

VETO MESSAGE - No. 76

TO THE ASSEMBLY:

I am returning herewith, without my approval, the following bill:

Assembly Bill Number 8555-A, entitled:

"AN ACT to amend the executive law and the state finance law, in relation to enacting the New York State Service-Disabled Veteran-Owned Business Enterprise Opportunity Act"

NOT APPROVED

This bill would enact the New York State Service-Disabled Veteran-Owned Business Enterprise Opportunity Act to assist businesses owned by service-disabled veterans in participating in State procurements, by creating a statewide certification program for such businesses and providing them with preference in the State's procurement process. Under the bill, any state agency or authority which let more than \$2 million dollars in commodities, service and construction contracts in the prior fiscal year must award a contract for the purchase of goods, services or construction for public use to a certified service-disabled veteran-owned business enterprise domiciled in New York State, even if such enterprise is not the lower responsible bidder, as long as the enterprise's bid does not exceed the lowest bid by more than six percent and provided there is no lower bid by a certified minority or women-owned business enterprise (M/WBE).

The Office of General Services (OGS) would be required to create, administer and enforce a certification program for service-disabled, veteran-owned businesses. In consultation with the Division for Small Business (DSB), which is operated by the Empire State Development Corporation (ESDC), OGS would have to promulgate rules for the program, regulating the certification process and verifying businesses as being owned, operated and controlled by service-disabled veterans. With the assistance of DSB, OGS would also be required to report to the Governor and the Legislature by April 1 of each year, beginning in 2011, on the participation of service-disabled veteran-owned business enterprises in state procurement. The bill would also require the Division of Veterans' Affairs (DVA) to identify eligible service-disabled, veteran-owned businesses and encourage their participation in State procurements.

I strongly support meaningful efforts to improve economic opportunities for all veterans who have served this nation in the armed forces, including and especially those disabled during such service. Nonetheless, I am constrained to veto this legislation, as it would impose a fiscal cost on the State, is at odds with the State's policy of competitive bidding and is duplicative of other programs.

There are several existing programs that seek to serve the objectives of this bill. For example, Chapter 387 of the Laws of 2008 requires OGS, together with the State Comptroller, to conduct annual statewide seminars advising veteran-owned businesses regarding the opportunities available for obtaining procurement contracts from New York State agencies, municipalities and authorities. In addition, the New York State Small Business Council's Veterans Business Outreach Program provides targeted training, counseling, and mentoring to help veterans start and

grow small businesses. Further, the United States Department of Veterans' Affairs also offers the Federal Contractor Certification training program for veteran business owners to help them understand federal contracting, respond to solicitations and perform successfully once they have been awarded a contract.

Additional endeavors to support businesses owned by service-disabled veterans that supplement the aforementioned programs are unquestionably worthy of pursuit. But the approach adopted by this bill is technically flawed. In particular, the bill restricts certification and pricing preferences solely to businesses domiciled in New York State and owned by service-disabled veterans, which is contradictory to New York's current open-market procurement policy and may run afoul of the Commerce Clause and federal regulations. Indeed, the State Finance Law prevents State agencies from entering into procurement arrangements with businesses located in jurisdictions that discriminate against New York businesses through pricing preferences or other means, which encourages other states and nations to engage in reciprocity with New York in the government marketplace. Restricting the bill's application to New York residents and business could result in a potential backlash of discrimination by other jurisdictions.

In addition, this legislation comes at a time of fiscal crisis, which has required substantial reductions in the resources of State agencies and will like require additional such reductions in the very near future. This bill would require the establishment and implementation of a new program by OGS and DVA, but neither agency can meet these obligations without additional staff. Moreover, because the bill would require State agencies to accept bids up to six percent higher than the lowest responsible bid, the cost of procurements undertaken by state agencies and public authorities would necessarily rise. As a result, numerous agencies - including OGS, DVA, the State Education Department, the Thruway Authority, the Metropolitan Transit Authority and the Division of the Budget - oppose this bill.

Veterans with disabilities incurred in the service of their country are owed a special obligation. I am certain that there are ways to promote the participation of service-disabled veteran-owned businesses in the State procurement system or to otherwise improve the opportunities available to them that do not implicate the aforementioned concerns, and I will instruct my staff to work with DVA and OGS to explore such alternatives.

The bill is disapproved.

(signed) DAVID A. PATERSON
