

# STATE OF NEW YORK

7526

2023-2024 Regular Sessions

## IN SENATE

June 2, 2023

Introduced by Sen. COMRIE -- (at request of the Mayor's Office of Minority and Women-owned Business Enterprises) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the New York city charter, the education law, the public housing law and the New York city health and hospitals corporation act, in relation to construction and mentoring programs; and providing for the repeal of certain provisions upon the expiration thereof

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

1 Section 1. The New York city charter is amended by adding a new  
2 section 1309 to read as follows:

3 § 1309. Mentoring program. a. As used in this section, the following  
4 terms shall have the following meanings:

5 1. The term "mentoring program" means a program established pursuant  
6 to this section:

7 (i) to provide mentee businesses with the opportunity for up to four  
8 years, to compete for and, where awarded, to perform certain contracts  
9 designated for inclusion in the mentoring program, with the assistance  
10 of a competitively selected mentor firm that has extensive management  
11 and mentoring experience, with the mentor providing the mentee business  
12 with advice and assistance in competing for and managing contracts; and

13 (ii) to provide to a mentee business that the mentoring program agency  
14 has determined has successfully completed the program under subparagraph  
15 (i) of this paragraph, for up to four additional years: (A) additional  
16 opportunities to compete with other designated mentee businesses in the  
17 program for certain contracts to be designated for inclusion under this  
18 subparagraph and, where awarded, to perform such contracts, with the  
19 further assistance of a competitively selected mentor firm that has  
20 extensive management and mentoring experience, with the mentor providing  
21 the mentee with advice and technical assistance in competing for and  
22 managing contracts; and (B) assistance, as determined by the mentoring

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

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1 program agency, for such a mentee business to obtain bonding for  
2 contracts that are competitively awarded pursuant to any other provision  
3 of law.

4 2. The term "mentoring program agency" means an agency that has estab-  
5 lished a mentoring program pursuant to this section.

6 3. The term "mentoring program contract" means a contract designated  
7 by the mentoring program agency, in an estimated amount of not more than  
8 one million five hundred thousand dollars for contracts under subpara-  
9 graph (i) of paragraph one of this subdivision and five million dollars  
10 for contracts under subparagraph (ii) of such paragraph, for which bids  
11 or proposals are to be invited and accepted only from businesses that  
12 are enrolled in a mentoring program and have been selected by the  
13 mentoring program to compete for the contract.

14 4. The term "small business" means a business that: is independently  
15 owned and operated; and has annual revenues that do not exceed an aver-  
16 age of five million dollars for the three preceding fiscal years, as  
17 calculated at the end of each fiscal year, or such lesser amount as  
18 established by the mentoring program agency pursuant to this section.

19 b. Any agency may establish a mentoring program for small businesses  
20 in the construction trades.

21 c. Notwithstanding any other law, including section two thousand five  
22 hundred four of the insurance law, except as otherwise provided in  
23 subdivision g of this section, a mentoring program agency shall have the  
24 authority to:

25 1. Determine the criteria pursuant to which a small business shall be  
26 eligible for and selected as a mentee business participating in the  
27 components of its mentoring program, as set forth in subparagraphs (i)  
28 and (ii) of paragraph one of subdivision a of this section, the number  
29 of mentee businesses to participate in each such component of such a  
30 program, the criteria for the competitive selection of the firms that  
31 will provide mentoring services, and the assignment of a mentor to a  
32 specific mentee business;

33 2. Designate which eligible contracts shall be mentoring program  
34 contracts;

35 3. Establish standards for qualifying mentee businesses to compete for  
36 a mentoring program contract, consistent with subdivision d of this  
37 section;

38 4. Determine when bids or proposals for a mentoring program contract  
39 should be restricted to mentee businesses that, prior to the receipt of  
40 bids or proposals, have been qualified for such competition;

41 5. Competitively select, designate, and contract with one or more  
42 experienced firms that, under the general supervision of the mentoring  
43 program agency, will provide mentoring services to the mentee busi-  
44 nesses, and assign such mentors to one or more designated mentee busi-  
45 nesses;

46 6. Assist mentee businesses that have been awarded mentoring program  
47 contracts to obtain any surety bond or contract of insurance required of  
48 them in connection with such contract only; and

49 7. Provide mentee businesses technical assistance in obtaining bid,  
50 payment, and performance bonding for contracts that are not mentoring  
51 program contracts, for which such businesses are otherwise qualified.

52 d. If the total number of qualified mentee businesses that respond to  
53 a competition and are considered capable of meeting the specifications  
54 and terms of the invitation to compete is less than three, or if the  
55 mentoring program agency determines that acceptance of the best offer  
56 will result in the payment of an unreasonable price, the agency shall

1 reject all offers and withdraw the designation of the contract as a  
2 mentoring program contract. If the agency withdraws the designation of  
3 such contract as a mentoring program contract, the mentee businesses, if  
4 any, that made offers shall be notified.

5 e. A mentor shall provide construction management services to a  
6 mentoring program agency in relation to a mentoring program contract and  
7 services and assistance to a mentee business, as designated by the  
8 mentoring program agency, including but not limited to the following:

9 1. providing business training in the skills necessary to operate a  
10 successful business and to compete for and perform a contract;

11 2. providing technical assistance to the mentee business to assess the  
12 outcome if the mentee business competes for but is not awarded a  
13 contract;

14 3. if the mentoring program contract is awarded to the mentee busi-  
15 ness, providing guidance, advice, and technical assistance to the mentee  
16 business in the performance of the contract; and

17 4. providing other technical assistance to the mentee business to  
18 facilitate learning, training, and resolution of other issues that may  
19 arise.

20 f. Except as provided in subdivision g of this section, any mentoring  
21 program agency may promulgate rules implementing the provisions of this  
22 section.

23 g. 1. Notwithstanding any other subdivision of this section, the mayor  
24 may authorize any office of the mayor or any department the head of  
25 which is appointed by the mayor to promulgate rules implementing the  
26 provisions of subparagraphs one, three, five, six and seven of paragraph  
27 one of subdivision c of this section; authorizing such office or depart-  
28 ment to exercise any power set forth under subparagraphs one, three,  
29 five, six and seven of paragraph one of subdivision c of this section;  
30 authorizing such office or department and the mentoring program agency  
31 to jointly manage the performance of any mentoring program contract,  
32 with the assistance of the mentor firm providing services pursuant to  
33 subdivision e of this section; or combining two or more mentoring  
34 programs, which may include the program established under section twelve  
35 hundred six of this charter, into a single centralized mentoring  
36 program, provided that no provision of this subdivision shall limit the  
37 authority of a mentoring program agency to exercise the authority set  
38 forth in subparagraph two or four of paragraph one of subdivision c or  
39 subdivision d of this section or otherwise limit an agency's authority  
40 to establish the specifications for a contract or to award a contract,  
41 and provided further that if the program established pursuant to section  
42 twelve hundred six of this charter is centralized pursuant to this  
43 subdivision, any such rules promulgated pursuant to this paragraph shall  
44 apply to such program.

45 2. If the mayor authorizes an office or department to promulgate rules  
46 combining two or more mentoring programs into a single centralized  
47 mentoring program pursuant to paragraph one of this subdivision:

48 (i) such office or department shall by rule establish a goal for the  
49 aggregate value of mentoring program contracts awarded by mentoring  
50 program agencies participating in such centralized program, which, to  
51 the extent consistent with the budget adopted pursuant to chapter ten of  
52 this charter, shall be calculated as follows:

53 (A) for the first full fiscal year following the establishment of such  
54 centralized program, fifteen million dollars in contract value; and

55 (B) for each year of such centralized program following the first full  
56 fiscal year of the centralized program, a goal that is twenty-five

1 percent greater than the goal established pursuant to this subparagraph  
2 for the preceding year, provided that such annual goal shall not exceed  
3 one hundred fifty million dollars in aggregate contract value;

4 (ii) all mentees participating in a mentoring program that is combined  
5 into such centralized program shall be deemed selected for participation  
6 in such centralized program;

7 (iii) all mentees participating in a mentoring program established  
8 pursuant to section twelve hundred six of this charter that are small  
9 businesses shall be deemed selected for participation in such central-  
10 ized program, provided that such program established pursuant to section  
11 twelve hundred six of this charter is designated as combined into the  
12 centralized mentoring program by a rule promulgated pursuant to para-  
13 graph one of this subdivision; and

14 (iv) all mentoring program contracts and contracts let pursuant to  
15 section twelve hundred six of this charter for which an invitation to  
16 compete is released prior to the effective date of rules promulgated  
17 pursuant to paragraph one of this subdivision shall not be subject to  
18 such rules.

19 h. Commencing on October first, two thousand twenty-four, the depart-  
20 ment shall submit an annual report to the governor, the temporary presi-  
21 dent of the senate, and the speaker of the assembly that contains the  
22 following information for the preceding city fiscal year:

23 1. the total number and total dollar value of mentoring program  
24 contracts from each mentoring program established under this section;

25 2. a brief description of (i) each project, (ii) agency compliance  
26 with mentoring program contract designation procedures, (iii) the type  
27 of assistance provided to obtain any surety bond or contract of insur-  
28 ance, and (iv) the type of technical assistance provided in obtaining a  
29 bid, payment, or performance bonding for mentoring program contracts  
30 from each mentoring program established under this section;

31 3. mentoring program participation rates;

32 4. the participation rate of and total dollar value of monies paid to  
33 businesses certified as minority or women-owned business enterprises or  
34 emerging business enterprises pursuant to section thirteen hundred four  
35 of this chapter or those certified as disadvantaged business enterprises  
36 pursuant to part twenty-six of title forty-nine of the code of federal  
37 regulations or any successor provisions; and

38 5. the degree to which a centralized mentoring program, established  
39 pursuant to subdivision q of this section, has achieved a goal estab-  
40 lished pursuant to such subdivision.

41 § 2. Subparagraph (iii) of paragraph (a) of subdivision 36 of section  
42 2590-h of the education law, as amended by chapter 98 of the laws of  
43 2019, is amended to read as follows:

44 (iii) measures to enhance the ability of minority and women owned  
45 business enterprises pursuant to section thirteen hundred four of the  
46 New York city charter and a certified business as defined in section  
47 three hundred ten of the executive law, including firms certified pursu-  
48 ant to article fifteen-A of the executive law and firms certified as  
49 minority and women owned business enterprises pursuant to section thir-  
50 teen hundred four of the New York city charter, to compete for contracts  
51 and to ensure their meaningful participation in the procurement process.  
52 The [~~school~~] city district shall have the authority to use the same  
53 measures[~~7~~] to enhance minority and women owned business enterprise and  
54 small business participation as are available to the city of New York  
55 pursuant to article five-A of the general municipal law, [~~section~~]  
56 sections thirteen hundred four and thirteen hundred nine of the New York

1 city charter, paragraphs one and two of subdivision i of section three  
2 hundred eleven of the New York city charter, and section 6-129 of the  
3 administrative code of the city of New York, provided that these poli-  
4 cies may establish that the city district is subject to the rules and  
5 goal authorized under subdivision g of section thirteen hundred nine of  
6 such charter with respect to a mentoring program established pursuant to  
7 this subparagraph, and provided further that, if such policies subject-  
8 ing the city district to such rules and goal are adopted, the chancellor  
9 and the city, acting by the mayor, may enter into a memorandum of under-  
10 standing relating to mentoring opportunities authorized under this  
11 subparagraph;

12 § 3. The public housing law is amended by adding a new section 402-g  
13 to read as follows:

14 § 402-g. Contracting with minority and women owned enterprises and  
15 small businesses. Notwithstanding any provision of article eight of this  
16 chapter or any other provision of law, the authority is authorized to  
17 establish and implement reasonable procedures to secure the meaningful  
18 participation of minority and women owned enterprises and small busi-  
19 nesses in its procurement process, and may use the same measures to  
20 enhance small business participation as are available to the city of New  
21 York pursuant to section thirteen hundred nine of the New York city  
22 charter, except to the extent inconsistent with federal law and any  
23 funding requirements that preclude the authority from implementing the  
24 provisions of this section. Upon written consent of the authority, the  
25 authority shall be subject to the rules and goal authorized under subdivi-  
26 vision g of section thirteen hundred nine of such charter with respect  
27 to a mentoring program established pursuant to this section, provided  
28 that after execution of such written consent, the NYCHA CEO, as such  
29 term is defined in subdivision fifteen of section six hundred twenty-  
30 seven of this chapter, and the city, acting by the mayor, may enter into  
31 a memorandum of understanding relating to mentoring opportunities  
32 authorized under this section.

33 § 4. Section 8 of section 1 of chapter 1016 of the laws of 1969,  
34 constituting the New York city health and hospitals corporation act, is  
35 amended by adding a new subdivision 7 to read as follows:

36 7. The corporation shall have the authority to use the same measures  
37 to enhance mentoring opportunities for small businesses as are available  
38 to the city of New York pursuant to section thirteen hundred nine of the  
39 New York city charter. Upon the written consent of the corporation, the  
40 corporation shall be subject to the rules and the goal authorized under  
41 subdivision g of section thirteen hundred nine of such charter with  
42 respect to a mentoring program established pursuant to this subdivision,  
43 provided that after execution of such written consent, a duly authorized  
44 officer of the corporation and the city, acting by the mayor, may enter  
45 into a memorandum of understanding relating to mentoring opportunities  
46 authorized under this subdivision.

47 § 5. If any clause, sentence, paragraph, or section of this act is  
48 declared invalid or unconstitutional by any court of competent jurisdic-  
49 tion, after exhaustion of all further judicial review, such portion  
50 shall be deemed severable, and the court's judgment shall not affect,  
51 impair or invalidate the remainder of this act, but shall be confined in  
52 its operation to the clause, sentence, paragraph, or section of this act  
53 directly involved in the controversy in which the judgment was rendered.

54 § 6. For the purposes of this act, the following terms shall have the  
55 following meanings:

1 a. "mentoring program contract" shall have the same meaning set forth  
2 in section 1309 of the New York city charter, as added by section one of  
3 this act, and also includes any such contract let pursuant to section  
4 402-g of the public housing law or subdivision 7 of section 8 of section  
5 1 of chapter 1016 of the laws of 1969, constituting the New York city  
6 health and hospitals corporation act, as added by sections three and  
7 four of this act, respectively; and

8 b. "school district mentoring program contract" shall mean a contract  
9 let pursuant to the terms of section 1309 of the New York city charter  
10 and pursuant to the authority set forth in subparagraph (iii) of para-  
11 graph a of subdivision 36 of section 2590-h of the education law, as  
12 amended by section two of this act.

13 § 7. This act shall take effect on the one hundred twentieth day after  
14 it shall have become a law; provided, however:

15 a. sections one, three and four of this act shall expire and be deemed  
16 repealed ten years after such date; provided, however, that such expira-  
17 tion and repeal shall not affect the solicitation, award, or performance  
18 of any mentoring program contract, or any extensions or amendments ther-  
19 eto, or the authority to provide any assistance in conjunction with such  
20 a mentoring program contract; and

21 b. the amendments to paragraph (a) of subdivision 36 of section 2590-h  
22 of the education law made by section two of this act shall not affect  
23 the expiration of such section and subdivision and shall expire and be  
24 deemed repealed therewith or ten years after such effective date, which-  
25 ever shall occur earlier, provided that such expiration and repeal shall  
26 not affect the solicitation, award, or performance of any school  
27 district mentoring program contract, or any extensions or amendments  
28 thereto, or the authority to provide any assistance in conjunction with  
29 such a school district mentoring program contract.