis law, the labor law, the state finance law and the state technology law, in relation to participation by veterans with respect to state contracts

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

Section 1. The article heading of article 3 of the veterans' services law is amended to read as follows:

PARTICIPATION BY [~~SERVICE-DISABLED~~] VETERANS WITH RESPECT TO STATE CONTRACTS

§ 2. Subdivisions 1, 3 and 4 of section 40 of the veterans' services law are amended to read as follows:

1. "Certified [~~service-disabled~~] veteran-owned business enterprise" shall mean a business enterprise, including a sole proprietorship, partnership, limited liability company or corporation that is:

(a) at least fifty-one percent owned by one or more [~~service-disabled~~] veterans;

(b) an enterprise in which such [~~service-disabled~~] veteran ownership is real, substantial, and continuing;

(c) an enterprise in which such [~~service-disabled~~] veteran ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise;

(d) an enterprise authorized to do business in this state and is independently-owned and operated;

(e) an enterprise that is a small business which has a significant business presence in the state, not dominant in its field and employs, based on its industry, a certain number of persons as determined by the director, but not to exceed three hundred, taking into consideration factors which include, but are not limited to, federal small business

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

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administration standards pursuant to 13 CFR part 121 and any amendments thereto; and

(f) certified by the office of general services.

3. "Director" shall mean the director of the division of [~~service-disabled~~] veterans' business development.

4. "Division" shall mean the division of [~~service-disabled~~] veterans' business development in the office of general services.

§ 3. Section 41 of the veterans' services law is amended to read as follows:

§ 41. Division of [~~service-disabled~~] veterans' business development. 1. The head of the division of [~~service-disabled~~] veterans' business development shall be the director who shall be appointed by the governor and who shall hold office at the pleasure of the commissioner.

2. The director may appoint such deputies, assistants, and other employees as may be needed for the performance of the duties prescribed herein subject to the provisions of the civil service law and the rules and regulations of the civil service commission. The director may request and shall receive from any (i) department, division, board, bureau, or executive commission of the state or (ii) state agency, such assistance as may be necessary to carry out the provisions of this article.

3. The director shall have the following powers and duties:

(a) Develop, collect, summarize and disseminate information that will be helpful to persons and organizations throughout the state in undertaking or promoting the establishment and successful operation of a [~~service-disabled~~] veteran-owned business.

(b) Develop and make available to state agencies a directory of certified [~~service-disabled~~] veteran-owned business enterprises which shall, wherever practicable, be divided into categories of labor, services, supplies, equipment, materials and recognized construction trades and which shall indicate areas or locations of the state where such enterprises are available to perform services. Such directory shall be posted on the office of general services website.

(c) Assist state agencies in the development of programs to foster and promote the use of [~~service-disabled~~] veteran-owned business enterprises on state contracts.

(d) Coordinate the plans, programs and operations of the state government which affect or may contribute to the establishment, preservation and development of [~~service-disabled~~] veteran-owned business enterprises.

(e) To appoint independent hearing officers who by contract or terms of employment shall preside over adjudicatory hearings pursuant to this section for the office and who are assigned no other work by the office.

(f) In conjunction with the commissioner, develop a comprehensive statewide plan and operational guidelines to promote [~~service-disabled~~] veteran-owned business enterprises and to assist them in obtaining opportunities to participate in the procurement of goods and services by the state, including identification of barriers to **veterans' and** service-disabled veterans' business development and investigation and evaluation of their impact on achieving the objectives of this article.

4. The commissioner shall:

(a) Coordinate training of all procurement personnel of state agencies, emphasizing increased sensitivity and responsiveness to the unique needs and requirements of [~~service-disabled~~] veteran-owned business enterprises.

(b) Conduct a coordinated review of all existing and proposed state training and technical assistance activities in direct support of the [~~service-disabled~~] veterans' business development program to assure consistency with the objectives of this article.

(c) Evaluate and assess availability of firms for the purpose of increasing participation of such firms in state contracting in consultation with relevant state entities including, but not limited to, the New York state department of veterans' services.

(d) Provide advice and technical assistance to promote [~~service-disabled~~] veteran-owned business enterprises' understanding of state procurement laws, practices and procedures to facilitate and increase the participation of [~~service-disabled~~] veteran-owned business enterprises in state procurement.

(e) Establish regular performance reporting systems regarding implementation of the programs designed to increase [~~service-disabled~~] veteran-owned business participation in procurement contracts by state agencies.

(f) Submit a report by the thirty-first of December each year, to the governor, the temporary president of the senate, the speaker of the assembly and the chairpersons of the senate finance and assembly ways and means committees. Such report shall include information including, but not limited to, the number of contracts entered into pursuant to this article, the average amount of such contracts, the number of [~~service-disabled~~] veteran-owned business enterprises certified, the number of applications for certification as a [~~service-disabled~~] veteran-owned business enterprise, the number of denials for such certification, the number of appeals of such denials, and the outcome of such appeals and the average time that is required for such certification to be completed. Also to be included shall be the level of [~~service-disabled~~] veteran-owned businesses participating in each agency's contracts for goods and services and on activities of the division and efforts by each contracting agency to promote utilization of [~~service-disabled~~] veteran-owned businesses and to promote and increase participation by certified [~~service-disabled~~] veteran-owned businesses with respect to state contracts and subcontracts to such businesses. Such report may recommend new activities and programs to effectuate the purposes of this article.

5. Certification. (a) The director, or in the absence of the director, the commissioner, within ninety days of the effective date of this article, shall promulgate rules and regulations providing for the establishment of a statewide certification program including rules and regulations governing the approval, denial, or revocation of any such certification. Such rules and regulations shall include, but not be limited to, such matters as may be required to ensure that the established procedures thereunder shall at least be in compliance with the code of fair procedure set forth in section seventy-three of the civil rights law.

(b) The division of [~~service-disabled~~] veterans' business development shall be responsible for verifying businesses as being owned, operated, and controlled by a [~~service-disabled~~] veteran and for certifying such verified businesses. Status as a [~~service-disabled~~] veteran pursuant to paragraph (a) of this subdivision shall be documented by a copy of the veteran's certificate of release or discharge from active duty, including but not limited to, a DD-214 form or an honorable service certificate/report of casualty from the Department of Defense, a letter of certification by the United States Department of Veterans Affairs or

the United States Department of Defense and any additional information that may be required by the division of [~~service-disabled~~] veterans' business development. In the case of the New York guard or the New York naval militia and/or reserves thereof, status as a [~~service-disabled~~] veteran pursuant to this paragraph shall be documented pursuant to rules and regulations promulgated by the director, or in the absence of the director, the commissioner.

(c) Following application for certification pursuant to this section, the director shall provide the applicant with written notice of the status of the application, including notice of any outstanding deficiencies, within thirty days. Within sixty days of submission of a final completed application, the director shall provide the applicant with written notice of a determination by the director approving or denying such certification and, in the event of a denial, a statement setting forth the reasons for such denial. Upon a determination denying or revoking certification, the business enterprise for which certification has been so denied or revoked shall, upon written request made within thirty days from receipt of notice of such determination, be entitled to a hearing before an independent hearing officer designated for such purpose by the director. In the event that a request for a hearing is not made within such thirty-day period, such determination shall be deemed to be final. The independent hearing officer shall conduct a hearing and upon the conclusion of such hearing, issue a written recommendation to the director to affirm, reverse, or modify such determination of the director. Such written recommendation shall be issued to the parties. The director, within thirty days, by order, must accept, reject or modify such recommendation of the hearing officer and set forth in writing the reason therefor. The director shall serve a copy of such order and reasons therefor upon the business enterprise by personal service or by certified mail return receipt requested. The order of the director shall be subject to review pursuant to article seventy-eight of the civil practice law and rules.

(d) All certifications shall be valid for a period of five years.

§ 4. Section 42 of the veterans' services law is amended to read as follows:

§ 42. Opportunities for certified [~~service-disabled~~] veteran-owned business enterprises. 1. The director, or in the absence of the director, the commissioner, within ninety days of the effective date of this article shall promulgate rules and regulations for the following purposes:

(a) provide measures and procedures to ensure that certified [~~service-disabled~~] veteran-owned business enterprises are afforded the opportunity for meaningful participation in the performance of state contracts and to assist in state agencies' identification of those state contracts for which certified [~~service-disabled~~] veteran-owned business enterprises may best perform;

(b) provide for measures and procedures that assist state agencies in the identification of state contracts where [~~service-disabled~~] veteran contract goals are practical, feasible and appropriate for the purpose of increasing the utilization of [~~service-disabled~~] veteran-owned business enterprise participation on state contracts;

(c) achieve a statewide goal for participation on state contracts by [~~service-disabled~~] veteran-owned business enterprises of six percent;

(d) provide for procedures relating to submission and receipt of applications by [~~service-disabled~~] veteran-owned business enterprises for certification;

(e) provide for the monitoring and compliance of state contracts by state agencies with respect to the provisions of this article;

(f) provide for the requirement that state agencies submit regular reports, as determined by the director, with respect to their [~~service-disabled~~] veteran-owned business enterprise program activity, including but not limited to, utilization reporting and state contract monitoring and compliance;

(g) notwithstanding any provision of the state finance law, the public buildings law, the highway law, the transportation law or the public authorities law to the contrary, provide for the reservation or set-a-side of certain procurements by state agencies in order to achieve the objectives of this article; provided, however, that such procurements shall remain subject to (i) priority of preferred sources pursuant to sections one hundred sixty-two and one hundred sixty-three of the state finance law; (ii) the approval of the comptroller of the state of New York pursuant to section one hundred twelve and section one hundred sixty-three of the state finance law and section twenty-eight hundred seventy-nine-a of the public authorities law; and (iii) the procurement record requirements pursuant to paragraph g of subdivision nine of section one hundred sixty-three of the state finance law; and

(h) provide for any other purposes to effectuate this article.

2. State agencies shall administer the rules and regulations promulgated by the director for the implementation of this article.

§ 5. Subdivision 28 of section 4 of the veterans' services law is amended to read as follows:

28. To include within the annual report as required by subdivision seventeen of this section an accounting of the number of veteran-owned small businesses in the state of New York, to be listed by the following designations: small business concern owned and controlled by veterans as set forth in 15 U.S.C. section 632(Q)(3), as amended from time to time, and [~~service-disabled~~] veteran-owned business enterprise as set forth in article three of this chapter. Such listing shall include but not be limited to the name of the veteran owner or owners of each business, location of each such business, the type of each such business and whenever practicable, be divided into categories of labor, services, equipment, materials and recognized construction trades. The department shall request this information annually from the U.S. department of veterans affairs, any other appropriate federal agencies and the department of [~~service-disabled~~] veterans' business development within the New York state office of general services.

§ 6. Clause (B) of subparagraph (v) of paragraph (a) of subdivision 3 of section 35 of the cannabis law is amended to read as follows:

(B) whether the registered organization is a minority and/or woman owned business enterprise, a [~~service-disabled~~] veteran-owned business, or from communities disproportionally impacted by the enforcement of cannabis prohibition;

§ 7. The section heading, subdivision 1, paragraph (f) of subdivision 2, and paragraph (f) of subdivision 5 of section 87 of the cannabis law, paragraph (f) of subdivision 5 as amended by section 29 of part PP of chapter 56 of the laws of 2022, are amended to read as follows:

Social and economic equity, minority and women-owned businesses, distressed farmers and [~~service-disabled~~] veterans; incubator program.

1. The board, in consultation with the chief equity officer and executive director, and after receiving public input shall create and implement a social and economic equity plan and actively promote applicants from communities disproportionately impacted by cannabis prohibition,

and promote racial, ethnic, and gender diversity when issuing licenses for adult-use cannabis related activities, including mentoring potential applicants, by prioritizing consideration of applications by applicants who are from communities disproportionately impacted by the enforcement of cannabis prohibition or who qualify as a minority or women-owned business, distressed farmers, or [~~service-disabled~~] veterans. Such qualifications shall be determined by the board, with recommendations from the state cannabis advisory board, the chief equity officer and executive director, by regulation.

(f) [~~service-disabled~~] veterans.

(f) "[~~Service-disabled veterans~~] **Veterans**" shall mean persons qualified under article three of the veterans' services law.

§ 8. Subdivision 6 of section 224-d of the labor law, as amended by section 30 of part PP of chapter 56 of the laws of 2022, is amended to read as follows:

6. Each owner and developer subject to the requirements of this section shall comply with the objectives and goals of certified minority and women-owned business enterprises pursuant to article fifteen-A of the executive law and certified [~~service-disabled~~] veteran-owned businesses pursuant to article three of the veterans' services law. The department in consultation with the commissioner of the division of minority and women's business development and the director of the division of [~~service-disabled~~] veterans' business development shall make training and resources available to assist minority and women-owned business enterprises and [~~service-disabled~~] veteran-owned business enterprises on covered renewable energy systems to achieve and maintain compliance with prevailing wage requirements. The department shall make such training and resources available online and shall afford minority and women-owned business enterprises and [~~service-disabled~~] veteran-owned business enterprises an opportunity to submit comments on such training.

§ 9. Subdivision 1 of section 143 of the state finance law, as amended by section 27 of part PP of chapter 56 of the laws of 2022, is amended to read as follows:

1. Notwithstanding any inconsistent provision of any general or special law, the board, division, department, bureau, agency, officer or commission of the state charged with the duty of preparing plans and specifications for and awarding or entering into contracts for the performance of public work may require the payment of a fixed sum of money, not exceeding one hundred dollars, for each copy of such plans and specifications, by persons or corporations desiring a copy thereof. Any person or corporation desiring a copy of such plans and specifications and making the deposit required by this section shall be furnished with one copy of the plans and specifications. Notwithstanding the foregoing, where payment is required it shall be waived upon request by minority- and women-owned business enterprises certified pursuant to article fifteen-A of the executive law or by [~~service-disabled~~] veteran-owned business enterprises certified pursuant to article three of the veterans' services law. Such payment may also be waived when such plans and specifications are made available and obtained electronically or in any non-paper form from the board, division, department, bureau, agency, officer or commission of the state.

§ 10. Paragraph j of subdivision 1 and subdivision 6-d of section 163 of the state finance law, as amended by section 28 of part PP of chapter 56 of the laws of 2022, are amended to read as follows:

j. "Best value" means the basis for awarding contracts for services to the offerer which optimizes quality, cost and efficiency, among responsive and responsible offerers. Such basis shall reflect, wherever possible, objective and quantifiable analysis. Such basis may also identify a quantitative factor for offerers that are small businesses, certified minority- or women-owned business enterprises as defined in subdivisions one, seven, fifteen and twenty of section three hundred ten of the executive law or [~~service-disabled~~] veteran-owned business enterprises as defined in subdivision one of section forty of the veterans' services law to be used in evaluation of offers for awarding of contracts for services.

6-d. Pursuant to the authority provided in subdivision six of this section, state agencies shall report annually on a fiscal year basis by July first of the ensuing year to the director of the division of minority and women-owned business development the total number and total value of contracts awarded to businesses certified pursuant to article fifteen-A of the executive law, and with respect to contracts awarded to businesses certified pursuant to article three of the veterans' services law such information shall be reported to the division of [~~service-disabled~~] veteran-owned business enterprises for inclusion in their respective annual reports.

§ 11. Subdivision 3 of section 103-a of the state technology law, as amended by section 31 of part PP of chapter 56 of the laws of 2022, is amended to read as follows:

3. The director shall conduct an outreach campaign informing the public of the iCenter and shall conduct specific outreach to minority and women-owned business enterprises certified pursuant to article fifteen-A of the executive law, small businesses as such term is defined in section one hundred thirty-one of the economic development law, and [~~service-disabled~~] veteran owned business enterprises certified pursuant to article three of the veterans' services law to inform such businesses of iCenter initiatives.

§ 12. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that:

(a) if section 2 of part PP of chapter 56 of the laws of 2022 shall not have taken effect on or before such date then sections one, two, three, four, five and six of this act shall take effect on the same date and in the same manner as such chapter of the laws of 2022 takes effect;

(b) if section 29 of part PP of chapter 56 of the laws of 2022 shall not have taken effect on or before such date then section seven of this act shall take effect on the same date and in the same manner as such chapter of the laws of 2022 takes effect;

(c) if section 30 of part PP of chapter 56 of the laws of 2022 shall not have taken effect on or before such date then section eight of this act shall take effect on the same date and in the same manner as such chapter of the laws of 2022 takes effect;

(d) if section 27 of part PP of chapter 56 of the laws of 2022 shall not have taken effect on or before such date then section nine of this act shall take effect on the same date and in the same manner as such chapter of the laws of 2022 takes effect;

(e) if section 28 of part PP of chapter 56 of the laws of 2022 shall not have taken effect on or before such date then section ten of this act shall take effect on the same date and in the same manner as such chapter of the laws of 2022 takes effect;

(f) if section 31 of part PP of chapter 56 of the laws of 2022 shall not have taken effect on or before such date then section eleven of this

act shall take effect on the same date and in the same manner as such chapter of the laws of 2022 takes effect; and

(g) the amendments to section 163 of the state finance law made by section ten of this act shall not affect the repeal of such section and shall be deemed repealed therewith.