ASSEMBLY, No. 5300

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JANUARY 27, 2021

Sponsored by:
Assemblywoman SHANIQUE SPEIGHT
District 29 (Essex)
Assemblywoman VALERIE VAINIERI HUTTLE
District 37 (Bergen)
Assemblyman DANIEL R. BENSON
District 14 (Mercer and Middlesex)

Co-Sponsored by:
Assemblywoman McKnight, Assemblymen Verrelli, DeAngelo and Caputo

SYNOPSIS

Creates State contract set-aside program for businesses owned and operated by persons with disabilities.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 2/23/2021)

AN ACT concerning the designation of certain State purchase and construction contracts as set-asides for businesses owned and operated by persons with disabilities and supplementing Title 52 of the Revised Statutes.

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

1. This act shall be known and may be cited as the "Set-Aside Act for Disability-Owned Business Enterprises."

2. As used in this act:

"Contracting agency" means the State or any board, commission, committee, authority, or agency of the State.

"Department" means the Department of the Treasury.

“Disability” means a physical or mental disability that substantially impairs a major life activity.

“Disability-owned business enterprise” means a business which has its principal place of business in the State, is independently owned and operated and at least 51 percent of which is owned and controlled by persons with disabilities, and is certified by nonprofit organizations focused on business disability inclusion, including Disability:IN, as a disability-owned business enterprise.

“Disability-owned business enterprise set-aside contract” means (1) a contract for goods, equipment, construction, or services which is designated as a contract with respect to which bids are invited and accepted only from small businesses, or (2) a portion of a contract when that portion has been so designated.

3. The Department of the Treasury shall administer a disability-owned business enterprise set-aside program which shall be in addition to any other set-aside program established by law. The department shall require proof of disability status for all appropriate individuals.

4. a. Notwithstanding the provisions of any State bidding or public contracts laws to the contrary, but subject to any supervening federal statutes or rules, contracting agencies, in consultation with the department, may designate a contract, or a portion thereof, for goods, equipment, construction or services to be awarded by a contracting agency as a disability-owned business enterprise set-aside contract pursuant to the goals and procedures established in this act, whenever there is a reasonable expectation that bids may be obtained from at least three qualified disability-owned business enterprises capable of furnishing the desired goods, equipment, construction or services at a fair and reasonable price. The designation shall be made prior to the advertisement for bids.

b. When application of the goals and procedures established under this act would jeopardize the State's participation in a program from which the State receives federal funds or other benefits, the contracting agency may, in consultation with the department, withdraw the affected contracts from consideration or calculation.

5. a. There are established the goals that contracting agencies award at least three percent of their contracts to disability-owned business enterprises. These goals may, when appropriate, be attained by the direct designation of prime contracts for these businesses or, in the case of a prime contract not directly so designated, by requiring that a portion of such a prime contract be subcontracted to a disability-owned business enterprise. Each contracting agency shall make a good faith effort to attain the goals established in this subsection.

b. For purposes of attaining this goal, contracting agencies shall, when necessary, specifically set aside contracts or portions of contracts for which only these businesses may bid.

6. If the department and the contracting agency disagree as to whether a set-aside is appropriate for a contract or a portion of a contract, the dispute shall, within seven days, be submitted to the State Treasurer, or his designee, for final determination.

7. The advertisement for bids on a disability-owned business enterprise set-aside contract shall indicate the invitation to bid as a set-aside. The advertisement shall be in such newspaper or newspapers as will best give notice thereof to appropriate bidders and shall be sufficiently in advance of the purchase or contract to promote competitive bidding among the businesses for which the contract is being set aside. The newspaper or newspapers in which the advertisement shall appear shall be selected by the contracting agency in consultation with the department. The advertisement shall designate the time and place at which sealed proposals shall be received and publicly opened and read, the certified check, if any, which shall accompany each bid and such other items as the contracting agency may deem proper. The advertisement shall be made by that contracting agency pursuant to the procedure set forth in the law governing State contracts, when this act is inconsistent with that law.

8. a. The department shall establish reasonable regulations appropriate for controlling the designation of prospective disability-owned business enterprise bidders and shall maintain lists of designated businesses.

b. The department shall establish a procedure whereby businesses may request inclusion on appropriate lists for disability-owned business enterprises.

c. The department shall establish a procedure for annually reviewing the lists and determining whether the businesses on the lists shall continue to be designated as disability-owned business enterprises.

d. The department shall establish a procedure whereby the designation of a business as a disability-owned business enterprise may be challenged by a third party.

e. Any procedures established pursuant to subsections b., c., and d. of this section shall include notice to the business whose designation is at issue and an opportunity for a hearing at the department. The hearing shall not be considered a contested case under the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

9. When a contract or portion thereof has been designated as a disability-owned business enterprise set-aside, invitations for bids shall be confined to businesses designated by the department as appropriate for the set-aside and bids from other bidders shall be rejected. The purchase, contract, or expenditure of funds shall be awarded among the businesses, considering conformity with specifications and terms, in accordance with the statutes and rules governing purchases by the contracting agency. The award shall be made with reasonable promptness by the contracting agency with written notice to the department.

10. If the contracting agency determines that the acceptance of the lowest responsible bid on a disability-owned business enterprise set-aside contract will result either in the payment of an unreasonable price or in a contract otherwise unacceptable pursuant to the statutes and rules governing purchases by that agency, the contracting agency shall reject all bids and withdraw the designation of the set-aside contract. Bidders shall be notified of the set-aside cancellation, the reasons for the rejection and the State's intent to resolicit bids on an unrestricted basis. The canceled solicitation shall not be counted as a set-aside for the purpose of attaining established set-aside goals. Except in cases of emergency, prior to the final award of the contract, the contracting agency shall provide an opportunity for a hearing on the reasons for the rejection of the set-aside designation. This hearing shall not be considered a contested case under the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

11. Each contracting agency shall submit an annual report to the department according to a schedule announced by the department. This report shall include the following information:

a. the total dollar value and number of contracts awarded to disability-owned business enterprises, including a separate accounting of any set-aside contracts, and the percentage of the total State procurements by the contracting agency that the figure of total dollar value and the number of set-asides reflect;

b. the types and sizes of businesses receiving set-aside awards and the nature of the purchases and contracts; and

c. the efforts made to publicize and promote the program.

The department shall receive and analyze the reports submitted by the contracting agencies and, utilizing these data, submit an annual report to the Governor, and pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), the Legislature, showing the progress being made toward the objectives and goals of this act during the preceding fiscal year.

12. Each contracting agency shall annually develop, in consultation with the department, a plan for achieving its disability-owned business enterprise goals.

13. The department shall consult regularly with representatives of the contracting industry for the purpose of implementing the provisions of this act. These consultations shall take place no less than once every six months.

14. When the department determines that a business has been classified as a disability-owned 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 department shall:

a. assess the business any difference between the contract amount and what the State'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 the business a penalty in an amount of not more than 10 percent of the amount of the contract involved;

c. order the business ineligible to transact any business with the State for a period of not less than three months and not more than 24 months; and

d. prior to any final determination, assessment or order under this section, afford the business an opportunity for a contested case hearing pursuant to P.L.1968, c.410 (C.52:14B-1 et seq.).

All payments to the State pursuant to subsection a. of this section shall be deposited in the fund out of which the contract involved was awarded. All payments to the State pursuant to subsection b. of this section shall be deposited in the General Fund.

15. Whenever any obligation is imposed by law upon a contracting agency to set aside a percentage of State contracts

awarded by that agency for disability-owned business enterprises, compliance with that requirement shall be calculated based, according to objective and verifiable standards as promulgated pursuant to administrative regulation, upon the dollar value of payments actually made each year to, and received by, disability-owned business enterprises pursuant to State contracts awarded by that agency, or subcontracts thereto, compared to the total of all payments made to, and received by, all parties awarded State contracts by that agency.

Compliance with any such set-aside requirement shall not be calculated using statements made by bidders with respect to the portion of a contract which the bidder intends to subcontract to disability-owned business enterprises.

16. The Department of the Treasury shall develop such other regulations as may be necessary to interpret and implement all provisions of this act, including rules governing the determination of which type or class of contract is covered by this act.

17. This act shall take effect immediately.

STATEMENT

This bill creates a State contract set-aside program for businesses owned and operated by persons with disabilities.

This bill would add a new three percent set-aside program for disability-owned business enterprises which is in addition to other State set-aside programs. The three percent set-aside would represent three percent of all contracts awarded by contracting agencies.

"Disability-owned business enterprise" would be defined to mean a business which has its principal place of business in the State, is independently owned and operated and at least 51 percent of which is owned and controlled by persons with disabilities and is certified by nonprofit organizations focused on business disability inclusion, including Disability:IN, as a disability-owned business enterprise. Disability-owned business enterprise is a commonly used term by several non-profit organizations focused on business disability inclusion, such as Disability:IN, to recognize such businesses. The term "disability" would be defined to mean a physical or mental disability that substantially impairs a major life activity.