

CHAPTER 5

AN ACT concerning certain public contract set-aside programs and amending P.L.1985, c.482.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 1 of P.L.1985, c.482 (C.40A:11-41) is amended to read as follows:

C.40A:11-41 Definitions.

1. As used in this act:
 - a. "County or municipal contracting agency" shall mean the governing body of a county or municipality or any department, board, commission, committee, authority or agency of a county or municipality but shall not include school districts;
 - b. "Minority group members" shall mean persons who are black, Hispanic, Portuguese, Asian-American, American Indian or Alaskan natives;
 - c. "Qualified women's business enterprise" shall mean a business which has its principal place of business in this State, is independently owned and operated, is at least 51% owned and controlled by women and is qualified pursuant to section 25 of P.L.1971, c.198 (C.40A:11-25);
 - d. "Qualified minority business enterprise" shall mean a business which has its principal place of business in this State, is independently owned and operated, is at least 51% owned and controlled by minority group members and is qualified pursuant to section 25 of P.L.1971, c.198 (C.40A:11-25);
 - e. "Qualified small business enterprise" shall mean a business which has its principal place of business in this State, is independently owned and operated and meets all other qualifications as may be established in accordance with P.L.1981, c.283 (C.52:27H-21.1 et seq.);
 - f. "Set-aside contracts" shall mean (1) a contract for goods, equipment, construction, or services which is designated as a contract for which bids are invited and accepted only from qualified small business enterprises, qualified veteran business enterprises, qualified minority business enterprises or qualified women's business enterprises, as appropriate, (2) a portion of a contract when that portion has been so designated, or (3) any other purchase or procurement so designated;
 - g. "Total procurements" shall mean all purchases, contracts or acquisitions of a county or municipal contracting agency, whether by competitive bidding, single source contracting, or other method of procurement, as prescribed or permitted by law;
 - h. "Veteran" shall have the same meaning as set forth in subsection b. of N.J.S.11A:5-1, except that the veteran shall present to the Adjutant General of the Department of Military and Veterans' Affairs sufficient evidence of a record of service and receive a determination of status no later than the date established for the submission of bids; and
 - i. "Qualified veteran business enterprise" shall mean a business which has its principal place of business in this State, is independently owned and operated, is at least 51% owned and controlled by a veteran or that wherein at least twenty five percent of the required workforce for the contract are veterans, including new hires if additional workers are required to perform the contract, and is qualified pursuant to section 25 of P.L.1971, c.198 (C.40A:11-25). The business shall also submit forms quarterly to the contracting agency showing proof of veteran status for all the veteran employees.

2. Section 2 of P.L.1985, c.482 (C.40A:11-42) is amended to read as follows:

C.40A:11-42 Set-aside programs authorized.

2. a. The governing body of a county or municipality may, by ordinance or resolution, as appropriate, establish a qualified minority business enterprise set-aside program. In authorizing such a program, the governing body of a county or municipality shall establish a goal for its contracting agencies of setting aside a certain percentage of the dollar value of total procurements to be awarded as set-aside contracts to qualified minority business enterprises.

b. The governing body of a county or municipality may, by ordinance or resolution, as appropriate, establish a qualified women's business enterprise set-aside program. In authorizing such a program, the governing body of a county or municipality shall establish a goal for its contracting agencies of setting aside a certain percentage of the dollar value of total procurements to be awarded as set-aside contracts to qualified women's business enterprises.

c. The governing body of a county or municipality may, by ordinance or resolution, as appropriate, establish a qualified small business enterprise set-aside program. In authorizing such a program, the governing body of a county or municipality shall establish a goal for its contracting agencies of setting aside a certain percentage of the dollar value of total procurements to be awarded as set-aside contracts to qualified small business enterprises.

d. The governing body of a county or municipality may, by ordinance or resolution, as appropriate, establish a qualified veteran business enterprise set-aside program. In authorizing such a program, the governing body of a county or municipality shall establish a goal for its contracting agencies of setting aside a certain percentage of the dollar value of total procurements to be awarded as set-aside contracts to qualified veteran business enterprises.

3. Section 3 of P.L.1985, c.482 (C.40A:11-43) is amended to read as follows:

C.40A:11-43 Attainment of goals.

3. a. Any goal established pursuant to section 2 of this act may be attained by requiring that a portion of a contract be subcontracted to a qualified small business enterprise, qualified veteran business enterprise, qualified minority business enterprise or qualified women's business enterprise, in addition to designating entire contracts to these enterprises.

b. Each contracting agency shall make a good faith effort to attain any goal established by its governing body. The governing body shall evaluate each contracting agency's efforts by comparing the percentage of the dollar value of a contracting agency's total procurements awarded to qualified small business enterprises, qualified veteran business enterprises, qualified minority business enterprises or qualified women's business enterprises, as appropriate, to the percentage of the dollar value of the county's or municipality's total procurements awarded to qualified small business enterprises, qualified veteran business enterprises, qualified minority business enterprises or qualified women's business enterprises, as appropriate.

4. Section 5 of P.L.1985, c.482 (C.40A:11-45) is amended to read as follows:

C.40A:11-45 Designation as set-aside.

5. Notwithstanding the provisions of any law to the contrary, a contracting agency of a county or municipality which has established a qualified small business enterprise set-aside program, a qualified veteran business enterprise set-aside program, a qualified minority

business enterprise set-aside program or a qualified women's business enterprise set-aside program shall designate that a contract, subcontract or other means of procurement of goods, services, equipment, or construction be awarded to a qualified small business enterprise, a qualified veteran business enterprise, a qualified minority business enterprise or a qualified women's business enterprise, if a contracting agency is likely to receive bids from at least two qualified small business enterprises, qualified veteran business enterprises, qualified minority business enterprises or qualified women's business enterprises, as appropriate, at a fair and reasonable price.

Such designations shall be made prior to any advertisement for bids, if required. Once designated, the advertisement for bids, if necessary, shall indicate that the contract to be awarded is a qualified small business enterprise set-aside contract, qualified veteran business enterprise set-aside contract, a qualified minority business enterprise set-aside contract or a qualified women's business enterprise set-aside contract, as appropriate. All advertisements for bids shall be published in at least one newspaper which will best provide notice thereof to qualified small business enterprises, qualified veteran business enterprises, qualified minority business enterprises or to qualified women's business enterprises, as appropriate, sufficiently in advance of the date fixed for receiving the bids to promote competitive bidding, but shall not be published less than 10 days prior to that date.

5. Section 6 of P.L.1985, c.482 (C.40A:11-46) is amended to read as follows:

C.40A:11-46 Set-aside cancellation.

6. a. If the contracting agency determines that two bids from qualified small, qualified veteran, qualified minority or qualified women's businesses cannot be obtained, the contracting agency may withdraw the designation of the set-aside contract and resolicit bids on an unrestricted basis pursuant to the provisions of P.L.1971, c.198 (C.40A:11-1 et seq.). The cancelled designation shall not be considered in determining the percentage of contracts awarded pursuant to subsection b. of section 3 of this act.

b. If the contracting agency determines that the acceptance of the lowest responsible bid will result in the payment of an unreasonable price, the contracting agency shall reject all bids and withdraw the designation of the set-aside contract. Qualified small business enterprises, qualified veteran business enterprises, qualified minority business enterprises or qualified women's business enterprises, as appropriate, shall be notified in writing of the set-aside cancellation, the reasons for the rejection and the agency's intent to resolicit bids on an unrestricted basis pursuant to the provisions of P.L.1971, c.198 (C.40A:11-1 et seq.). The cancelled bid solicitation shall not be considered in determining the percentage of contracts awarded pursuant to subsection b. of section 3 of this act.

6. Section 7 of P.L.1985, c.482 (C.40A:11-47) is amended to read as follows:

C.40A:11-47 False information; penalties.

7. Where the governing body of a county or municipality determines that a business has been classified as a qualified small business enterprise, qualified veteran business enterprise, qualified minority business enterprise or qualified women's business enterprise on the basis of false information knowingly supplied by the business and has been awarded a contract to which it would not otherwise have been entitled under this act, the governing body shall have the authority to:

a. Assess against the business any difference between the contract and what the governing body's cost would have been if the contract had not been awarded in accordance with the provisions of this act;

b. In addition to the amount due under subsection a., assess against the business a penalty in an amount of not more than 10% of the amount of the contract involved; and

c. Order the business ineligible to transact any business with the governing body or contracting agency of the governing body for a period to be determined by the governing body.

Prior to any final determination, assessment or order under this section, the governing body shall afford the business an opportunity for a hearing on the reasons for the imposition of the penalties set forth in subsection a., b. or c. of this section.

7. Section 8 of P.L.1985, c.482 (C.40A:11-48) is amended to read as follows:

C.40A:11-48 Annual agency report.

8. Each contracting agency of a county or municipality which has established a qualified small business enterprise set-aside program, a qualified veteran business enterprise set-aside program, a qualified minority business enterprise set-aside program or a qualified women's business enterprise set-aside program shall submit a report to its governing body by January 31 of each year describing the agency's efforts in attaining the set-aside goals and the percentage of the dollar value of total procurements awarded pursuant to subsection b. of section 3 of this act. The governing body shall publish a list of each agency's attainments in the immediately preceding local fiscal year, to include the county or municipal average, in at least one newspaper circulating in the county or municipality, as appropriate, by March 1 of each year.

8. The Title of P.L.1985, c.482 is amended to read as follows:

Title amended.

An act concerning the establishment of small, veteran, women, and minority business enterprise set-aside programs in counties and municipalities.

9. This act shall take effect immediately.

Approved January 25, 2013.