

County of Passaic Board of County Commissioners

OFFICE OF COUNTY COMMISSIONERS

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Public Meeting (Board Meeting)

Date: Oct 26, 2021 - 5:30 PM

Location: County Administration Building
220
401 Grand Street
Paterson, NJ 07601

Agenda: RESOLUTION ESTABLISHING A MINORITY BUSINESS ENTERPRISE AND WOMEN BUSINESS ENTERPRISE SET-ASIDE AND JOINT VENTURE PROGRAM FOR THE COUNTY OF PASSAIC, PURSUANT TO N.J.S.A. 40A:11-42 ET SEQ., ALL AS NOTED IN THE RESOLUTION.

THIS RESOLUTION WAS REQUESTED BY:

REVIEWED BY:

Anthony J. De Nova III
COUNTY ADMINISTRATOR

APPROVED AS TO FORM AND LEGALITY:

Matthew P. Jordan, Esq.
COUNTY COUNSEL

Administration and Finance

COMMITTEE NAME

| | | | | | | | | |
|-----------------------------|-------|------------------|------|-----|-----|-----|-------|-------|
| Official Resolution# | | R20210933 | | | | | | |
| Meeting Date | | 10/26/2021 | | | | | | |
| Introduced Date | | 10/26/2021 | | | | | | |
| Adopted Date | | 10/26/2021 | | | | | | |
| Agenda Item | | o-24 | | | | | | |
| CAF # | | | | | | | | |
| Purchase Req. # | | | | | | | | |
| Result | | Adopted | | | | | | |
| COMMISSIONER | PRES. | ABS. | MOVE | SEC | AYE | NAY | ABST. | RECU. |
| Lepore | ✓ | | | | ✓ | | | |
| James | ✓ | | ✓ | | ✓ | | | |
| Akhter | ✓ | | | | ✓ | | | |
| Bartlett | ✓ | | | | ✓ | | | |
| Best Jr. | ✓ | | | | ✓ | | | |
| Duffy | ✓ | | | | ✓ | | | |
| Lazzara | ✓ | | | ✓ | ✓ | | | |

PRES.= present ABS.= absent
MOVE= moved SEC= seconded
AYE= yes NAY= no ABST.= abstain
RECU.= recuse

Dated: October 27, 2021

RESOLUTION ESTABLISHING A MINORITY BUSINESS ENTERPRISE AND WOMEN BUSINESS ENTERPRISE SET-ASIDE AND JOINT VENTURE PROGRAM FOR THE COUNTY OF PASSAIC, PURSUANT TO N.J.S.A. 40A:11-42 ET SEQ.

WHEREAS, the County of Passaic (hereafter “County”) is a body politic and corporate pursuant to N.J.S.A. 40:18-1 and vested with all rights contained therein; and

WHEREAS, pursuant to N.J.S.A. 40:20-1 the Board of County Commissioners of the County of Passaic (hereafter “Board”) is vested with managing the property, finances, and affairs of the County; and

WHEREAS, the Board desires to affirm their commitment to economic inclusion and wishes to ensure that the County's business practices promote equal opportunities to compete for all willing and able businesses eligible to contract with the County for construction, architecture, engineering, and other professional services, and for the procurement of other goods and services; and

WHEREAS, the Board has been analyzing the County's procurement practices and policies and closely monitoring contracts with Minority Business Enterprise (hereafter “MBE”) and Women Business Enterprise (hereafter “WBE”) vendors and has determined the best course of action is to establish a formalized set-aside program, pursuant to N.J.S.A. 40A:11-42; and

WHEREAS, pursuant to N.J.S.A. 40A:11-41, a MBE is a business that is at least 51 percent owned by minority group members and has its principal place of business in New Jersey, a WBE as a business that is at least 51 percent owned by women and has its principal place of business in New Jersey; and

WHEREAS, the cities of Atlanta, New York, the District of Columbia, the County of Essex, the County of Hudson, and the County of Bergen and a number of other counties and municipalities have had success in increasing MBE and WBE contract participation and utilization through Joint Ventures in the procurement process; and

WHEREAS, in December of 2016, the Minority Business Development Agency of the United States Department of Commerce developed a report looking at practices within NJ and throughout the country entitled, "Contracting Barriers and Factors Affecting Minority Business Enterprises", finding that "both discriminatory and non-discriminatory actions lead to a contracting disparity for MBEs;" and

WHEREAS, pursuant to N.J.S.A. 40A:11-42, the Board is empowered to enact, by Resolution, a set-aside program to attract the participation of qualified MBEs and WBEs; and

WHEREAS, the Board has determined that a Minority Business Enterprise and Women Business Enterprise Set-Aside and Joint-Venture program will best support and affirm the County's commitment for greater economic inclusion for all residents of the County.

WHEREAS, this matter was discussed at the September 29, 2021 meeting of the Administration and Finance Committee and is being recommended to the Board for approval; and

NOW THEREFORE LET IT BE RESOLVED, that pursuant to N.J.S.A. 40A:11-42 et seq., the Board of County Commissioners of the County of Passaic hereby authorize the County Administrator to Amend the Administrative Code of the County of Passaic to establish a Minority Business Enterprise and Women Business Enterprise Set-Aside and Joint-Venture program as follows:

Section 1. Definitions.

"Set-Aside" has the same meaning as set forth in N.J.S.A. 40A:11-41 as "(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 minority business enterprises or qualified women's business enterprises, as appropriate, (2) a portion of a contract when that portion has been so designated, or (3) any other purchase or procurement so designated. "

"Contract" shall mean any agreement, including but not limited to a purchase order or a formal agreement which is legally binding relationship enforceable by law, between a vendor who agrees to provide or perform goods or services and the County of Passaic which agrees to compensate a vendor as defined by and subject to the terms and conditions of the agreement. A

contract may include an arrangement whereby a vendor compensates a contracting unit for the vendor's right to perform a service, such as, but not limited to, operating a concession.

"Joint Venture" shall mean an association of one or more Minority Business Enterprise or Women Business Enterprise in combination with one or more non-MBE/WBE business enterprise, proposing to perform as a single for-profit enterprise, in which each Joint Venture partner contributes property, capital, efforts, skill and knowledge. Joint Ventures must have an agreement in writing specifying the terms and conditions of the relationship between the partners and their respective roles in the contract. The County is to issue payment for services to Joint Ventures on checks to be endorsed by each partner of the enterprise; and,

"Goods and Nonprofessional Services" shall mean such goods and services from vendors typically procured through the County's straight bid process pursuant to N.J.S.A. 40A:11-4.

"Professional Services" shall mean services rendered or performed by a person authorized by law to practice a recognized profession, whose practice is regulated by law, and the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship and training. Professional services may also mean services rendered in the provision or performance of goods or services that are original and creative in character in a recognized field of artistic endeavor.

Section 2. Goals.

For the fiscal year beginning on January 1, 2022, and for every year thereafter, goals are hereby established for qualified business participation and shall be obtained, unless prohibited by any Federal, State or local law, for any contract advertised, or if not advertised after the effective date of this section, the MBE/WBE Set-aside and Joint Venture program created herein shall have the goals of contracts awarded as set forth below, and shall serve as the initial goals for the County of Passaic to pursue. At any time, the Board of County Commissioners of the County of Passaic may, at their discretion, revise the goals established herein by subsequent resolution.

(a) For Goods and Nonprofessional Services, the initial goals are as follows:

- (1) WBE: Ten percent (10%) total average "spend" on contracts for Nonprofessional Services awarded to WBEs and with the goal to increase same to twenty percent (20%) by 2024 by way of set-asides.
- (2) MBE: Ten percent (10%) total average "spend" on contracts for Nonprofessional Services awarded to MBEs and with the goal to increase same to twenty percent (20%) by 2024 by way of set-asides.

(b) For Professional Services, the initial goals are as follows:

- (1) WBE: Ten percent (10%) total average "spend" on contracts for Professional Services awarded to WBEs and with the goal to increase same to twenty percent (20%) by 2024 by way of set-asides.
- (2) MBE: Ten percent (10%) total average "spend" on contracts for Professional Services awarded to MBEs and with the goal to increase same to twenty percent (20%) by 2024 by way of set-asides.

(c) For Construction Contracts, the initial goals are as follows:

- (1) WBE: Ten percent (10%) total average "spend" on Construction contracts awarded to WBEs and increasing same to twenty percent (20%) by 2024 by way of set-asides or Joint Venture.
- (2) MBE: Ten percent (10%) total average "spend" on Construction contracts awarded to MBEs and increasing same to twenty percent (20%) by 2024 by way of set-asides or Joint Venture.

The above stated percentages relate to the total dollar value of all County contracting departments and contracting agencies to be set aside for qualified businesses, as appropriate, as goals for County departments and contracting agencies to achieve by the end of each year.

Section 3. Duties of the Purchasing Agent

- (a) The County will pay by reimbursement the \$100 certification fee for first-time registrants who wish to become certified as WBEs or MBEs, in accordance with procedures adopted by the Purchasing Agent.
- (b) The Purchasing Agent may forego awarding a contract pursuant to this section, under the following conditions: (i) an emergency exists, as a specific, documented and definable danger to public health, safety or welfare; (ii) where an eligible MBE or WBE Joint Venture or set-aside is determined by the Purchasing Agent to be unqualified or ineligible to perform the contract; (iii) where the Purchasing Agent determines that two (2) bids from qualified MBE, WBE, or a qualified Joint Venture cannot be obtained pursuant to N.J.S.A. 40A:11-46(a); or (iv) where the Purchasing Agent determines that the acceptance of the lowest responsible bid will result in the payment of an unreasonable price pursuant to N.J.S.A. 40A:11-46(b).
- (c) For the purposes of Joint Ventures the bonding requirement for any contract awarded the joint entity formed, for purposes of complying with this Resolution, shall be the liability of the entity formed to satisfy same; and
- (d) For all contracts advertised after the effective date of this section, the Purchasing Agent shall make a good faith effort to attain the goals established by the Board of County Commissioners of the County of Passaic pursuant to this Resolution.
- (e) The policies set forth in this Resolution shall not apply to any contract to the extent that the requirements imposed by this section are inconsistent with procedures or standards required by any law or regulation of the United States or the State of New Jersey to the extent such inconsistency is not permitted under law or the home rule powers of the County, and,

Section 4. Joint Venture Requirements

- (a) As a condition of being awarded a contract under this Resolution, the eligible MBE or WBE joint venture or set-aside shall continue to meet the definition and satisfy the criteria of an eligible joint venture or set-aside during the term of the contract for which the bid incentive was awarded.
- (b) The joint venture contract awardee shall maintain accurate and detailed books and records necessary to monitor compliance with this section and shall submit such reports as required by the Purchasing Agent, his/her designee or the Board of County Commissioners of the County of Passaic.

Section 5. Certification & Compliance Officer

- (a) The Purchasing Agent in collaboration with the County Administrator shall be required to adopt policy, rules and regulations for the proper administration and enforcement of the policy set forth in this Resolution. The policy, rules and regulations to be adopted, shall include training opportunities, outreach, compliance and enforcement measures to assess the accurate representation of MBE and WBE structure, including, but not limited to the establishing of a Certification & Compliance Officer within the Division of Purchasing to ensure compliance with this Resolution and to assess the Set-aside company and/or Joint Venture's Board of Directors composition.
- (b) The role of the Certification & Compliance Officer shall be as follows:

- (1) Maintain a list of eligible businesses; consult with the Purchasing Agent, and the County Administration to determine which County contracts should be set aside for participation herein; oversee outreach to qualified business enterprises; and to oversee and co-ordinate seminars for qualified businesses enterprise to expand the number of qualified business eligible to participate in this set-aside program.

- (2) Maintain a listing of qualified businesses in the Passaic County area for use by the County's Departments and Officers.
- (3) Pursuant to N.J.S.A. 40A:11-48, submit annual written reports to the County Administrator indicating the good faith effort made by the County's contracting agencies to attain the set-aside goals. The reports shall be submitted to the Board of County Commissioners of the County of Passaic setting forth the previous annual activity. The County shall publish a list of the County's contracting agencies' attainments (goals) for the immediately preceding year, in two newspapers circulating in the County, by March 1 of each year.
- (4) Have access to all records and files of all County departments related to construction, goods and services contracts in order to monitor and review compliance.
- (5) Classify each business according to contract types in which the business represents itself to have capabilities, such a list shall be shared with all Departments, Agencies, and Divisions within the County.
- (6) Survey businesses placed on the solicitation list to determine their past and current participation in County contracts. The results may be used to ascertain the Department's good faith efforts to attain the goals as established by the County.

Section 6. Effective Date

The policies set forth herein shall take effect on January 1, 2022.

KJB

October 26, 2021