

# STATE OF NEW YORK

8937--A

## IN SENATE

April 1, 2024

Introduced by Sens. COONEY, ASHBY -- read twice and ordered printed, and when printed to be committed to the Committee on Procurement and Contracts -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

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

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

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

18 § 3-a. Subparagraph (iii) of paragraph a of subdivision 4 of section  
19 162 of the state finance law, as added by chapter 83 of the laws of  
20 1995, is amended to read as follows:

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

29 § 4. The opening paragraph of paragraph b of subdivision 4 of section  
30 162 of the state finance law, as amended by chapter 565 of the laws of  
31 2022, is amended to read as follows:

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

41 § 4-a. The opening paragraph of paragraph b of subdivision 4 of  
42 section 162 of the state finance law, as added by chapter 83 of the laws  
43 of 1995, is amended to read as follows:

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

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

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

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

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

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

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

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

49 f. The commissioner may request the state comptroller to conduct  
50 audits and examinations to be made of all records, books and data of any  
51 agency for the blind or [~~the~~] other disabled persons and/or formerly  
52 incarcerated persons, any special employment program for mentally ill  
53 persons or any veterans' entity qualified under this section to deter-  
54 mine the costs of manufacture or the rendering of services and the  
55 manner and efficiency of production and administration of such agency or  
56 special employment program or veterans' entity with relation to any

1 product or services purchased by a state agency or political subdivision  
2 or public benefit corporation and to furnish the results of such audit  
3 and examination to the commissioner for such action as he or she may  
4 deem appropriate under this section.

5 § 6. This act shall take effect immediately; provided, however, that:

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

11 (b) the amendment to subparagraph (iii) of paragraph a of subdivision  
12 4 of section 162 of the state finance law made by section three of this  
13 act shall be subject to the expiration and reversion of such subpara-  
14 graph pursuant to section 4 of chapter 565 of the laws of 2022, as  
15 amended, when upon such date the provisions of section three-a of this  
16 act shall take effect; and

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