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Title:	AN ORDINANCE ESTABLISHING A VETERAN'S AND SMALL BUSINESS SET-ASIDE PROGRAM FOR CITY OF NEWARK CONTRACTS PURSUANT TO N.J.S.A. 40A:11-41 et seq. Sponsors: Councilmembers Baraka/James				
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3/19/2014	1	Municipal Council	Close on Public Hearing and Adopt	Pass
3/5/2014	1	Municipal Council	Adopt on First Reading	Pass
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AN ORDINANCE ESTABLISHING A VETERAN'S AND SMALL BUSINESS SET-ASIDE PROGRAM FOR CITY OF NEWARK CONTRACTS PURSUANT TO N.J.S.A. 40A:11-41 et seq.
Sponsors: Councilmembers Baraka/James

WHEREAS, the City of Newark has a long history of promoting equality of opportunity in procurement; and

WHEREAS, the Legislature of the State of New Jersey has authorized the establishment, by resolution or ordinance, of set-aside contract programs for qualified small business enterprises and most recently qualified veteran business enterprises; and

WHEREAS, the Municipal Council has determined that it is in the public interest to establish such set-aside programs in the City of Newark.

NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT:

Note: All material is new, therefore underlining has been omitted.

Section 1. The Revised General Ordinances of the City of Newark, New Jersey, 2000, are hereby amended to include the following new Ordinance:

TITLE - AN ORDINANCE ESTABLISHING A VETERAN AND SMALL BUSINESS SET-ASIDE PROGRAM

1. Definitions

- a. "Qualified Small Business Enterprise" shall mean a business, which has its principal place of business in this State, is independently owned and operated and meets all other qualifications as may be established pursuant to *N.J.S.A. 52:27H-21.1, et seq.*; and
- b. "Set-aside contracts" shall mean: (1) a contract for goods, equipment, construction, or services, which is designated as a contract for which bids are invited and accepted only from qualified small business enterprises and/or qualified veteran business enterprises, as determined by the Division of Central Purchasing of the City of Newark within the Department of Administration or any other City of Newark Department responsible for its own procurement; and (2) a portion of a contract when that portion has been so designated; and or (3) any other purchase or procurement so designated; and
- c. "Veteran" shall have the same meaning as set forth in Subsection b. of *N.J.S.A. 11A:5-1*, except that the veteran shall present to the Adjutant General of the Department of Military and Veterans' Affairs sufficient evidence of a record of service and receive a determination of status, no later than the date established for the submission of bids; and
- d. "Qualified Veteran Business Enterprise" shall mean a business, which has its principal place of business in this State, is independently owned and operated, is at least 51% owned and controlled by a veteran or that wherein at least 25% of the required workforce for the contract are veterans, including new hires, if additional workers are required to perform the contract, and is qualified pursuant to *Section 25 of P.L. 1971, c.198 (N.J.S.A. 40A:11-25)*. The business shall also submit forms quarterly to the City of Newark showing proof of veteran status for all of the veteran employees.

2. Set-Aside Program Authorized

- a. The Municipal Council hereby establishes as a goal, that ten percent (10%) of all City of Newark contracts be collectively awarded to Qualified Small Business Enterprises and Qualified Veteran Business Enterprises.
- b. In order to attain the goal, the Division of Central Purchasing (and/or any City of Newark department responsible for its own procurement) shall identify entire contracts or portions of contracts to be contracted or subcontracted to such Qualified Small Business Enterprises and/or Qualified Veteran Business Enterprises. The Division of Central Purchasing (and/or any City of Newark department responsible for its own procurement) shall make a good faith effort to attain the goal and may consider, in doing so, to consider procuring contracts less than \$100,000.00 in whole or in part as such Set-aside contracts. This dollar value is not to be considered a floor or a ceiling with regard to considering whether to designate a contract as a Set-aside contract.
- c. A Set-aside designation for the procurement of goods, services, equipment or construction, shall be made in advance of the procurement and only where the Division of Central Purchasing (and/or any City of Newark department responsible for its own procurement) is likely to

receive bids or proposals from at least two (2) Qualified Small Business Enterprises or Qualified Veteran Business Enterprises. All advertisements for bids shall be published on the Newark Municipal web-site and in at least one (1) newspaper, which will best provide notice thereof to such business enterprises.

d. The Department of Administration shall be responsible for monitoring and reporting to the Municipal Council whether the stated goals have been attained.

3. Set-aside Cancellation

a. If the Division of Central Purchasing (and/or any City of Newark department responsible for its own procurement) determines that two (2) bids cannot be obtained, the designation may be withdrawn and re-solicit bids on an unrestricted basis.

b. If the Division of Central Purchasing (and/or any City of Newark department responsible for its own procurement) determines that the acceptance of the lowest responsible bid will result in the payment of an unreasonable price, the bids shall be rejected and the designation withdrawn. Qualified Small Business Enterprises and Qualified Veteran Business Enterprises, as appropriate, shall be notified in writing of the Set-aside cancellation, the reasons for the rejection and the Division of Central Purchasing's (and/or any City of Newark department responsible for its own procurement) intent to re-solicit bids on an unrestricted basis.

4. False Information; Penalties

a. In accordance with *N.J.S.A. 40A:11-47*, if the Division of Central Purchasing (and/or any City of Newark department responsible for its own procurement) determines that a business has been classified as a Qualified Small Business Enterprise or Qualified Veteran 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, the governing body shall have the authority to:

i. Assess against the business any difference between the contract and what the governing body's cost would have been if the contract had not been awarded in accordance with the provisions of this ordinance and the authorizing statute;

ii. In addition to the amount due under Subsection (i), assess against the business a penalty in an amount of not more than ten percent (10%) of the amount of the contract involved; and

iii. Order or the ineligible business to not transact any business with the City of Newark, its Division of Central Purchasing (and/or any City of Newark department responsible for its own procurement) for a period to be determined by the Municipal Council, upon recommendation of the Purchasing Agent of the Division of Central Purchasing (and/or the Director of any City of Newark department responsible for its own procurement).

b. Prior to any final determination of the penalties in Section 4 (a), the Municipal

Council shall afford the business an opportunity for a hearing before the Purchasing Agent of the Division of Central Purchasing (and/or the Director of any City of Newark department responsible for its own procurement) on the reasons for the imposition of the penalties set forth herein. The penalties shall be assessed, upon the recommendation of the Director of the Division of Central Purchasing (and/or the Director of any City of Newark department responsible for its own procurement) , by the Municipal Council, in accordance with *N.J.S.A. 40A:11-47*.

Section 2. Severability

If any provision of this ordinance or application thereof to any person or circumstance is judged invalid, the invalidity shall not affect other provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

Section 3. Effective Date

This ordinance will take effect upon final adoption and publication, in accordance with law.

Section 4. Repealer

All ordinances and parts of ordinances inconsistent herewith are hereby repealed.

STATEMENT:

This ordinance hereby establishes Set-Aside Contracts Program for the purchase of goods and services by the City of Newark for Qualified Small Business Enterprises and Qualified Veteran Business Enterprises.