

**ORDINANCE #1761-2014**

**AN ORDINANCE ESTABLISHING  
A QUALIFIED VETERAN-OWNED BUSINESS  
SET-ASIDE PROGRAM IN THE TOWNSHIP OF HAMILTON**

**WHEREAS;** the Township Committee of the Township of Hamilton has determined that the adoption of a “Qualified Veteran Business Enterprise Set-aside program” is good public policy.

**NOW THEREFORE BE IT HEREBY RESOLVED;** by the Township Committee of the Township of Hamilton, County of Atlantic, State of New Jersey, that the following is hereby adopted:

**Chapter 14**

**QUALIFIED VETERAN BUSINESS ENTERPRIZE SET-ASIDE PROGRAM**

**14-1. Purpose**

The purpose of implementing the provisions of the Townships qualified Veteran Business Enterprise's “VBE” set-aside program is to provide preference to VBE's for the opportunity to bid and be awarded selected Township contracts in an amount up to 5% of the Township's purchases, services and construction contracts for qualified veteran's business enterprise.

**14-2. Definitions**

For the purposes of this chapter, the following definitions shall apply:

**Construction Contract** - Any agreement for the erection, repair or alteration of any building, structure, bridge, roadway or other improvement to real property.

**County** -The County of Atlantic.

**Qualified Veteran Business Enterprise or VBE** - The meaning set forth at N.J.S.A. 40A:11-4li, namely 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 twenty five percent of the required workforce for the contract are veterans, and 25% of the labor hours charged to the contract are accrued by employees who 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 (CAOA: 11-25).

**Township** - The Township of Hamilton (Atlantic County)

**Veteran** - The meaning set froth at N.J.S.A. 40A II-41h, namely the same meaning as set forth in subsection b. of N.J.S.A. 40A: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.

**Set-aside Contracts** -

- A. A contract for goods, equipment, construction or services, which is designated as a contract for which bids are invited and accepted only from a qualified veteran business enterprise.
- B. A portion of a contract when that has been so designated; or
- C. Any other purchase or procurement so designated.

**Total Procurements** - Shall mean all purchases, contracts or acquisitions of the Township, whether by competitive bidding, single source contracting, or other method of procurement, as prescribed or permitted by law.

### **14-3. Goals; Revisions.**

- A. For the fiscal year beginning January 1, 2014, and for every year thereafter, the goal for the “qualified veteran business enterprise set-aside program” shall be 5% of the Township’s purchases, services and construction contracts.
- B. The Township Committee may revise the goals established herein by subsequent ordinance.
- C. The above-stated percentages relate to the total dollar value of all Township contracting departments to be set aside for qualified veteran business enterprises as goals for the Township to achieve by the end of each fiscal year.

### **14-4. Effect on Provisions.**

If a Township contract, construction, service or procurement, which would otherwise be subject to the provisions of this chapter, is or becomes subject to federal or state laws which conflict with this program or actions thereof, federal or state law shall apply, and the contract shall be interpreted and enforced accordingly.

### **14.5 Implementation**

In the implementation of the Township's qualified veteran-owned business set-aside program and pursuant to the provisions of N.J.S.A. 40A: 11-43:

- A. The Township shall advertise the “qualified veteran business enterprise set-aside program” on its Electronic Sign, and on the Township Television Station, in an attempt to identify qualified veteran business enterprises.
- B. The Administrator shall recommend to the Township Committee a contract, subcontract or other means of procurement as a set-aside contract if it is likely to receive bids from at least two VBEs at a fair and reasonable price.
- C. If it is determined by the Finance/Purchasing Department that two bids cannot be obtained or that acceptance of the low responsible bid will result in the payment of an unreasonable price, the Finance/Purchasing Department may recommend to the Township Committee that the bids be re-solicited on an unrestricted basis.
- D. Upon recommendation from the Administrator designation(s) of contracts and/or subcontracts as set-aside contracts shall be made by the Township Committee prior to advertisement, and notice of such designation shall be included in the advertisement.
- E. The Township Auditor shall include in the audit a report at the end of each fiscal year identifying each contract awarded as a result of it’s “qualified veteran business enterprise set-aside program”.
- F. Set-aside designation, as described in subsection B, shall be made prior to any advertisement for bids (if required). Notice of such designation shall be included in the advertisement not less than ten (10) days prior to the date fixed for receiving bids.

### **14-6. Finance/Purchasing Department**

With respect to all contracts and procurements it shall be the Finance/Purchasing Department’s authority and responsibility to:

- A. Ensure, through the certification procedure herein provided, that qualified businesses taking advantage of this set-aside program are legitimate VBEs.
- B. Maintain a listing of known VBE businesses in the proximate area for referral by the Township.
- C. Have access to all Township records and files which relate to construction, service and procurement contracts in order to monitor and review compliance.

### **14-7. Certification.**

- A. To ensure that only qualified businesses which meet the veteran ownership or employment requirements set forth in N.J.S.A. 40A:11-41(i) in both form and substance are counted towards the goals' requirements set forth in this chapter, any veteran-owned

business, including a joint venture, desiring to participate in Township set-aside program must be certified by the Finance/Purchasing Department as a legitimate VBE.

- B. Any business wishing to be certified as a VBE business shall apply to the Finance/Purchasing Department for such certification and shall complete all forms and supply all documentation required by the Finance/Purchasing Department for such application.
- C. The Finance/Purchasing Department will evaluate the submitted information to determine whether the applicant meets the criteria for qualified veteran business enterprises. Prior to making a certification the Finance/Purchasing Department may, in their discretion, request an interview with the applicant. Failure of an applicant to comply with requests for information or documentation may result in a determination of certification status based on the information supplied or a suspension of the application for certification.
- D. Following certification, the Finance/Purchasing Department may require the business to furnish additional information from time to time in order to establish its continued eligibility for certification.
- E. Upon becoming certified, a business shall notify the Finance/Purchasing Department if there is a change in the business that affects its status as a VBE, including changes in ownership, percent of veteran's on contract staffing, control or management.
- F. If a business is denied certification, the Finance/Purchasing Department shall notify the business, in writing, of the reasons for its determination. The business may appeal the denial to the Township Administrator or his designee, who shall conduct a hearing at which the business shall have the opportunity to present witnesses and documents in support of its application for certification. No appeals will be considered if filed later than 15 days from the date of the notice. Businesses that are denied certification may not reapply for certification for a period of six months from the date of denial.
- G. The right of the Township to evaluate a bidder or contractor's ability to satisfy financial, technical or other criteria, separate and apart from the certification process provided for in this program, is not altered by this chapter.
- H. The certification granted pursuant to this section shall entitle a business to participate in any category of contract or procurement for which it qualifies. The certification shall not be considered contract- or project-specific. The Township may, but shall not be required to, delay the award of any contract pending the appeal of the Finance/Purchasing Department decision to deny certification.

#### **14-8. Decertification.**

- A. A VBE may be decertified for failure to meet the certification standards set forth in Section XII and for the following reasons:
  - (1) For providing false or misleading information to the Finance/Purchasing Department during the certification process.
  - (2) If the VBE is no longer an ongoing business entity.
  - (3) If the business entity has changed to the extent that it is no longer owned and controlled by veterans or does not employ a sufficient numbers of veterans pursuant to the requirements of this program.
  - (4) For failure to report to the Township, within 10 days, any determination of the federal government or any state government, municipality or school board, or any department, subdivision, agency or authority of the federal government or any state government, municipality or school board denying or revoking the certification of the business as a veteran's- business enterprise.
- B. Upon review of the documentation concerning decertification, the Finance/Purchasing Department shall promptly decide the issue and notify the business of the decision in writing. The business may appeal the decision to the Township Administrator or his designee in accordance with the provisions of Section XI(F). Reasons for decertifying a business shall be expressed by certified mail. The decertified business may not reapply for certification for a period of time to be determined by the Township Administrator and/or his designee, but in no event longer than a period of one year.

#### **14-9. Recertification.**

A certified VBE shall submit any information requested by the Finance/Purchasing Department annually to ascertain whether such business is still a qualified VBE pursuant to this program. If it is determined that the annual submission of information has changed to such an extent that the VBE status has changed, affecting the certified status, the Finance/Purchasing Department may recommend that the business be required to reapply for certification pursuant to this program.

#### **14-10. Certification Standards.**

To determine whether a business shall be recommended by the Finance/Purchasing Department to be certified as a legitimate VBE, the following in conjunction with information submitted by the applicant, shall be used:

- A. Eligible VBEs under this program shall be independent businesses. There shall be conclusive evidence that the ownership and control of such business is real, substantial and continuing and shall go beyond the pro forma ownership of the business as reflected in its ownership documents. The VBE owners shall enjoy the customary interests of ownership. They shall share in the risks and profits commensurate with their interest of ownership. Recognition of the business as a separate entity for tax or corporate purposes is not necessarily sufficient for recognition as a VBE. To determine the legitimacy of an independent VBE, the Finance/Purchasing Department shall consider all relevant factors concerning ownership and control of business assets, including but not limited to the date the business was established, whether its resources for the work of the contract are adequate and the degree to which financial, equipment-leasing and other relationships with non - VBE firms vary from industry practice.
- B. The VBE's owners shall have the power to direct or cause management and policy directions of the firm/business as well as make major decisions on matters of management policy and operations. The firm shall not be subject to any restrictions limiting the customary discretions of the veteran owners. This shall include provisions in bylaws, partnership agreements or charter requirements for cumulative voting rights or otherwise that prevent the veteran owners, without the cooperation or vote of any owner who is not a veteran, from making a business decision of the firm.
- C. Where non-veteran owners of the firm are disproportionately responsible for the firm's operation, then, by the standards of this program, the firm is not controlled by veterans shall not be considered a VBE business within the program's meaning on the basis of veteran ownership.
- D. In establishing a status of a legitimate VBE, all securities which constitute qualifying ownership and/or control of a corporation shall be held directly by veterans. Securities held in trust or by any guardian for a minor shall not be considered as held by a veteran in determining the ownership and/or control of a corporation.
- E. Capital or expertise contributed by veteran owners to acquire their interest in the firm shall be real and substantial. A promise to contribute capital, a note payable to the firm or its owners who are not veterans or the mere participation as an employee, rather than as a manager, shall be examples of insufficient contributions.
- F. In determining eligibility as a VBE, in addition to the above standards, the Finance/Purchasing Department shall give special consideration to the following circumstances:
  - (1) VBEs which are newly formed and whose ownership and/or control have changed since the date and/or time of the advertisement of the contract shall be closely monitored to determine the reasons and the relationship between the timing, formation and/or change in the firm.
  - (2) Careful scrutiny and review of previous and/or continuing employer/employees relationships between or among present owners shall be conducted to ensure that the employer/owner has the management responsibilities pursuant to this program.
  - (3) Any relationship between a VBE and a non-veteran-owned business having interest in the VBE shall be carefully monitored to determine if the interest of the VBE conflicts with the ownership and control requirements of this program.

- G. Joint ventures may be eligible to compete as VBEs under this program, provided that the VBE partner of the joint venture meets the eligibility standards of a VBE set forth herein and the VBE partner shares in the ownership, control and management responsibilities, the risks and profits of the joint venture and the VBE partner is responsible for a clearly defined portion of the work to be performed.

**14-11. Violations and Penalties.**

When the Township determines, after hearing, that a business has been classified as a VBE 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 Township may:

- A. Assess against the business any difference between the contract and what the Township's cost would have been if the contract had not been awarded in accordance with the provisions of this chapter.
- B. Assess against the business a penalty in an amount of not more than 10% of the amount of the contract involved.
- C. Bar the business from transacting business with the Township for a period of 1 year.

Nothing contained herein shall preclude the violator from facing criminal sanctions for false swearing and other crimes that may be applicable under the New Jersey Criminal Code.

**14-12. Severability.**

Should any portion of this Ordinance be declared unconstitutional or impermissible by a Court of competent jurisdiction, said declaration shall not affect the remaining portions of this Ordinance which shall continue in full force and effect.

**14-13. Effective Date April 1, 2014.**

ATTEST: TOWNSHIP COMMITTEE OF THE  
TOWNSHIP OF HAMILTON,  
COUNTY OF ATLANTIC and  
STATE OF NEW JERSEY

\_\_\_\_\_  
Joan I. Anderson, R.M.C.  
Township Clerk \_\_\_\_\_  
ROGER SILVA, MAYOR

ROLL CALL: DIX "YES"  
GATTO "YES"  
GUISHARD "YES"  
LINK "YES"  
SILVA "NO"

ORDINANCE NO. 1761-2014 INTRODUCED & PASSED FIRST READING FEBRUARY 3, 2014.  
**ORDINANCE NEVER ADOPTED – REPLACED WITH #1765-2014 APRIL 7, 2014**