

ASSEMBLY, No. 1832

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblywoman BRITNEE N. TIMBERLAKE

District 34 (Essex and Passaic)

SYNOPSIS

Authorizes local contracting units to establish joint venture and set-aside programs.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** authorizing local joint venture and set-aside programs and
2 amending P.L.1985, c.482.

3

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

6

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

9 1. As used in **[this act]** P.L.1985, c.482 (C.40A:11-41 et seq.):

10 a. "County or municipal contracting agency" shall mean the
11 governing body of a county or municipality or any department,
12 board, commission, committee, authority or agency of a county or
13 municipality but shall not include school districts;

14 b. "Minority group members" shall mean persons who are
15 black, Hispanic, Portuguese, Asian-American, American Indian or
16 Alaskan natives;

17 c. "Qualified women's business enterprise" shall mean a
18 business which has its principal place of business in this State, is
19 independently owned and operated, is at least 51% owned and
20 controlled by women and is qualified pursuant to section 25 of
21 P.L.1971, c.198 (C.40A:11-25);

22 d. "Qualified minority business enterprise" shall mean a
23 business which has its principal place of business in this State, is
24 independently owned and operated, is at least 51% owned and
25 controlled by minority group members and is qualified pursuant to
26 section 25 of P.L.1971, c.198 (C.40A:11-25);

27 e. "Qualified small business enterprise" shall mean a business
28 which has its principal place of business in this State, is
29 independently owned and operated and meets all other
30 qualifications as may be established in accordance with P.L.1981,
31 c.283 (C.52:27H-21.1 et seq.);

32 f. "Set-aside contracts" shall mean (1) a contract for goods,
33 equipment, construction, or services which is designated as a
34 contract for which bids are invited and accepted only from qualified
35 small business enterprises, qualified veteran business enterprises,
36 qualified minority business enterprises or qualified women's
37 business enterprises, as appropriate, and, if authorized by the
38 contracting agency, joint ventures, (2) a portion of a contract when
39 that portion has been so designated, or (3) any other purchase or
40 procurement so designated;

41 g. "Total procurements" shall mean all purchases, contracts or
42 acquisitions of a county or municipal contracting agency, whether
43 by competitive bidding, single source contracting, or other method
44 of procurement, as prescribed or permitted by law;

45 h. "Veteran" shall have the same meaning as set forth in

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 subsection b. of N.J.S.11A:5-1, except that the veteran shall present
2 to the Adjutant General of the Department of Military and Veterans'
3 Affairs sufficient evidence of a record of service and receive a
4 determination of status no later than the date established for the
5 submission of bids; and

6 i. "Qualified veteran business enterprise" shall mean a
7 business which has its principal place of business in this State, is
8 independently owned and operated, is at least 51% owned and
9 controlled by a veteran or that wherein at least twenty five percent
10 of the required workforce for the contract are veterans, including
11 new hires if additional workers are required to perform the contract,
12 and is qualified pursuant to section 25 of P.L.1971, c.198
13 (C.40A:11-25). The business shall also submit forms quarterly to
14 the contracting agency showing proof of veteran status for all the
15 veteran employees.

16 j. "Joint venture" shall mean an association of one or more
17 qualified women's business enterprises, qualified minority business
18 enterprises, or qualified veteran business enterprises and one or
19 more businesses that are not qualified women's business enterprises,
20 qualified minority business enterprises, or qualified veteran
21 business enterprises, which association proposes to perform a
22 contract as a single for-profit enterprise. To qualify as a joint
23 venture, each business and business enterprise joining together shall
24 enter into a written agreement which specifies the terms and
25 conditions of the relationship between the members of the joint
26 venture and the role of each member of the joint venture in
27 performing the contract. Each member of a joint venture shall
28 contribute property, capital, efforts, skill, and knowledge to the
29 joint venture.

30 (cf: P.L.2013, c.5, s.1)

31

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

34 2. a. The governing body of a county or municipality may, by
35 ordinance or resolution, as appropriate, establish a qualified
36 minority business enterprise set-aside program or a joint venture
37 and set-aside program. In authorizing such a program, the
38 governing body of a county or municipality shall establish a goal
39 for its contracting agencies of setting aside a certain percentage of
40 the dollar value of total procurements to be awarded as set-aside
41 contracts to qualified minority business enterprises, joint ventures
42 which include one or more qualified minority business enterprises,
43 or both qualified minority business enterprises and joint ventures.

44 b. The governing body of a county or municipality may, by
45 ordinance or resolution, as appropriate, establish a qualified
46 women's business enterprise set-aside program or a joint venture
47 and set-aside program. In authorizing such a program, the
48 governing body of a county or municipality shall establish a goal

1 for its contracting agencies of setting aside a certain percentage of
2 the dollar value of total procurements to be awarded as set-aside
3 contracts to qualified women's business enterprises, joint ventures
4 which include one or more qualified women's business enterprises,
5 or both qualified women's business enterprises and joint ventures.

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

13 d. The governing body of a county or municipality may, by
14 ordinance or resolution, as appropriate, establish a qualified veteran
15 business enterprise set-aside program or a joint venture and set-
16 aside program. In authorizing such a program, the governing body
17 of a county or municipality shall establish a goal for its contracting
18 agencies of setting aside a certain percentage of the dollar value of
19 total procurements to be awarded as set-aside contracts to qualified
20 veteran business enterprises, joint ventures which include one or
21 more qualified veteran business enterprises, or both qualified
22 veteran business enterprises and joint ventures.

23 (cf: P.L.2013, c.5, s.2)

24
25 3. Section 3 of P.L.1985, c.482 (C.40A:11-43) is amended to
26 read as follows:

27 3. a. Any goal established pursuant to section 2 of **【this act】**
28 P.L.1985, c.482 (C.40A:11-42) may be attained by requiring that a
29 portion of a contract be subcontracted to a qualified small business
30 enterprise, qualified veteran business enterprise, qualified minority
31 business enterprise **【or】**, qualified women's business enterprise,
32 and, if applicable, joint ventures, in addition to designating entire
33 contracts to these enterprises and joint ventures.

34 b. Each contracting agency shall make a good faith effort to
35 attain any goal established by its governing body. The governing
36 body shall evaluate each contracting agency's efforts by comparing
37 the percentage of the dollar value of a contracting agency's total
38 procurements awarded to qualified small business enterprises,
39 qualified veteran business enterprises, qualified minority business
40 enterprises **【or】**, qualified women's business enterprises, and, if
41 applicable, joint ventures, as appropriate, to the percentage of the
42 dollar value of the county's or municipality's total procurements
43 awarded to qualified small business enterprises, qualified veteran
44 business enterprises, qualified minority business enterprises **【or】**,
45 qualified women's business enterprises, and, if applicable, joint
46 ventures, as appropriate.

47 (cf: P.L.2013, c.5, s.3)

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

3 5. Notwithstanding the provisions of any law to the contrary, a
4 contracting agency of a county or municipality which has
5 established a qualified small business enterprise set-aside program,
6 a qualified veteran business enterprise set-aside or joint venture and
7 set-aside program, a qualified minority business enterprise set-aside
8 or joint venture and set-aside program or a qualified women's
9 business enterprise set-aside or joint venture and set-aside program
10 shall designate that a contract, subcontract or other means of
11 procurement of goods, services, equipment, or construction be
12 awarded to a qualified small business enterprise, a qualified veteran
13 business enterprise, a qualified minority business enterprise **【or】**, a
14 qualified women's business enterprise, or, if applicable, a joint
15 venture, if a contracting agency is likely to receive bids from at
16 least two qualified small business enterprises, qualified veteran
17 business enterprises, qualified minority business enterprises **【or】**,
18 qualified women's business enterprises, or, if applicable, joint
19 ventures, as appropriate, at a fair and reasonable price.

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

34 (cf: P.L.2013, c.5, s.4)

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

38 6. a. If the contracting agency determines that two bids from
39 qualified small, qualified veteran, qualified minority **【or】**,
40 qualified women's businesses , or, if applicable, joint ventures,
41 cannot be obtained, the contracting agency may withdraw the
42 designation of the set-aside contract and resolicit bids on an
43 unrestricted basis pursuant to the provisions of P.L.1971, c.198
44 (C.40A:11-1 et seq.). The cancelled designation shall not be
45 considered in determining the percentage of contracts awarded
46 pursuant to subsection b. of section 3 of **【this act】** P.L.1985, c.482
47 (C.40A:11-43).

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1 This bill would amend the current local set-aside law to permit a
2 local contracting unit to set aside a percentage of the dollar value of
3 total procurements to be awarded as set-aside contracts to joint
4 ventures which include one or more qualified women's, minority, or
5 veteran business enterprises. This joint venture method, allowing
6 traditionally disadvantaged women's, minority, and veteran-owned
7 businesses to partner with more seasoned businesses into joint
8 ventures, has been successfully employed in other places as a way
9 to remove historic roadblocks that prevent disadvantaged businesses
10 from competing in the public bidding process.