

SENATE, No. 3734

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MAY 11, 2021

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

SYNOPSIS

Creates State business assistance program to establish contracting agency procurement goals for socially and economically disadvantaged business enterprises.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning the establishment of State business assistance
2 program for socially and economically disadvantaged business
3 enterprises and supplementing Title 52 of the Revised Statutes.

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

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8 1. As used in this act:

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

11 "Department" means the Department of the Treasury.

12 "Division" means the Division of Purchase and Property in the
13 Department of the Treasury.

14 "Director" means the director of the Division of Purchase and
15 Property.

16 "Economically disadvantaged" means that the owner or owners
17 of a business enterprise:

18 demonstrate that the ability to compete in business has been
19 impaired due to diminished capital and credit opportunities, as
20 compared to others in the same or similar line of business who are
21 not socially disadvantaged; or

22 demonstrate a personal net worth that does not exceed a level
23 established by the director, but does not include equity in any
24 personal residence or business for which the person is applying for
25 certification.

26 "Qualified business enterprise" means a business which has its
27 principal place of business in the State, is independently owned and
28 operated, meets all other qualifications as established in accordance
29 with this act, and is certified for participation in the business
30 assistance program by the director.

31 "Socially disadvantaged" means that the owner or owners of a
32 business enterprise:

33 demonstrate membership in a racial minority group or show
34 personal disadvantage due to color, ethnic origin, gender, physical
35 disability, long-term residence in an environment isolated from the
36 mainstream of American society, or location in an area of high
37 unemployment, with such demonstration creating a presumption
38 that may be rebutted;

39 demonstrate personal disadvantage not common to other
40 businesses, as determined by the director; or

41 demonstrate a business location in a qualified census tract having
42 a poverty rate of 20 percent or more; or a census tract in which the
43 median family income for the census tract does not exceed 80
44 percent of the greater of the Statewide median family income or the
45 median family income of the metropolitan statistical area in which
46 the census tract is situated.

- 1 2. The director shall establish a business assistance program for
2 qualified business enterprises that are socially disadvantaged and
3 economically disadvantaged and certified as qualified in accordance
4 with this act, P.L. , c. (C.) (pending before the Legislature as
5 this bill). The program shall be implemented in addition to any set-
6 aside program established by law. The program shall:
- 7 a. establish procedures by which a socially and economically
8 disadvantaged business enterprise may apply for certification as a
9 qualified business enterprise;
- 10 b. establish a system of certifying qualified business
11 enterprises based on a requirement that the business owner or
12 owners show both social and economic disadvantages, and the
13 relative wealth of the business seeking certification as well as the
14 personal wealth of the owner or owners of the business;
- 15 c. establish standards to determine when a qualified business
16 enterprise no longer qualifies for qualified business enterprise
17 certification;
- 18 d. establish a system to evaluate bid proposals to encourage
19 qualified business enterprises to participate in the procurement of
20 professional design and information technology services;
- 21 e. establish a process to mediate complaints and to review
22 qualified business enterprise certification appeals;
- 23 f. implement an outreach program to educate potential
24 participants about the business assistance program;
- 25 g. establish a system to assist contracting agencies in
26 identifying and utilizing qualified business enterprises in their
27 contracting processes;
- 28 h. implement a system of self-reporting by qualified business
29 enterprises as well as an on-site inspection process to validate the
30 qualifications of a qualified business enterprise;
- 31 i. establish a waiver mechanism to waive program goals or
32 participation requirements for those contracting agencies that,
33 despite their best-documented efforts, are unable to contract with
34 qualified business enterprises;
- 35 j. establish a process for monitoring overall program
36 compliance in which equal employment opportunity officers
37 primarily are responsible for monitoring their respective contracting
38 agencies; and
- 39 k. establish guidelines for public institutions of higher
40 education for awarding contracts to allow the institutions to
41 establish contracting agency procurement goals for contracting with
42 qualified business enterprises.
- 43
- 44 3. a. (1) The director shall establish contracting agency
45 procurement goals for contracting with qualified business
46 enterprises in the awarding of contracts. These goals may, where
47 appropriate, be attained by the direct designation of prime contracts
48 for qualified business enterprises or, in the case of a prime contract

1 not directly designated for qualified business enterprises, by
2 requiring that a portion of such a prime contract be subcontracted to
3 a qualified business enterprise. Each contracting agency shall make
4 a good faith effort to attain the goals established in this section.

5 (2) The director shall develop a process for evaluating and
6 adjusting goals to determine what adjustments are necessary to
7 achieve participation goals.

8 b. Each contracting agency shall annually develop, in
9 consultation with the department, a plan for achieving its qualified
10 business enterprise goals.

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12 4. a. The department shall establish reasonable regulations
13 appropriate for controlling the designation of socially and
14 economically disadvantaged businesses and shall maintain lists of
15 designated businesses.

16 b. The department shall establish a procedure whereby
17 businesses may request inclusion on appropriate lists for qualified
18 business enterprises.

19 c. The department shall establish a procedure for annually
20 reviewing the lists and determining whether the businesses on the
21 lists shall continue to be designated as qualified business
22 enterprises.

23 d. The department shall establish a procedure whereby the
24 certification of a business as a qualified business enterprise may be
25 challenged by a third party.

26 e. Any procedures established pursuant to subsections b., c.,
27 and d. of this section shall include notice to the business whose
28 certification is at issue and an opportunity for a hearing at the
29 department. The hearing shall not be considered a contested case
30 under the "Administrative Procedure Act," P.L. 1968, c. 410 (C.
31 52:14B-1 et seq.).

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

36 a. the total dollar value and number of contracts awarded to
37 qualified business enterprises, and the percentage of the total State
38 procurements by the contracting agency that the figure of total
39 dollar value reflects;

40 b. the types and sizes of businesses receiving contracts and the
41 nature of the purchases and contracts; and

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

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

7. When the department determines that a business has been certified as a qualified 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:

b. in addition to the amount due under paragraph a., assess the business a penalty in an amount of not more than 10 percent of the amount of the contract involved;

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.).

8. The Department of the Treasury shall promulgate rules and regulations, in accordance with the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the provisions of this act.

9. This act shall take effect immediately.

This bill creates a State business assistance program to establish contracting agency procurement goals for socially and economically disadvantaged business enterprises.

The business assistance program establishes an annual goal for State contracting agencies, as well as guidelines for public institutions of higher education, in awarding contracts to certified and qualified business enterprises. The program is designed to assist socially and economically disadvantaged businesses in obtaining State government contracts in the following areas: construction,

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1 architecture and engineering; professional services; goods and
2 services; and information technology services.

3 The purpose of this bill is to recognize the need to encourage,
4 nurture, and support the growth of socially and economically
5 disadvantaged businesses, to foster their development, and to
6 increase the number of qualified competitors in the marketplace.