

SENATE, No. 1888

STATE OF NEW JERSEY

INTRODUCED MARCH 10, 1997

By Senator BUBBA

1 AN ACT concerning the designation of certain State purchases 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.

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

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

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12 2. As used in this act:

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

15 "Chief" means the Chief of the Office of Small Business Assistance.

16 "Department" means the Department of Commerce, Energy and
17 Economic Development.

18 "Office" means the Office of Small Business Assistance in the
19 Department of Commerce, Energy and Economic Development.

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

23 "Disabled veterans' business" means a business which has its
24 principal place of business in the State, is independently owned and
25 operated and at least 51% of which is owned and controlled by
26 persons who are disabled veterans.

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

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33 3. The Office of Small Business Assistance in the Department of
34 Commerce, Energy and Economic Development shall administer a
35 disabled veterans' business set-aside program which shall be in addition
36 to any other set-aside program established by law.

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

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

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19 5. a. There are established the goals that contracting agencies
20 award at least 3% of their contracts to disabled veterans' businesses.
21 These goals may, where appropriate, be attained by the direct
22 designation of prime contracts for these business or, in the case of a
23 prime contract not directly so designated, by requiring that a portion
24 of such a prime contract be subcontracted to a disabled veterans'
25 business. Each contracting agency shall make a good faith effort to
26 attain the goals established in this subsection.

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

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

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36 7. The advertisement for bids on a disabled veterans' business set-
37 aside contract shall indicate the invitation to bid as a set-aside. The
38 advertisement shall be in such newspaper or newspapers as will best
39 give notice thereof to appropriate bidders and shall be sufficiently in
40 advance of the purchase or contract to promote competitive bidding
41 among the businesses for which the contract is being set aside. The
42 newspaper or newspapers in which the advertisement shall appear shall
43 be selected by the contracting agency in consultation with the office.
44 The advertisement shall designate the time and place at which sealed
45 proposals shall be received and publicly opened and read, the amount
46 of the cash or certified check, if any, which shall accompany each bid

1 and such other items as the contracting agency may deem proper. The
2 advertisement shall be made by that contracting agency pursuant to the
3 procedure set forth in the law governing State contracts, where this
4 act is inconsistent with that law.

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6 8. a. The department shall establish reasonable regulations
7 appropriate for controlling the designation of prospective disabled
8 veterans' business bidders and shall maintain lists of designated
9 businesses.

10 b. The department shall establish a procedure whereby businesses
11 may request inclusion on appropriate lists for disabled veterans'
12 businesses.

13 c. The department shall establish a procedure for annually
14 reviewing the lists and determining whether the businesses on the lists
15 shall continue to be designated as disabled veterans' businesses.

16 d. The department shall establish a procedure whereby the
17 designation of a business as a disabled veterans' business may be
18 challenged by a third party.

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

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26 9. When a contract or portion thereof has been designated as a
27 disabled veterans' business set-aside, invitations for bids shall be
28 confined to businesses designated by the department as appropriate for
29 the set-aside and bids from other bidders shall be rejected. The
30 purchase, contract or expenditure of funds shall be awarded among the
31 businesses, considering conformity with specifications and terms, in
32 accordance with the statutes and rules governing purchases by the
33 contracting agency. The award shall be made with reasonable
34 promptness by the contracting agency with written notice to the
35 department.

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37 10. If the contracting agency determines that the acceptance of the
38 lowest responsible bid on a disabled veteran business set-aside
39 contract will result either in the payment of an unreasonable price or
40 in a contract otherwise unacceptable pursuant to the statutes and rules
41 governing purchases by that agency, the contracting agency shall reject
42 all bids and withdraw the designation of the set-aside contract.
43 Bidders shall be notified of the set-aside cancellation, the reasons for
44 the rejection and the State's intent to resolicit bids on an unrestricted
45 basis. The canceled solicitation shall not be counted as a set-aside for
46 the purpose of attaining established set-aside goals. Except in cases

1 of emergency, prior to the final award of the contract, the contracting
2 agency shall provide an opportunity for a hearing on the reasons for
3 the rejection of the set-aside designation. This hearing shall not be
4 considered a contested case under the "Administrative Procedure Act,"
5 P.L.1968, c.410 (C.52:14B-1 et seq.).

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

10 a. the total dollar value and number of contracts awarded to
11 disabled veterans' businesses, including a separate accounting of any
12 set-aside contracts, and the percentage of the total State procurements
13 by the contracting agency that the figure of total dollar value and the
14 number of set-asides reflect;

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

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

18 The department shall receive and analyze the reports submitted by
19 the contracting agencies and, utilizing these data, submit an annual
20 report to the Governor and the Legislature showing the progress being
21 made toward the objectives and goals of this act during the preceding
22 fiscal year.

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24 12. Each contracting agency shall annually develop, in consultation
25 with the department, a plan for achieving its disabled veterans'
26 business goals.

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

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33 14. Where the department determines that a business has been
34 classified as a disabled veteran business on the basis of false
35 information knowingly supplied by the business and has been awarded
36 a contract to which it would not otherwise have been entitled under
37 this act, the department shall:

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

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

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

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

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

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9 15. This act shall take effect immediately.

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12 STATEMENT

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14 This bill creates a State contract set-aside program for disabled
15 veterans to be administered by the Office of Small Business
16 Assistance. It establishes a goal that contracting agencies set aside at
17 least 3% of their contracts for disabled veterans' businesses. A
18 disabled veterans' business is defined as a business which has its
19 principal place of business in New Jersey, is independently owned and
20 operated and at least 51% of which is owned and controlled by
21 persons who are disabled veterans. The set-aside program would
22 create economic opportunity for disabled veterans and recognize their
23 service and sacrifice.

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