

COUNTY OF MERCER, NEW JERSEY
ORDINANCE NO. 2018- 5

1st Reading....June 28, 2018.....
 2nd Reading... July 12, 2018
 Public Hearing... July 12, 2018

Date to County Executive... July 13, 2018
 Date Returned... July 13, 2018

Date Adopted:
 July 12, 2018

 August 1, 2018

Date Resubmitted to Board.....
 Approved as to Form and Legality

.....
 County Counsel

Effective Date

AN ORDINANCE AMENDING AN ORDINANCE TO ADOPT THE MERCER COUNTY, NEW JERSEY ADMINISTRATIVE CODE PURSUANT TO THE COUNTY EXECUTIVE PLAN OF THE OPTIONAL COUNTY CHARTER LAW (N.J.S.A. 40:41A- ET SEQ.) AN ORDINANCE ESTABLISHING A QUALIFIED MINORITY, WOMEN, VETERAN-OWNED, OR SMALL BUSINESS SET-ASIDE PROGRAM FOR THE COUNTY OF MERCER (AMENDMENT NO. 18)

| RECORD OF VOTE | | | | | | | | | | | | | | |
|----------------|-----|-----|------|------|------|------|------------|----------------|-----|------|------|------|------|--|
| First Reading | | | | | | | | Second Reading | | | | | | |
| FREEHOLDER | Aye | Nay | N.V. | Abs. | Res. | Sec. | FREEHOLDER | Aye | Nay | N.V. | Abs. | Res. | Sec. | |
| Cannon | X | | | | | ✓ | Cannon | X | | | | | | |
| Cimino | X | | | | | | Cimino | X | | | | | | |
| Colavita | X | | | | | | Colavita | X | | | | | | |
| Frisby | | | | X | | | Frisby | X | | | | ✓ | | |
| Koontz | X | | | | | | Koontz | X | | | | | ✓ | |
| Verrelli | X | | | | ✓ | | Verrelli | | | | X | | | |
| Walter | | | | X | | | Walter | X | | | | | | |

X—Indicates Vote Abs.—Absent N.V.—Not Voting
 Res.—Resolution Moved Sec.—Resolution Seconded

Rejected By Brian H. Lee
 Approved County Executive
 Reconsidered Override
 By Board..... Vote Aye Nay
Lucy R. Walter Chair of the Board Jerlene H. Worthy Clerk to the Board

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WHEREAS, on or about April 24, 2003, the Mercer County Board of Chosen Freeholders adopted Ordinance No. 2003-8, which restated, amended and adopted in its entirety the Mercer County, New Jersey Administrative Code (“Code”); and,

WHEREAS, pursuant to Section 2.01.02, of the Code, the Board of Chosen Freeholders has the power to adopt ordinances as it deems appropriate and necessary; and,

WHEREAS, the County of Mercer desires to establish a set-aside program for qualified minority, women, veteran or small businesses pursuant to the Local Public Contracts Law, N.J.S.A. 40A:11-1, et seq.; now therefore

BE IT ORDAINED by the Mercer County Board of Chosen Freeholders that the Mercer County Administrative Code shall be amended to provide as follows:

A. Title:

The title of this Ordinance shall be "An Ordinance Establishing a Qualified Minority, Women, Veteran-Owned Business, or Small Business Set-Aside Program" (hereinafter "Set-Aside Program"). This Ordinance is being enacted pursuant to and in accordance with the provisions of N.J.S.A. 40A:11-41, et seq.

B. Definitions:

For the purposes of this chapter, the following definitions shall apply:

CONSTRUCTION CONTRACT:

Any agreement for the erection, repair or alteration of any building, structure, bridge, roadway or other improvement to real property.

CONTRACT:

Any agreement for the sale of goods or for the provision of services to the County of Mercer.

MINORITY GROUP MEMBERS:

Persons who are Black, Hispanic, Portuguese, Asian Americans, American Indians or Alaskan natives, as per N.J.S.A. 40A:11-41.

NEW JERSEY SELECTIVE ASSISTANCE VENDOR INFORMATION (NJSAVI):

a database that identifies businesses that are registered as a Small Business Enterprise and/or certified as a Minority/Women/Veteran Owned Business Enterprise with the State of New Jersey, through the Division of Revenue.

QUALIFIED BUSINESS ENTERPRISE:

A minority owned enterprise, or a women-owned enterprise, or veteran-owned enterprise, or small business enterprise, as defined herein and qualified under N.J.S.A. 40A:11-25, or a general contractor who hires as a subcontractor, a minority-owned, woman-owned, veteran-owned, and/or small-business enterprise, as part of a contract award by the County (hereinafter “qualified business”).

QUALIFIED MINORITY BUSINESS ENTERPRISE:

A business which has its principal place of business in this State, is independently owned and operated, is at least fifty-one percent (51%) owned and controlled by minority group members and is qualified pursuant to N.J.S.A. 40A:11-25.

QUALIFIED SMALL BUSINESS ENTERPRISE:

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 N.J.S.A. 52:27H-21.1 et seq.

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QUALIFIED VETERAN BUSINESS ENTERPRISE:

A business which has its principal place of business in this State, is independently owned and operated, and is at least fifty-one percent (51%) owned and controlled by a veteran, and is qualified under N.J.S.A. 40A:11-25.

QUALIFIED WOMEN'S BUSINESS ENTERPRISE:

A business which has its principal place of business in this State, is independently owned and operated, is at least fifty-one percent (51%) owned and controlled by women, and is qualified pursuant to N.J.S.A. 40A:11-25.

SET ASIDE CONTRACTS:

(1) A contract for goods, equipment, construction, or professional services, inclusive of sub-contracts, which is designated as contract for which bids are invited and accepted only from qualified businesses, 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.

SUBCONTRACT:

A contract by which one agrees to render services or to provide materials necessary for the performance of another contract.

TOTAL PROCUREMENTS:

All purchases, contracts, or acquisitions by the County as permitted by law.

VETERAN:

Any citizen and resident of this State now or hereafter honorably discharged or released under honorable circumstances that served in any branch of the Armed Forces of the United States or a Reserve component thereof for at least 90 days, and shall include disabled veterans.

C. Applicability:

These provisions concerning qualified businesses participation in the County's Set-Aside Program shall apply to contracts for goods, services, professional services, and/or construction awarded by or through the County's Purchasing Department.

D. Purpose:

The purpose of this Set- Aside Program is to set aside, or otherwise allocate, ten percent (10%) of the dollar value of all the County's goods, services, professional services, and construction contracts in a fiscal year to be utilized for qualified business enterprises.

E. Goals:

1. For the fiscal year beginning July 1, 2018 and for every fiscal year thereafter, the following goals for qualified business participation shall serve as the initial goals for the County of Mercer. Of the ten (10%) percent set-aside or allocation, there shall be:

(a) Thirty percent (30%) County contract participation for qualified minority business enterprises,

(b) Thirty percent (30%) County contract participation for qualified women's business enterprises,

(c) Thirty percent (30%) County contract participation for qualified veteran business enterprises.

(d) Ten percent (10%) County contract participation for qualified small businesses.

2. The above stated percentages relate to the total dollar value of all the County's contracting departments to be set aside for qualified businesses, as appropriate, as goals for the County departments to achieve by the end of each fiscal year.

3. The monetary value of sub-contracts awarded subject to the Set-Aside Program shall be

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included when reviewing whether the goals established by the Set-Aside Program have been achieved.

4. The County will conduct a disparity study, to be completed by December 31, 2019. All contracts awarded pursuant to this ordinance prior to the completion of that study shall be done in good faith effort to attain the goals as outlined herein.

F. Effect on Provisions:

If a County contract for goods, services, professional services, or construction, which would otherwise be subject to the provision of this chapter, is or becomes subject to federal or state laws which conflict with this program or actions thereof, federal or state law shall apply, and the contract shall be interpreted and enforced accordingly.

G. Implementation:

1. In General

a. The County Deputy Administrator/Finance shall make a good faith effort to attain the goals established for the Set-Aside Program.

b. The County Deputy Administrator/Finance shall designate a contract, subcontract or other means of procurement as a set-aside contract if it is likely to receive bids from at least two (2) qualified businesses at a fair and reasonable price.

c. If it is determined by the Purchasing Agent that two (2) bids cannot be obtained or that acceptance of the low responsible bid will result in the payment of an unreasonable price, the Purchasing Agent may recommend to the County Deputy Administrator/Finance that the bids be resolicited on an unrestricted basis.

d. Designation(s) of contracts and/or subcontracts as set-aside contracts shall be made by the County Deputy Administrator/Finance prior to advertisement and notice of such designation shall be included in the advertisement.

e. The Purchasing Agent will submit semi-annual reports to the County Deputy Administrator/Finance to document the percentage of set-aside contracts which have been awarded to qualified businesses.

f. Pursuant to N.J.S.A. 40A:11-48, the Purchasing Agent will make annual written reports to the County Deputy Administrator/Finance indicating the good faith effort made by the County's contracting agencies to attain the set-aside goals. The reports shall be submitted to the County Executive and the Board of Chosen Freeholders setting forth the previous annual activity. The County shall publish a list of the County's contracting agencies' attainments (goals) for the immediate preceding local fiscal year, in two newspapers circulating in the County, by March 1st of each year.

g. The County Deputy Administrator/Finance with the Purchasing Agent will assist qualified businesses for participation in this program through educational and outreach programs.

h. The Purchasing Agent shall set forth the nature of problem(s) and any suggestions for better implementation of the Set-Aside Program. If the County Deputy Administrator/Finance concludes that the County's Set-Aside Program is unlikely to attain the stated participation goals, he/she may recommend that the Purchasing Agent revise the County's plan to provide additional opportunities for qualified business participation, including the following:

(1) Recommendation as to stronger solicitation, education and outreach efforts to identify more qualified minority, women, and veteran-owned businesses and small businesses.

(2) Recommendations as to the elimination of extended experience or capitalization requirements, to permit participation of qualified businesses.

(3) Recommendations as to publication of advertisements for bids in more than one newspaper, e.g., County minority-oriented newspapers.

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H. Qualification; Certification:

1. The County will rely upon and utilize the NJSAVI database to determine certified businesses.
2. Each qualified business shall submit a fully executed certification to the County's Purchasing Department, affirming that his or her business meets all the requirements to be a qualified business by January 1st of each year.
3. The qualified business shall notify the Purchasing Agent if there is a change in the business that affects its status as a qualified business, including changes in ownership, control or management.

I. Disqualification:

1. Any business may be disqualified by the County and not be eligible to participate in the Set-Aside Program, for the following reasons:
 - a. Providing false or misleading information to the Purchasing Agent.
 - b. No longer an ongoing business entity.
 - c. Failure to report to the County of Mercer, within ten (10) days, any determination denying or revoking the certification of the business as a minority, or women, or veteran-owned, or small business enterprise.
 - d. Failure of the business to maintain registration with the NJSAVI database.
2. During the term of the contract with the County if a business is disqualified, the County may exercise its right to terminate the contract within thirty (30) days of notification of disqualification.

J. Violations and Penalties:

1. When the County determines that a business is no longer covered under NJSAVI 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 chapter as a result, the County may, in accordance with the provisions afforded to it by N.J.S.A. 40A:11-47:
 - a. Assess against the business any difference between the contract and what the County's cost would have been if the contract had not been awarded in accordance with the provisions of this program;
 - b. In addition to the amount due under subsection a, assess against the business a penalty in an amount of not more than ten (10%) percent of the amount of the contract involved;
 - c. Order the business ineligible to transact any business with the County, pursuant to the provisions of N.J.S.A. 40A:11-4, for a period to be determined by the County, which shall not exceed five (5) years; and/or
 - d. File an action to enforce a civil penalty imposed by this section providing for its collection or enforcement by a civil proceeding, which action shall be brought as a summary action in the New Jersey Superior Court, Law Division pursuant to New Jersey Court Rule 4:67 and other applicable laws, as same may be amended and supplemented
2. Prior to any final determination, assessment or order under this section, the County shall afford the business an opportunity for a hearing on the reasons for the imposition of the penalty.

BE IT FURTHER ORDAINED, by the Board of Chosen Freeholders of the County of Mercer, State of New Jersey, as follows:

1. This Ordinance shall take effect after passage and publication as required by law.
2. The Clerk of the Board shall forward certified copies of this Ordinance to the Department of Finance and the Office of the County Counsel for further distribution.