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

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

1. 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.
   "Division" means the Division of Purchase and Property in the
   Department of the Treasury.
   "Director" means the director of the Division of Purchase and
   Property.
   "Economically disadvantaged" means that the owner or owners
   of a business enterprise:
   demonstrate that the ability to compete in business has been
   impaired due to diminished capital and credit opportunities, as
   compared to others in the same or similar line of business who are
   not socially disadvantaged; or
   demonstrate a personal net worth that does not exceed a level
   established by the director, but does not include equity in any
   personal residence or business for which the person is applying for
   certification.
   "Qualified business enterprise" means a business which has its
   principal place of business in the State, is independently owned and
   operated, meets all other qualifications as established in accordance
   with this act, and is certified for participation in the business
   assistance program by the director.
   "Socially disadvantaged" means that the owner or owners of a
   business enterprise:
   demonstrate membership in a racial minority group or show
   personal disadvantage due to color, ethnic origin, gender, physical
   disability, long-term residence in an environment isolated from the
   mainstream of American society, or location in an area of high
   unemployment, with such demonstration creating a presumption
   that may be rebutted;
   demonstrate personal disadvantage not common to other
   businesses, as determined by the director; or
   demonstrate a business location in a qualified census tract having
   a poverty rate of 20 percent or more; or a census tract in which the
   median family income for the census tract does not exceed 80
   percent of the greater of the Statewide median family income or the
   median family income of the metropolitan statistical area in which
   the census tract is situated.
2. The director shall establish a business assistance program for qualified business enterprises that are socially disadvantaged and economically disadvantaged and certified as qualified in accordance with this act, P.L. , c. (C. ) (pending before the Legislature as this bill). The program shall be implemented in addition to any set-aside program established by law. The program shall:
   a. establish procedures by which a socially and economically disadvantaged business enterprise may apply for certification as a qualified business enterprise;
   b. establish a system of certifying qualified business enterprises based on a requirement that the business owner or owners show both social and economic disadvantages, and the relative wealth of the business seeking certification as well as the personal wealth of the owner or owners of the business;
   c. establish standards to determine when a qualified business enterprise no longer qualifies for qualified business enterprise certification;
   d. establish a system to evaluate bid proposals to encourage qualified business enterprises to participate in the procurement of professional design and information technology services;
   e. establish a process to mediate complaints and to review qualified business enterprise certification appeals;
   f. implement an outreach program to educate potential participants about the business assistance program;
   g. establish a system to assist contracting agencies in identifying and utilizing qualified business enterprises in their contracting processes;
   h. implement a system of self-reporting by qualified business enterprises as well as an on-site inspection process to validate the qualifications of a qualified business enterprise;
   i. establish a waiver mechanism to waive program goals or participation requirements for those contracting agencies that, despite their best-documented efforts, are unable to contract with qualified business enterprises;
   j. establish a process for monitoring overall program compliance in which equal employment opportunity officers primarily are responsible for monitoring their respective contracting agencies; and
   k. establish guidelines for public institutions of higher education for awarding contracts to allow the institutions to establish contracting agency procurement goals for contracting with qualified business enterprises.

3. a. (1) The director shall establish contracting agency procurement goals for contracting with qualified business enterprises in the awarding of contracts. These goals may, where appropriate, be attained by the direct designation of prime contracts for qualified business enterprises or, in the case of a prime contract
not directly designated for qualified business enterprises, by
requiring that a portion of such a prime contract be subcontracted to
a qualified business enterprise. Each contracting agency shall make
a good faith effort to attain the goals established in this section.

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

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

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

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

d. The department shall establish a procedure whereby the
certification of a business as a qualified 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
certification 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.).

5. 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
qualified business enterprises, and the percentage of the total State
procurements by the contracting agency that the figure of total
dollar value reflects;

b. the types and sizes of businesses receiving contracts 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 the Legislature pursuant to
section 2 of P.L.1991, c.164 (C.52:14-19.1), showing the progress
being made toward the objectives and goals of this act during the
preceding fiscal year.
6. The department shall consult regularly with representatives of the contracting industry for the purpose of implementing the provisions of this act, P.L. , c. (C. ) (pending before the Legislature as this bill). These consultations shall take place not less than once every six months.

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:
   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 paragraph 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 paragraph 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 paragraph b. of this section shall be deposited in the State General Fund.

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.

STATEMENT

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,
architecture and engineering; professional services; goods and
services; and information technology services.

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