

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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d. Commodities and services produced by any qualified charitable non-profit-making agency for other severely 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;

§ 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 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.

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.