

P.L.2015, CHAPTER 116, *approved October 26, 2015*
Assembly, No. 976 (*Second Reprint*)

1 **AN ACT** concerning the designation of certain State purchase and
2 construction contracts as set-asides for businesses owned and
3 operated by disabled veterans and supplementing Title 52 of the
4 Revised Statutes.

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

8
9 1. This act shall be known and may be cited as the "Set-Aside
10 Act for Disabled Veterans' Businesses."

11
12 2. As used in this act:
13 ¹["Commission" means the New Jersey Commerce and
14 Economic Growth Commission.]¹

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

17 ¹"Department" means the Department of the Treasury.¹

18 "Disabled veteran" means a resident of this State who is certified
19 by the federal Department of Veterans' Affairs as having any degree
20 of service-connected disability.

21 "Disabled veterans' business" means a business which has its
22 principal place of business in the State, is independently owned and
23 operated and at least 51% of which is owned and controlled by
24 persons who are disabled veterans ²or a business which has its
25 principal place of business in this State and has been officially
26 verified by the United States Department of Veterans Affairs as a
27 service disabled veteran-owned business for the purposes of
28 department contracts pursuant to federal law².

29 "Disabled veterans' business set-aside contract" means a contract
30 for goods, equipment, construction or services which is designated
31 as a contract with respect to which bids are invited and accepted
32 only from disabled veterans' businesses, or a portion of a contract
33 when that portion has been so designated.

34 ¹["Office" means the Office of Small Business Assistance in the
35 New Jersey Commerce and Economic Growth Commission.]¹

36
37 3. The ¹["Office of Small Business Assistance in the New

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AMV committee amendments adopted October 9, 2014.

²Senate SMV committee amendments adopted May 7, 2015.

1 Jersey Commerce and Economic Growth Commission] Department
2 of the Treasury¹ shall administer a disabled veterans' business set-
3 aside program which shall be in addition to any other set-aside
4 program established by law. ¹The department shall require proof of
5 disabled veteran status for all appropriate individuals.¹
6

7 4. a. Notwithstanding the provisions of any State bidding or
8 public contracts laws to the contrary, but subject to any supervening
9 federal statutes or rules, contracting agencies, in consultation with
10 the ¹[commission] department¹, may designate a contract, or a
11 portion thereof, for goods, equipment, construction or services to be
12 awarded by a contracting agency as a disabled veterans' business
13 set-aside contract pursuant to the goals and procedures established
14 in this act, whenever there is a reasonable expectation that bids may
15 be obtained from at least three qualified disabled veterans'
16 businesses capable of furnishing the desired goods, equipment,
17 construction or services at a fair and reasonable price. The
18 designation shall be made prior to the advertisement for bids.

19 b. When application of the goals and procedures established
20 under this act would jeopardize the State's participation in a
21 program from which the State receives federal funds or other
22 benefits, the contracting agency may, in consultation with the
23 ¹[commission] department¹, withdraw the affected contracts from
24 consideration or calculation.
25

26 5. a. There are established the goals that contracting agencies
27 award at least 3% of their contracts to disabled veterans' businesses.
28 These goals may, when appropriate, be attained by the direct
29 designation of prime contracts for these business or, in the case of a
30 prime contract not directly so designated, by requiring that a portion
31 of such a prime contract be subcontracted to a disabled veterans'
32 business. Each contracting agency shall make a good faith effort to
33 attain the goals established in this subsection.

34 b. For purposes of attaining this goal, contracting agencies
35 shall, when necessary, specifically set aside contracts or portions of
36 contracts for which only these businesses may bid.
37

38 6. If the ¹[commission] department¹ and the contracting
39 agency disagree as to whether a set-aside is appropriate for a
40 contract or a portion of a contract, the dispute shall, within seven
41 days, be submitted to the State Treasurer, or his designee, for final
42 determination.
43

44 7. The advertisement for bids on a disabled veterans' business
45 set-aside contract shall indicate the invitation to bid as a set-aside.
46 The advertisement shall be in such newspaper or newspapers as will
47 best give notice thereof to appropriate bidders and shall be

1 sufficiently in advance of the purchase or contract to promote
2 competitive bidding among the businesses for which the contract is
3 being set aside. The newspaper or newspapers in which the
4 advertisement shall appear shall be selected by the contracting
5 agency in consultation with the ¹['office'] department¹. The
6 advertisement shall designate the time and place at which sealed
7 proposals shall be received and publicly opened and read, the
8 amount of the cash or certified check, if any, which shall
9 accompany each bid and such other items as the contracting agency
10 may deem proper. The advertisement shall be made by that
11 contracting agency pursuant to the procedure set forth in the law
12 governing State contracts, when this act is inconsistent with that
13 law.

14
15 8. a. The ¹['commission'] department¹ shall establish
16 reasonable regulations appropriate for controlling the designation of
17 prospective disabled veterans' business bidders and shall maintain
18 lists of designated businesses.

19 b. The ¹['commission'] department¹ shall establish a procedure
20 whereby businesses may request inclusion on appropriate lists for
21 disabled veterans' businesses.

22 c. The ¹['commission'] department¹ shall establish a procedure
23 for annually reviewing the lists and determining whether the
24 businesses on the lists shall continue to be designated as disabled
25 veterans' businesses.

26 d. The ¹['commission'] department¹ shall establish a procedure
27 whereby the designation of a business as a disabled veterans'
28 business may be challenged by a third party.

29 e. Any procedures established pursuant to subsections b., c.,
30 and d. of this section shall include notice to the business whose
31 designation is at issue and an opportunity for a hearing at the
32 ¹['commission'] department¹. The hearing shall not be considered a
33 contested case under the "Administrative Procedure Act," P.L.1968,
34 c.410 (C.52:14B-1 et seq.).

35
36 9. When a contract or portion thereof has been designated as a
37 disabled veterans' business set-aside, invitations for bids shall be
38 confined to businesses designated by the ¹['commission']
39 department¹ as appropriate for the set-aside and bids from other
40 bidders shall be rejected. The purchase, contract or expenditure of
41 funds shall be awarded among the businesses, considering
42 conformity with specifications and terms, in accordance with the
43 statutes and rules governing purchases by the contracting agency.
44 The award shall be made with reasonable promptness by the
45 contracting agency with written notice to the ¹['commission']
46 department¹.

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

17
18 11. Each contracting agency shall submit an annual report to the
19 '【commission】 department'¹ according to a schedule announced by
20 the '【commission】 department'¹. This report shall include the
21 following information:

22 a. the total dollar value and number of contracts awarded to
23 disabled veterans' businesses, including a separate accounting of
24 any set-aside contracts, and the percentage of the total State
25 procurements by the contracting agency that the figure of total
26 dollar value and the number of set-asides reflect;

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

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

30 The '【commission】 department'¹ shall receive and analyze the
31 reports submitted by the contracting agencies and, utilizing these
32 data, submit an annual report to the Governor, and the Legislature
33 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), showing
34 the progress being made toward the objectives and goals of this act
35 during the preceding fiscal year.

36
37 12. Each contracting agency shall annually develop, in
38 consultation with the '【commission】 department'¹, a plan for
39 achieving its disabled veterans' business goals.

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41 13. The '【commission and office】 department'¹ shall consult
42 regularly with representatives of the contracting industry for the
43 purpose of implementing the provisions of this act. These
44 consultations shall take place no less than once every six months.

45
46 14. When the '【commission】 department'¹ determines that a
47 business has been classified as a disabled veterans' business on the

1 basis of false information knowingly supplied by the business and
2 has been awarded a contract to which it would not otherwise have
3 been entitled under this act, the '【commission】 department'¹ shall:

4 a. assess the business any difference between the contract
5 amount and what the State's cost would have been if the contract
6 had not been awarded in accordance with the provisions of this act;

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

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

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

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

20
21 15. This act shall take effect immediately.
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25

26 Creates State contract set-aside program for businesses owned
27 and operated by disabled veterans.