

AN ACT to amend the labor law and the state finance law, in relation to enacting the New York state apparel workers fair labor conditions and procurement act and to amend the labor law, the state finance law and the education law, in relation to authorizing SUNY and CUNY, as state agencies, to consider certain labor standards and working conditions when purchasing apparel; and providing for the repeal of certain provisions of the labor law and the state finance law relating thereto

Became a law August 6, 2002, with the approval of the Governor. Passed on message of necessity pursuant to Article III, section 14 of the Constitution by a majority vote, three-fifths being present.

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

Section 1. Short title. This act shall be known and may be cited as the "New York state apparel workers fair labor conditions and procurement act".

§ 2. Legislative intent. It is the sense of this legislature that the state of New York, as a major purchaser of goods and services, must be cognizant of fair labor conditions in its actions as a market participant. Many consumers have legitimately revised their own purchase decisions in the face of revelations about sweatshop labor and conditions. The city of New York has recently enacted legislation to ensure that the labor standards utilized in the manufacture of its apparel are decent and just. It is therefore incumbent that the state exercise appropriate awareness regarding the working conditions in which its extensive apparel purchases are made. The uniformed employees of our state often embody, and indeed represent, the high ideals which have made New York great. It is the intent and purpose of this legislation to ensure that through its market participation, the state continues to uplift economic standards of the workforce.

§ 3. Section 347 of the labor law, as added by chapter 764 of the laws of 1986, is amended to read as follows:

§ 347. Report. Two years after the date on which this article takes effect, and on or before the thirty-first of January of each year thereafter, the special task force shall issue a report on its activities and on the apparel industry in New York state. This report shall be delivered to the labor committees and ways and means and finance committees of the legislature. The special task force shall report on a regular basis to the apparel industry advisory committee of the department, or its successor.

§ 4. The labor law is amended by adding a new section 349 to read as follows:

§ 349. Special September eleventh bidders registry. 1. The department is authorized to promulgate the necessary rules and regulations to establish a registry of apparel manufacturers and contractors adversely impacted by the September eleventh, two thousand one attack on the United States of America. For purposes of this section, "the September

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

eleventh, two thousand one attack on the United States of America" shall consist of the attack on the World Trade Center, the attack on the Pentagon and the hijackings and crashes of United Airlines flights 93 and 175 and American Airlines flights 11 and 77.

2. In order to be registered, the manufacturer or contractor shall substantiate that:

a. such manufacturer or contractor was registered with the department pursuant to section three hundred forty-one of this article, as of September eleventh, two thousand, and had been continuously doing business until and including September eleventh, two thousand one;

b. such manufacturer or contractor has demonstrated, through cooperative labor management efforts, a commitment to improving the economic well-being of their employees; and

c. neither the business entity, nor any owner or partner of such entity, has in the previous five years been found in violation of the workers' compensation law or any other state or federal labor law, rule or regulation.

3. For purposes of this section, the term "adversely impacted" shall mean that a manufacturer or contractor was forced to shut production, lay off employees or otherwise diminish their economic worthiness because of their location, the loss of access to employees, production equipment, utilities or other factors which occurred in the aftermath of the September eleventh, two thousand one attack on the United States of America.

4. For purposes of procurements of apparel and textiles, the department shall make the registry available to any state agency, department, board, bureau, commission, division, or any public benefit corporation, public authority, a majority of whose members are appointed by the governor, and if requested, to political subdivisions.

5. Manufacturers and contractors may be removed from the registry in the discretion of and as determined by the department. Any manufacturer or contractor who knowingly submits false or misleading information in order to qualify for placement on the list under this section shall be:

(a) guilty of a class A misdemeanor;

(b) be subject to a civil penalty of not more than five hundred dollars; or

(c) guilty of a class A misdemeanor and subject to such civil penalty as provided in paragraph (b) of this subdivision.

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

1. Purpose. To advance special social and economic goals, selected providers shall have preferred source status for the purposes of procurement in accordance with the provisions of this section. Procurement from these providers, except those defined in paragraph f of subdivision two of this section, shall be exempted from the competitive procurement provisions of section one hundred sixty-three of this article and other competitive procurement statutes. Such exemption shall apply to commodities produced, manufactured or assembled, including those repackaged to meet the form, function and utility required by state agencies, in New York state and, where so designated, services provided by those sources in accordance with this section.

§ 6. Subdivision 2 of section 162 of the state finance law is amended by adding a new paragraph f to read as follows:

f. Commodities provided by any qualified apparel manufacturer and contractor on the special September eleventh bidders registry, as added by section three hundred forty-nine of the labor law, approved for such

purposes by the commissioner of labor, provided, however, that nothing in this paragraph shall affect or displace the preferences and priorities established in paragraphs a, b, c, d and e of this subdivision.

§ 7. Subdivision 3 of section 162 of the state finance law is amended by adding a new paragraph d to read as follows:

d. Paragraphs a, b and c of this subdivision shall not apply to commodities provided by any qualified apparel manufacturer and contractor on the special September eleventh bidders registry, as added by section three hundred forty-nine of the labor law, or approved for such

purposes by the commissioner of labor. The commissioner of labor shall periodically provide the commissioner of general services with the special September eleventh bidders registry, as added by section three hundred forty-nine of the labor law, of qualified apparel manufacturers and contractors. The commissioner of labor shall also make the registry available upon request to other state agencies, public benefit corporations, public authorities, and, if requested, to political subdivisions.

§ 8. Section 162 of the state finance law is amended by adding a new subdivision 4-a to read as follows:

4-a. Priority in purchasing requirements for apparel or textiles. a. Definitions. As used in this section, the following terms shall have the following meanings:

(i) "Apparel" or "textiles" shall mean all articles of clothing or goods produced by weaving, knitting, or felting or any similar production processes for such articles of clothing and shall include all goods produced by the apparel industry as defined by subdivision (c) of section three hundred forty of the labor law.

(ii) "State" shall mean any New York state agency, department, board, bureau, commission, division, or any public benefit corporation or public authority a majority of whose members are appointed by the governor.

b. Notwithstanding anything to the contrary, political subdivisions may adopt and apply the priority established herein by specifically including the provisions of this subdivision in their bid specifications.

c. Conditions for participation in certain state contracts. In the event the state, as defined in subparagraph (ii) of paragraph a of this subdivision, seeks to purchase apparel or textiles pursuant to a competitive bid pursuant to section one hundred sixty-three of this article or other applicable competitive procurement statutes, the following additional conditions shall apply:

(i) the bid shall include a statement that a state agency shall not enter into a contract to purchase or obtain for any purpose any apparel from a bidder unable or unwilling to provide documentation as part of its bid:

(A) attesting that such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hour laws and workplace safety laws;

(B) stating, if known, the name and address of each subcontractor to be utilized; and

(C) stating, if known, all manufacturing plants utilized by the bidder or subcontractor.

(ii) manufacturers and contractors identified on the special September eleventh bidders registry, as added by section three hundred forty-nine of the labor law, shall be a preferred source for purposes of a compet-

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itive bid and the associated contract award for apparel or textile procurements where the price bid by such participating qualified registrant bidder is not greater than fifteen percent more than the lowest price bid by an otherwise responsive and responsible bidder. Where there is more than one participating qualified registrant bidder, the state shall make the contract award based upon the lowest price bid among such bidders.

(iii) where no qualified bidders under subparagraph (ii) of this paragraph participate in the competitive bid for the specified apparel or textiles the state shall award the contract to the otherwise lowest responsive and responsible bidder pursuant to section one hundred sixty-three of this article or other applicable competitive procurement statutes.

d. Waiver. The provisions of this section may be waived by the head of

any state agency, department, board, bureau, commission, division, or any public benefit corporation or public authority a majority of whose members are appointed by the governor where it is determined in writing and included in the procurement record that it is in the best interests of the state to do so.

§ 9. The labor law is amended by adding a new section 213-a to read as follows:

§ 213-a. Special provisions regarding the purchasing of apparel by the state university of New York and the city university of New York.

1. Notwithstanding any other provision of law, the various units of the state university of New York, the city university of New York and community colleges shall have the authority to:

a. Determine that a bidder on a contract for the purchase of apparel is not a responsible bidder as defined in section one hundred sixty-three of the state finance law based upon either of the following considerations:

(i) the labor standards applicable to the manufacture of the apparel, including but not limited to employee compensation, working conditions, employee rights to form unions, and the use of child labor, or

(ii) the bidder's failure to provide information sufficient for the state agency or corporation to determine the labor conditions applicable to the manufacture of the apparel.

b. Include in the internal policies and procedures governing procurement of apparel, where such procurement is not further required to be made pursuant to the competitive bidding requirements of section one hundred sixty-three of the state finance law, a prohibition against the purchase of apparel from any vendor based upon either or both of the following considerations:

(i) the labor standards applicable to the manufacture of the apparel, including but not limited to employee compensation, working conditions, employee rights to form unions, and the use of child labor, or

(ii) the bidder's failure to provide sufficient information for said state agencies to determine the labor standards applicable to the manufacture of the apparel.

2. For the purposes of this section, "apparel" shall mean goods, such as, but not limited to, sports uniforms, including gym uniforms, required school uniforms, shoes, including, but not limited to, athletic shoes or sneakers, sweatshirts, caps, hats, and other clothing, whether or not imprinted with a school's name or logo, academic regalia, lab coats and staff uniforms.

§ 10. Section 165 of the state finance law is amended by adding a new subdivision 7 to read as follows:

7. Special provisions regarding the purchasing of apparel by the state university of New York and the city university of New York.

a. Notwithstanding any other provision of law, the various units of the state university of New York, the city university of New York and community colleges shall have authority to:

(i) Determine that a bidder on a contract for the purchase of apparel is not a responsible bidder as defined in section one hundred sixty-three of this article based upon either of the following considerations:

(A) the labor standards applicable to the manufacture of the apparel, including but not limited to employee compensation, working conditions, employee rights to form unions, and the use of child labor, or

(B) the bidder's failure to provide information sufficient for the state agency or corporation to determine the labor conditions applicable to the manufacture of the apparel.

(ii) Include in the internal policies and procedures governing procurement of apparel, where such procurement is not further required to be made pursuant to the competitive bidding requirements of section one hundred sixty-three of this article, a prohibition against the purchase of apparel from any vendor based upon either or both of the

following considerations:

(A) the labor standards applicable to the manufacture of the apparel, including but not limited to employee compensation, working conditions, employee rights to form unions, and the use of child labor, or

(B) the bidder's failure to provide sufficient information for said state agencies to determine the labor standards applicable to the manufacture of the apparel.

b. For the purposes of this subdivision, "apparel" shall mean goods, such as, but not limited to, sports uniforms, including gym uniforms, required school uniforms, shoes, including, but not limited to, athletic shoes or sneakers, sweatshirts, caps, hats, and other clothing, whether or not imprinted with a school's name or logo, academic regalia, lab coats and staff uniforms.

§ 11. Section 6302 of the education law is amended by adding a new subdivision 6 to read as follows:

6. a. Notwithstanding any other provision of law, community colleges established under this article shall have the authority to:

(i) Determine that the bidder on a contract for the purchase of apparel is not an acceptable bidder based on either of the following considerations:

(A) the labor standards applicable to the manufacture of the apparel, including but not limited to employee compensation, working conditions, employee rights to form unions, and the use of child labor, or

(B) the bidder's failure to provide information sufficient for the state agency or corporation to determine the labor conditions applicable to the manufacture of the apparel.

(ii) Include in the internal policies and procedures governing procurement of apparel a prohibition against the purchase of apparel from any vendor based upon either or both of the following considerations:

(A) the labor standards applicable to the manufacture of the apparel, including but not limited to employee compensation, working conditions, employee rights to form unions, and the use of child labor; or

(B) the bidder's failure to provide sufficient information for said state agencies to determine the labor standards applicable to the manufacture of the apparel.

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b. For the purposes of this subdivision, "apparel" shall mean goods, such as, but not limited to, sports uniforms, including gym uniforms, required school uniforms, shoes, including, but not limited to, athletic shoes or sneakers, sweatshirts, caps, hats, and other clothing, whether or not imprinted with a school's name or logo, academic regalia, lab coats and staff uniforms.

§ 12. This act shall take effect on September 1, 2002 and shall respectively apply to bids issued after such date; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date; provided, however, that sections four through eight of this act shall be deemed repealed on September 1, 2005.

The Legislature of the STATE OF NEW YORK **ss:**

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

JOSEPH L. BRUNO  
Temporary President of the Senate

SHELDON SILVER  
Speaker of the Assembly