

Ordinance of the City of Jersey City, N.J.

File No. Ord. 21-039
Agenda No. 3.3 (1st Reading)
Agenda No. 4.3 (2nd Reading and Final Passage)



AN ORDINANCE OF THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY ADOPTING AMENDMENTS TO CHAPTER 3 (ADMINISTRATION OF GOVERNMENT), ARTICLE VI (DEPARTMENT OF ADMINISTRATION) CONCERNING THE IMPLEMENTATION OF PROCUREMENT PROGRAMS FOR MINORITY, WOMAN, VETERAN, LGBTQ AND DISABLED-OWNED VENDORS.

COUNCIL AS A WHOLE offered and moved adoption of the following ordinance:

WHEREAS, the City of Jersey City, having been identified as the most diverse community in the nation, recognizes how economic disparities in municipal purchasing negatively impact the City’s historically disadvantaged communities; and

WHEREAS, the City of Jersey City found it necessary to conduct a Purchasing Disparity Study (more commonly referenced as a “Croson Study”) to thoroughly and transparently investigate our purchasing practices, policies and procedures; and

WHEREAS, the Purchasing Disparity Study used a variety of methodologies and data sources to undertake a comprehensive examination of the relevant marketplace related to municipal purchases over the five-year study period beginning July 1, 2013, through June 30, 2018; and

WHEREAS, this Study, conducted by the Rutgers University Disparity Research Team, led by Dr. Kevin Lyons, Principal Investigator, identified a number of barriers, including various forms of marketplace discrimination that appear to have undermined the formation, growth, and equitable participation of minority-, woman-, veteran-, Lesbian Gay Bisexual Transgender (LGBT), and Disability -owned business enterprises ("M/W/V/LGBT/D BE") in municipal purchases and contracts; and

WHEREAS, the City of Jersey City having received and reviewed the conclusions of the Purchasing Disparity Study, having deemed “good faith efforts” language no longer sufficient, will implement aggressive counter measures to remedy the ongoing effects of identified marketplace discrimination that continues to adversely affect the participation of M/W/V/LGBT/D BE in municipal purchasing; and

WHEREAS, in order to ensure immediate and lasting improvement with clear requirements, increased accountability and encourage substantial growth towards full participation, the City will phase in purchasing benchmarks for M/W/V/LGBT/D BE to participate in obtaining City contracts at targeted minimum amounts as set forth herein;

NOW, THEREFORE, THE MUNICIPAL COUNCIL OF JERSEY CITY DOES ORDAIN:


A.The following amendments to CHAPTER 3 (ADMINISTRATION OF GOVERNMENT), ARTICLE VI (DEPARTMENT OF ADMINISTRATION) are hereby adopted:

(Note: All new material is underlined; words ~~struck through~~ are omitted.)


"CHAPTER 3 –ADMINISTRATION OF GOVERNMENT

ARTICLE VI – DEPARTMENT OF ADMINISTRATION

APPROVED AS TO LEGAL FORM



Business Administrator



Corporation Counsel

An ordinance of the municipal council of the City of Jersey City adopting amendments to Chapter 3 (Administration of Government), Article VI (Department of Administration) concerning the implementation of procurement programs for minority, woman, veteran, LGBTQ and disabled-owned vendors.

§ 3-51. - Purchasing; Division of Purchasing and Central Services.

...

C. Public bidding procedures.

(1) The Purchasing Agent is authorized to advertise for and receive bids in connection with all purchases, contracts or agreements in accordance with the provisions of the Local Public Contracts Law. The governing body, however, shall be the contracting agent and shall award such contracts and purchases as may be recommended by the Purchasing Agent.

(2) The Purchasing Agent shall determine the method of presenting bids, except that such method shall be confined to either personal presentation at bid opening or by registered mail. In either case, the method shall be stated in the public advertisement, and if registered mail, proper safeguards shall be provided to ensure the security of bids. Bids received after the time stated in the advertisement shall be considered as nonresponsive and shall be returned unopened to the sender.

(3) Following review and evaluation of bids, the Purchasing Agent shall recommend the lowest responsible bidder to the governing body, which shall award the contract or take such other action as it deems proper. The Purchasing Agent may, however, reject all bids and re-advertise if he or she deems it to be in the best interest of the city.

(4) In accordance with N.J.S.A. §§ 40A:11-41 - 40A:11-49, the City hereby establishes a minority business enterprise set-aside program, a women-owned business enterprise set-aside program, a veteran-owned business enterprise set-aside program, a LGBT-owned business enterprise set-aside program, and a disability-owned business enterprise set-aside program as a means of achieving the goals herein.

(a) Goals of the Set-Aside Program.

The City intends to award to Qualified Minority-owned Business Enterprises, Qualified Women-owned Business Enterprises, Qualified Veteran-owned Business Enterprises, Qualified Lesbian, Gay, Bisexual, and Transgender ("LGBT")-owned Business Enterprises, and Qualified Disability-owned Business Enterprise (collectively "M/W/V/LGBT/D BE") the following percentages City Contracts.

(1) There is hereby established a goal of awarding no less than 15% of City Contracts to Qualified Minority-owned Business Enterprises for the purchase of goods and services. In determining compliance with the 15% goal, the aggregate cost of all such contracts within a fiscal year shall be considered.

(2) There is hereby established a goal awarding no less than 10% of the City Contracts to Qualified Women-owned Business Enterprises for the purchase of goods and services. In determining compliance with the 10% goal, the aggregate cost of all such contracts within a fiscal year shall be considered.

(3) There is hereby established a goal awarding no less than 4% of the City Contracts to veteran-owned businesses for the purchase of goods and services. In determining compliance with the 4% goal, the aggregate cost of all such contracts within a fiscal year shall be considered.

(4) There is hereby established a goal awarding no less than 3% of the City Contracts to Qualified LGBT-owned Business Enterprises for the purchase of goods and services. In determining compliance with the 3% goal, the aggregate cost of all such contracts within a fiscal year shall be considered.

(5) There is hereby established a goal awarding no less than 3% of the City Contracts to Qualified Disability-owned Business Enterprises for the purchase of goods and services. In determining compliance with the 3% goal, the aggregate cost of all such contracts within a fiscal year shall be considered.

(b) Implementation of the Program.

Pursuant to N.J. Stat. § 40A:11-45(a), and in conjunction with the Diversity and Inclusion Director, a Purchasing Agent may designate that a contract, subcontract or other means of procurement of goods, services, equipment, or construction be awarded to a qualified M/W/V/LGBT/D BE, if the Purchasing Agent is likely to receive bids from at least two qualified M/W/V/LGBT/D BE at a fair and reasonable price.

An ordinance of the municipal council of the City of Jersey City adopting amendments to Chapter 3 (Administration of Government), Article VI (Department of Administration) concerning the implementation of procurement programs for minority, woman, veteran, LGBTQ and disabled-owned vendors.

(1) The specifications for a set-aside contract shall clearly and conspicuously state prior to any advertisement for bids that an award may go only to a business duly registered with and approved by the Set-Aside Programs herein.

(2) Any contract specifically set aside for M/W/V/LGBT/D BE must be competitively bid, either through public advertising *when a contract amount shall be above the bid threshold as established and updated pursuant to N.J.S.A. 40A:11-3(c)* or through informal bidding *when a contract amount shall be below the bid threshold as established and updated pursuant to N.J.S.A. 40A:11-3(c)*, and may be awarded only if responsive bids from at least two qualified bidders are received. All advertisements for bids must comply with N.J. Stat. § 40A:11-45 and the New Jersey Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.

(3) If two qualifying bids cannot be obtained, or if the Purchasing Agent determines that the acceptance of the lowest responsible bid will result in the payment of an unreasonable price, the Purchasing Agent shall reject the bids and withdraw the designation of the set-aside contract.

(4) If the Purchasing Agent rejects bids pursuant to Section (3) herein, the Purchasing Agent or other authorized City representative may re-advertise the contract as an ordinary award. Qualified M/W/V/LGBT/D BE may participate in the re-bidding process.

(5) In conjunction with the Diversity and Inclusion Director, a Purchasing Agent shall prioritize quotes submitted by qualified M/W/V/LGBT/D BE for all goods or services with a cost that is less than the current bid threshold as currently established and updated pursuant to N.J.S.A. 40A:11-3(c). The Purchasing Agent shall award a contract to a M/W/V/LGBT/D BE that submits a quote that is no more than ten percent (10%) greater than the lowest and otherwise best quote unless the award to the M/W/V/LGBT/D BE substantially exceeds cost estimates or the Purchasing Agent's appropriation for the goods or services or if the quote exceeds the bid threshold as currently established and updated pursuant to N.J.S.A. 40A:11-3(c).

(6) Every Department in the City shall procure goods and services in accordance with the percentages defined in § 3-51(a)(1)-(5) to the greatest extent practicable. Each Department in the City of Jersey City shall consult with the Office of Diversity and Inclusion and the Purchasing Agent in order to ensure that the purchasing goals defined in § 3-51(a)(1)-(5) are achieved for each Department.

§ 3-54.3. – Supervision of Procurement; Minority-, Women-, Veteran-, LGBT-, and Disability-Owned Business Enterprises

A. With respect to all contracts and procurements, the Director of the Office of Diversity and Inclusion, under the supervision of the Business Administrator shall:

1) Ensure, through the certification and procedure herein provided, that businesses taking advantage of the city's policy on procurement of Minority-, Women-, Veteran-, LGBT-, and Disability-owned business enterprises ("M/W/V/LGBT/D BE") are legitimate Minority-, Women-, Veteran-, LGBT-, and Disability-owned business enterprises.

2) Maintain a listing of all qualified M/W/V/LGBT/D BE, or all credentials or certifications that a Purchasing Agent may accept in lieu of registration, for referral by the City departments and the Purchasing Agent.

3) Submit quarterly reports to the Business Administrator to document the percentage of contracts which have been awarded to the M/W/V/LGBT/D BE.

4) Have access to all records and files of all City departments, which relate to construction, service and procurement contracts, in order to monitor and review compliance.

5) Submit by July 31 of each year a written annual report to the Business Administrator containing such findings, recommendations and proposals as are necessary and appropriate to the actions taken by the City administration and its individual departments to meet the requirements set forth in this section.

6) Ascertain, with the assistance of the Purchasing Agent, the identity of qualified M/W/V/LGBT/D BE business enterprises.

An ordinance of the municipal council of the City of Jersey City adopting amendments to Chapter 3 (Administration of Government), Article VI (Department of Administration) concerning the implementation of procurement programs for minority, woman, veteran, LGBTQ and disabled-owned vendors.

7)Classify each business according to contract types in which the business represents itself to have capabilities, place all businesses on a solicitation list and distribute the list to City departments and the Purchasing Agent. Such solicitation shall be filed with the City Clerk for public review.

8)Survey all businesses placed on the solicitation list to determine their past and current participation level in the administration's required efforts to meet the standards as established in this section.

B.If the Director of the Office of Diversity and Inclusion determines that the requirements set forth in this section are not being met, he or she may recommend to the Business Administrator such revisions to the City's plan designed to provide additional opportunities for M/W/V/LGBT/D BE participation, including but not limited to any or all of the following actions:

1)Elimination of extended experience or capitalization requirements, when programmatically feasible, to permit more extensive participation of M/W/V BE in obtaining City contracts; and

2)Publication of advertisements for bids in more than one (1) newspaper, or in minority-oriented newspapers."

B.All ordinances and parts of ordinances inconsistent herewith are hereby repealed. In particular, chapter 3-60.2. (Division of Economic Opportunity) sections (e) through (h) are stricken in their entirety.

C.The City Clerk and the Corporation Counsel may change any chapter numbers, article numbers and section numbers if codification of this ordinance reveals a conflict between those numbers and the existing code, in order to avoid confusion and possible repeals of existing provisions.

D.This ordinance shall take effect at the time and in the manner provided by law.

E.This ordinance shall be a part of the Jersey City Code as though codified and incorporated in the official copies of the Jersey City Code.

*Amendments are highlighted and in Italics

An ordinance of the municipal council of the City of Jersey City adopting amendments to Chapter 3 (Administration of Government), Article VI (Department of Administration) concerning the implementation of procurement programs for minority, woman, veteran, LGBTQ and disabled-owned vendors.

RECORD OF COUNCIL VOTE ON INTRODUCTION – May 26 2021						
RIDLEY	AYE	SALEH	AYE	LAVARRO	AYE	9-0
PRINZ-AREY	AYE	SOLOMON	AYE	RIVERA	AYE	
BOGGIANO	AYE	ROBINSON	AYE	WATTERMAN, PRES	AYE	

RECORD OF COUNCIL VOTE TO CLOSE PUBLIC HEARING – Jun 16 2021						
RIDLEY	AYE	SALEH	AYE	LAVARRO	AYE	9-0
PRINZ-AREY	AYE	SOLOMON	AYE	RIVERA	AYE	
BOGGIANO	AYE	ROBINSON	AYE	WATTERMAN, PRES.	AYE	


SPEAKERS:
Yvonne Balcer

RECORD OF COUNCIL VOTE ON AMENDMENTS, IF ANY –						
RIDLEY	AYE	SALEH	AYE	LAVARRO	AYE	9-0
PRINZ-AREY	AYE	SOLOMON	AYE	RIVERA	AYE	
BOGGIANO	AYE	ROBINSON	AYE	WATTERMAN, PRES.	AYE	


RECORD OF FINAL COUNCIL VOTE – Jun 16 2021						
RIDLEY	AYE	SALEH	AYE	LAVARRO	AYE	9-0
PRINZ-AREY	AYE	SOLOMON	AYE	RIVERA	AYE	
BOGGIANO	AYE	ROBINSON	AYE	WATTERMAN, PRES.	AYE	

Adopted on first reading of the Council of Jersey City, N.J. on **May 26 2021**
Adopted on second and final reading after hearing on **Jun 16 2021**

This is to certify that the foregoing Ordinance was adopted
by the Municipal Council at its meeting on Jun 16 2021




City Clerk



Joyce E. Watterman, President of Council
Approved: Jun 16 2021

Amendment(s):
*Amendments are highlighted and in Italics



Steven M. Fulop, Mayor
Date to Mayor: Jun 17 2021
Approved: Jun 17 2021

An ordinance of the municipal council of the City of Jersey City adopting amendments to Chapter 3 (Administration of Government), Article VI (Department of Administration) concerning the implementation of procurement programs for minority, woman, veteran, LGBTQ and disabled-owned vendors.

FACT SHEET -

This summary sheet is to be attached to the front of any ordinance that is submitted for Council consideration. Incomplete or vague fact sheets will be returned with the ordinance.

Project Manager

Joyce E. Watterman, Council President	x4678	JWatterman@jcnj.org
Division	Municipal Council	

Note: Project Manager must be available by phone during agenda meeting (Wednesday prior to council meeting @ 1:00 p.m.)

Purpose

Co-sponsored by Soraya Hebron, Chief Officer of the Office of Diversity and Inclusion. This ordinance updates the city code to authorize a set aside program and other procurement measures that pertain to Minority-, Woman-, Veteran-, Lesbian Gay Bisexual Transgender (LGBT), and Disability -owned business enterprises.

Cost (Identify all sources and amounts)	Contract term (include all)
N/A	

Approved by	Status:
John McKinney, Attorney	Approved - May 20 2021
Peter Baker, Corporation Counsel	None
Amy Forman, Attorney	None
Nick Strasser, Attorney	None
Norma Garcia, Attorney	None
Ray Reddington, Attorney	None
Jeremy Jacobsen, Attorney	None
Sapana Shah, Attorney	None
Elizabeth Barna, Assistant Corporation Counsel	None
John Metro, Acting Business Administrator	Approved - May 21 2021