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THE LEGAL NEWSLETTER OF
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New Jersey's Minority and Female Contractor Set-Aside Program

This article will provide much of the basic information you need regarding participating in minority and female contractor set-aside contracts in the State of New Jersey. A contract is a "set-aside contract" if it has been designated by a New Jersey state contracting agency as exclusively available for award to either an eligible minority or female owned and operated business. N.J.A.C. 12A:10A-1.2.

Authorized Contracting Agencies

Some contracting agencies with authority to award set-aside contracts include state departments, such as the Department of Corrections and the Department of Transportation; colleges such as Rutgers and Trenton State College; authorities including the Sports and Exposition Authority; and commissions such as the Hackensack Meadowlands Development Commission. At present, there are over 50 authorized contracting agencies in New Jersey.

In order to qualify as a "minority business" the contractor must have its principal place of business within New Jersey, must be independently owned and operated, and at least 51 percent of the firm must be owned and controlled by persons who are African

Americans, Latinos or Asian Americans. The law provides definitions for each minority. For example, "Latino" means a person of Mexican, Puerto Rican Cuban, Central or South American, Caribbean Island or other Spanish culture or origin, regardless of race. A "female business" is defined under the law as one with its principal place of business within New Jersey, that is independently owned and operated, and at least 51 percent owned and controlled by women.

New Jersey statutes require a minimum of 25 percent of the total number of state contracts and purchase orders be allocated to small, minority-owned, and female-owned businesses. Of that percentage, the law stipulates a set-aside of 15% for small

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Law Firm Briefs

Since Our Last Issue ...

The firm recently announced the addition of several areas of law to our range of available services including Municipal Court, Internet & Technology, Trademark & Intellectual Property, Labor & Employment, and Bankruptcy Law.

Great Quotations ...

"Nothing endures but change." - Heraclitus

"The future belongs to those who prepare for it."

- Ralph Waldo Emerson

*This article was
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businesses; 7% for minority-owned businesses; and 3% for female owned businesses.

The act also contains specific provisions relating to the standards of certification as a minority or female business. N.J.A.C. 12A:11-1.3. "The ownership and control by minorities or women shall be real, substantial, and continuing and shall go beyond the pro forma ownership of the business as reflected in its ownership documents."

Substantial Female or Minority Control Required

The act further states, "Examples of insufficient contributions include: a promise to contribute capital; a note payable to the business; owners who are not minorities or women; or the mere participation of minorities or women as employees, rather than as manager. The minority or woman owner shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the substance, rather than form, of any arrangements." N.J.A.C. 12A:11-1.3(b)1.

A business seeking to be certified under the Act as minority or female must apply to the Contracting Opportunity and Certification Office of the Department of Commerce and Economic Development. Some of the information and documents to be submitted as part of the application include names of all owners and their representative shares of ownership; a complete disclosure of financial statements and balance sheets; a complete listing of affiliated banking institutions; and a representative list of current and prior clients for the past two years where applicable. N.J.A.C. 12A:11-1.4.

State Database Denoting Status

If the application for female or minority status is granted, the business is added to an electronic database thereby denoting that it is eligible for participation in programs requiring certification. N.J.A.C. 12A:11-1.5. There is no limit to the number of businesses that can be placed on the database and a business may seek certification at any time. N.J.A.C. 12A:11-1.5 and 1.6.

Any other bidder on the state bidders list or set-aside bidders list may challenge the qualifications of any other business on those lists. The Commissioner of the Department of Commerce and Economic Development has discretion to dismiss a challenge for insufficient evidence. N.J.A.C. 12A:11-1.9.

A challenge to the minority or female status of a business must be submitted in writing with copies to the challenged business and to the contracting agency where the specific contract is in issue. The written challenge must include supporting documentation in evidence of the charges. Hearings may be held and in the interim the contracting agency shall suspend any further awards under the contract pending a hearing, if warranted. The entire challenge procedure must be completed in no more than 20 days. N.J.A.C. 12A:11-1.9.

Once a business has been certified, another application is not required until 5 years after the effective date of the certification. N.J.A.C. 12A:11-1.11. However, during that time an Annual Verified Statement must be filed and any material change in the business, whether affecting status under the Act or not, must be reported.

The above are some of the more significant rules you will need to know regarding participating in minority and female contractor set-aside contracts in the State of New Jersey. Complete copies of the Act and application forms are available through our office.



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