

By Legislator Flagler-Mitchell and Felder

Intro No. _____

MOTION NO. _____ OF 2021

PROVIDING THAT LOCAL LAW (INTRO. NO. __ OF 2021, ENTITLED "GANTT'S LAW FOR UTILIZATION OF MINORITY AND WOMEN-OWNED BUSINESSES," BE AMENDED

BE IT MOVED, that Local Law (Intro. No. __ of 2021), entitled "GANTT'S LAW FOR UTILIZATION OF MINORITY AND WOMEN-OWNED BUSINESSES," be amended as follows:

Section 2. Part III, Administrative Local Laws of the Administrative Code and Charter of Monroe County, is hereby amended to add a new chapter to include the following Local Law:

CHAPTER 26, UTILIZATION OF MINORITY AND WOMEN-OWNED BUSINESSES

§ 26-1. Title.

This chapter shall be known as the "Gantt's Law."

§ 26-2. Legislative Intent.

- A. This Legislature hereby finds and determines that a need exists within the County of Monroe to recognize and encourage the growth of business enterprises that are owned and operated by women and minorities.
- B. This Legislature also finds business enterprises that are owned and operated by women and minorities have struggled to achieve equitable representation in procurement by the County of Monroe.
- C. This Legislature also finds that previous policies enacted by the County of Monroe regarding business enterprises that are owned and operated by women and minorities only pertained to construction activities.
- D. This Legislature also finds that the County's economy will benefit from the utilization by the County of business enterprises that are owned and operated by women and minorities.
- E. This Legislature further finds that both the state and federal governments have instituted programs that facilitate participation in government contracts by business enterprises that are owned and operated by women and minorities.
- F. Therefore, the purpose of this ~~article~~ chapter is to ensure that minority- and women-owned business enterprises have sufficient opportunity to participate both directly and indirectly in contracting opportunities with Monroe County.

§ 26-3. Purpose.

The purpose of this section is to promote and encourage the utilization of minority and women-owned business enterprises in procurement by the County of Monroe and establish clear guidelines for what constitutes a minority and women-owned business enterprise, create a directory of minority and women-owned business enterprises, expand the use of minority and women-owned business enterprises in all areas of County

procurement, institute reporting guidelines, conduct training for minority and women-owned business enterprises, and set new goals for the use of minority and women-owned business enterprises in County procurement.

§ 26-4. **Definitions.** As used in this section:

A. **Certified Business** – shall mean a business verified as a minority ~~and/or~~ women-owned business enterprise pursuant to § 26-5 of this ~~article~~ chapter and/or a business certified by New York State pursuant to Article 15-a of the New York State Executive Law.

B. **Committee** – shall mean the Diversity Action Plan Advisory Committee established in accordance with Resolution 212 of 2020.

C. **Contractor** – shall mean an individual, a business enterprise, including a sole proprietorship, a partnership, a corporation, ~~a not-for-profit corporation,~~ or any other party to a County contract, or a bidder in conjunction with the award of a County contract or a proposed party to a County contract.

D. **County** – shall mean any County department; or any agency, division, board, office, elected official, commission or bureau of the County or of any County department.

E. **County Contract** – shall mean:

~~1. a written agreement or purchase order instrument, providing~~ Purchase contracts, including contracts for a total expenditure service work, let by the County in excess of ~~fifteen~~ twenty thousand dollars, whereby the County is committed to expend or does expend funds in return.

~~1. Contracts for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to public works let by the County;~~

~~2. a written agreement in excess of sixty thousand dollars whereby.~~

~~2.3. Contracts for professional services let by the County is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon in excess of twenty thousand dollars.~~

For the purposes of this section: (1) the term "services" "service" shall not include banking relationships, the issuance of insurance policies or contracts, or contracts with the County for the sale of bonds, notes or other securities; and (2) the term "contract" shall not include contracts or other agreements with a municipal corporation, school district, district corporation, board of cooperative educational services, utility, not-for-profit corporation, or publicly traded company.

F. **Director** – shall mean the Director of Diversity, Equity and Inclusion – Chief Diversity Officer.

G. **Minority Group Members** – shall mean a United States citizen or permanent resident alien who has and can demonstrate membership in one of the following groups:

a. Black persons having origins in any of the Black African racial groups;

b. Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American ~~Descent~~ descent of either Indian or Hispanic origin, regardless of race;

- c. Native American or Alaskan native persons having origins in any of the original peoples of North America;
- d. Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.

H. ~~Minority-Owned Business Enterprise~~ – shall mean a business enterprise, including a sole proprietorship, partnership, limited liability company, or corporation that is:

- 1. at least fifty-one percent owned by one or more minority group members;
- 2. an enterprise in which such minority ownership is real, substantial, and continuing;
- 3. an enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and
- 4. an enterprise authorized to do business in the State of New York state and independently owned and operated.

I. Office – shall mean the Monroe County Department of Diversity, Equity and Inclusion.

J. Subcontract - shall mean an agreement ~~providing for a total expenditure in excess of fifteen thousand dollars for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon~~ between a contractor and any individual or business enterprise, including a sole proprietorship, partnership, ~~corporation~~ limited liability company, or ~~not-for-profit~~ corporation, in which a portion of a contractor's obligation under a County contract is undertaken or assumed, but shall not include any construction, demolition, replacement, major repair, renovation, planning or design of real property or improvements thereon for the beneficial use of the contractor.

K. Utilization Plan - shall mean a plan prepared by a contractor and submitted in connection with a proposed County contract. The utilization plan shall identify certified ~~minority and women-owned business enterprise businesses~~, if known, that have committed to perform work in connection with the proposed County contract as well as any such ~~enterprises~~ certified businesses, if known, which the contractor intends to use in connection with the contractor's performance of the proposed County contract. The plan shall specifically contain a list, including the name, address and telephone number, of each certified ~~enterprise business~~ with which the contractor intends to subcontract.

L. Women-Owned Business Enterprise – shall mean a business enterprise, including a sole ~~Proprietorship~~ proprietorship, partnership, limited liability company, or corporation that is:

- 1. at least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are women;
- 2. an enterprise in which the ownership interest of such women is real, substantial, and continuing;
- 3. an enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and
- 4. an enterprise authorized to do business in the State of New York state and independently owned and operated.

§ 26-5. Certification.

A. The Director, in ~~conjunction~~consultation with the Committee, shall promulgate rules and regulations providing for the establishment of a ~~Countywide~~County-wide certification program, including rules and regulations governing the approval, denial, or revocation of any such certification. ~~Such rules and regulations shall include, but not be limited to, such matters as may be required to ensure that the established procedures thereunder shall at least be in compliance with the code of fair procedure set forth in § 73 of the New York Civil Rights Law. The Director shall accept all businesses having or awaiting certification by a state agency.~~

B. For the purposes of this ~~article~~chapter, the Office shall be responsible for verifying businesses applying for or certified under the County-wide certification program as being owned, operated, and controlled by minority group members or women and for certifying such verified businesses ~~or may refer such process to an appropriate state agency.~~ The Director shall prepare a directory of certified businesses for use by the County and contractors in carrying out the provisions of this ~~article~~chapter. The Director shall periodically update the directory and make it publically available on the County's website. In the event a business certified under the County-wide certification program ceases to qualify as a minority- and/or women-owned business, the Office shall revoke its certification and send written notice of such revocation to the business.

C. Following application for certification pursuant to this section, the Director shall provide the applicant with written notice of the status of the application, including notice of any outstanding deficiencies, within 30 days. Within 60 days of submission of a final, completed application, the Director shall provide the applicant with written notice of a determination by the Office approving or denying such certification and, in the event of a denial, a statement setting forth the reasons for such denial.

~~G.D.~~ Upon a determination denying or revoking certification, the business enterprise for which certification has been so denied or revoked shall, upon written request made within 30 days from receipt of notice of such determination, be entitled to a hearing before the Committee. The business enterprise shall serve a copy of such request upon the Director and the Committee by personal service or by certified mail, return receipt requested. In the event that a request for a hearing is not made within such thirty-day period, such determination shall be deemed to be final. The Committee shall conduct a hearing and, upon the conclusion of such hearing, issue a written recommendation to the Director to affirm, reverse, or modify such determination of the ~~Director~~Office. Such written recommendation shall be issued to the applicant and the Director. The Director, within 30 days, shall, by order, accept, reject, or modify such recommendation of the Committee and set forth in writing the reasons therefor. The Director shall serve a copy of such order and reasons therefor upon the business enterprise by personal service or by certified mail, return receipt requested.

§ 26-6. Annual Workshop

The Office shall hold an annual workshop for potential minority and women-owned business enterprise applicants and certified businesses; for the purpose of educating and informing participants about the County's procurement processes and reviewing upcoming procurement opportunities, including; but not limited to the Capital Improvement Plan. The workshop shall include all relevant information to allow potential bidders to understand, navigate, and compete in the County's procurement process.

§ 26-7. Goals

The County hereby sets the following goals effective as of January 1, 2022, for insuring~~insuring~~ the full and equitable participation of minority and women-owned business enterprises:

A. the County shall have a ~~level-of-participation~~ goal of twelve (12) percent ~~for minority-owned~~

~~business enterprises~~ of the total value of County contracts in a given year for minority-owned business enterprises that are certified businesses;

B. the County shall have a ~~level of participation goal of three (3) percent for women-owned business enterprises~~ of the total value of County contracts in a given year for women-owned business enterprises that are certified businesses; and

C. the above stated goals shall coincide with the County's good faith efforts to utilize local labor and create local jobs through County contracts.

§ 26-8. Equal Employment Opportunities for Minority Group Members and Women-

A. All County contracts and all documents soliciting bids or proposals for County contracts shall contain or make reference to the following provisions as a condition of entering into a County contract:

1. the contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, sexual orientation, military status, or marital status, and will undertake or continue taking steps to ensure that minority group members and women are afforded equal employment opportunities without discrimination. For purposes of this ~~article~~ chapter, such steps shall include recruitment, employment, job assignments, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;
2. at the request of the County, the contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, sexual orientation, military status, or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and
3. the contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the County contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, sexual orientation, military status, or marital status.

B. The contractor shall include the provisions of Subsection A of this section in every subcontract in such a manner that the provisions will be binding upon each subcontractor as to all work done in connection with the County contract.

C. The provisions of this section shall not be binding upon contractors or subcontractors in the performance of work or the provision of services or any other activities that are unrelated, separate, or distinct from the County contract as expressed by its terms.

D. In the implementation of this section, the County shall consider whether compliance by a contractor or subcontractor with the requirements of any federal and state law concerning equal employment opportunity, ~~which~~ effectuates the purposes of this section. The County shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such law, and if such duplication or conflict exists, the County shall waive the applicability of this section to the extent of such duplication or conflict.

§ 26-9. Requirements

A. The Director, in ~~conjunction~~consultation with the Committee, shall promulgate rules and regulations that provide measures and procedures to ensure that certified businesses shall be given the opportunity for meaningful participation in the performance of County contracts. Such rules shall require the County to identify those County contracts for which certified businesses are most likely to be available and may set forth additional requirements for outreach to minority ~~businesses~~ and women-owned business enterprises particularly with regard to such contracts. Nothing in the provisions of this ~~article~~chapter shall be construed to limit the ability of any certified business to bid on any contract.

~~B. The County shall include or require to be included with respect to County contracts for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon, requests for proposals (RFPs), and any other applicable County contracts, such provisions as may be necessary to effectuate the provisions of this article, including but not limited to provisions:~~

- ~~1. requiring contractors to use best efforts to solicit active participation by enterprises identified in the directory of certified businesses provided to the County by the Office; and~~
- ~~2. requiring the parties to agree, as a condition of entering into such contract, to be bound by the provisions of § 26-8 of this article; provided, however, that no such provisions shall be binding upon contractors or in the performance of work or the provision of services that are unrelated, separate or distinct from the County contract as expressed by its terms, and nothing in this section shall authorize the Director or any contracting agency to impose any requirement on a contractor except with respect to a County contract.~~

~~C.B.~~ All requests for proposals, requests for qualifications, and expressions of interest issued by the County ~~for County contracts~~ shall include approach to minority and women-owned business enterprise utilization in the selection criteria, and shall state that minority and women-owned business enterprise utilization will be used as selection criteria and rated in compliance with the Monroe County Department of Finance - Division of Purchasing and Central Service's Procedure for Service Contracts.

~~D.C.~~ In the implementation of this section, the County shall consider whether compliance with the requirements of any federal or state law concerning opportunities for minority and women-owned business enterprises ~~which effectuate~~effectuates the purpose of this section. The County shall determine whether the imposition of the requirements of any such law duplicate or conflict with the provisions hereof, and if such duplication or conflict exists, the County may waive the applicability of this ~~article~~chapter to the extent of such duplication or conflict.

§ 26-10. Rules for Utilization of Subcontractors.

A. The Director, in ~~conjunction~~consultation with the Committee, shall promulgate rules and regulations requiring that all contractors use best efforts to achieve participation in subcontracting, when applicable, by minority and women-owned business enterprises in accordance with goals set by § 26-7 to enhance opportunity for minority and women-owned businesses to reflect the percentage of minority and women-owned businesses available to perform such work.

B. The County shall administer the rules and regulations promulgated by the Director, in ~~conjunction~~consultation with the Committee, to ensure compliance with the provisions of this section. Such rules and regulations shall require that, when it is in the County's interest to permit subcontracting:

- ~~1. Such rules and regulations shall require that:~~

1. contractors shall use best efforts to solicit active participation by enterprises identified in the directory of certified businesses provided to the County by the Director;
 - ~~a-2.~~ a contractor shall submit a utilization plan after bids are opened, when bids are required, or in a contractor's response to an RFP;
 - ~~b-3.~~ in all cases, prior to the award of ~~a~~the County contract, the County shall review the utilization plan submitted by the contractor within a reasonable period of time, as established by the Director;
 - ~~e-4.~~ the County shall notify the contractor in writing within a period of time specified by the Director as to any deficiencies contained in the contractor's utilization plan, as well as the permissible time period within which to cure such deficiencies;
 - ~~d-5.~~ the contractor shall submit periodic compliance reports relating to the operation and implementation of any utilization plan; and
 - ~~e.~~ ~~the County file a complaint with the Director, or the Committee, in the event a contractor is failing or has failed to comply with the minority and women owned business enterprise participation requirements set forth in the County contract and no waiver has been granted pursuant to Subsections E and F of this section.~~
2. ~~Such rules and regulations shall allow a contractor to:~~
- ~~a. apply for a partial or total waiver of the minority and women owned business enterprise participation requirements pursuant to Subsections E and F of this section.~~
 - ~~b. file a complaint with the Director, or the Committee, in the event the County has failed or refused to issue a waiver of the minority and women owned business enterprise participation requirements or has denied such request for a waiver.~~
- ~~C-6.~~ The rules and regulations promulgated pursuant to this section regarding a utilization plan shall provide that where enterprises where certified businesses have been identified within a utilization plan, a contractor shall use best efforts to utilize such enterprise certified businesses at least to the extent indicated. The County may require a contractor to indicate, within a utilization plan, what measures and procedures he or she intends to take to comply with the provisions of this article, but may not require, as a condition of award of or compliance with a contract, that a contractor utilize a particular enterprise in performance of the contract.

§ 26-11. Disqualification of Bid or Proposal

D. Without limiting other grounds for the disqualification of bids or proposals on the basis of nonresponsiveness and/or nonresponsibility, the County may disqualify the bid or proposal of a contractor as being nonresponsive and/or nonresponsible for failure to provide a utilization plan and/or remedy noted deficiencies in the contractor's utilization plan within a period of time specified in regulations promulgated by the Director, ~~in conjunction with the Committee, after receiving notification of such deficiencies from the County. Where failure to remedy any noted deficiency in the utilization plan is a ground for disqualification, that issue and all other grounds for disqualification shall be stated in writing by the County. Where the County states that a failure to remedy any noted deficiency in the utilization plan is a ground for disqualification, the contractor shall be entitled to an administrative hearing, on a record, involving all grounds stated by the County. Such hearing shall be conducted by the appropriate authority of the County to review the determination of disqualification. A final administrative determination made following such hearing shall be reviewable in~~

~~accordance with law consultation with the Committee, after receiving notification of such failure and/or deficiencies from the County.~~

§ 26-12. Waiver

~~E. A.~~ Where it appears that a contractor, after making its best efforts, cannot comply with the minority and women-owned business enterprise participation requirements set forth in a particular County contract, a contractor may file a written application with the County Director requesting a partial or total waiver of such requirements setting forth the reasons for the contractor's inability to meet any or all of the participation requirements and an explanation of the efforts undertaken by the contractor to obtain the required ~~minority and women-owned business enterprise participation of certified businesses~~. In implementing the provisions of this section, the County Director shall consider the number and types of ~~minority and women-owned business~~ certified businesses located in the County, the total dollar value of the County contract, the scope of work to be performed, and the project size and term. Based on such considerations, if the County Director determines there is not a reasonable availability of contractors on the list of certified businesses to furnish services for the project, ~~it shall the Director may~~ issue a waiver of compliance to the contractor. ~~In making such determination, the County shall first consider the availability of other business enterprises located in the County and shall thereafter consider the financial ability of certified businesses located in the County to perform the County contract.~~

~~F. B.~~ For purposes of determining if a contractor has used best efforts to comply with the requirements of this section or is entitled to a waiver, the County Director shall consider:

1. Whether the contractor has advertised in general circulation media, trade association publications, and ~~minority focus, or publications focused on minorities or women focus,~~ and in such event:
 - a. whether or not certified businesses which have been solicited by the contractor exhibited interest in submitting proposals for a particular project by attending a pre-bid conference; and
 - b. whether certified businesses which have been solicited by the contractor have responded in a timely fashion to the contractor's solicitations for timely competitive bid quotations prior to the County's bid date; and
2. Whether there has been written notification to appropriate certified businesses that appear in the directory of certified businesses prepared pursuant to § 26-5 of this ~~article chapter~~; and
3. Whether the contractor can reasonably structure the amount of work to be performed under subcontracts in order to increase the likelihood of participation by certified businesses.

~~G. C.~~ In the event that the County Director fails or refuses to issue a requested waiver to a contractor within 30 days of the application therefor ~~pursuant to Subsection E of this section~~, or if the County Director denies such application in whole or in part, the contractor may file ~~a complaint~~ an appeal with the Director, ~~or the Committee~~, setting forth the facts and circumstances giving rise to the contractor's ~~complaint together with a demand for relief~~ appeal. The contractor shall serve a copy of such ~~complaint~~ appeal upon the County Director and the Committee by personal service or by certified mail, return receipt requested. The County Director shall be afforded an opportunity to respond to ~~such~~ the appeal in writing. The Committee shall render its decision on the appeal within 30 days of being served with the appeal.

§ 26-13. Enforcement

~~H. If, after the review of a contractor's utilization plan~~ Upon receipt of a complaint that a contractor has violated this chapter, including but not limited to a failure or review of a periodic compliance report and after such contractor has been afforded an opportunity to respond to a notice of deficiency issued by the County in connection therewith, it appears that a contractor is failing or refusing refusal to comply with minority and women-owned business enterprise participation requirements as set forth in the County contract and where no waiver from such requirements has been granted, the County may file a written complaint with the Director, or the Committee, shall send a notice of such deficiency to said contractor setting forth the facts and circumstances giving rise to the County's complaint together with a demand for relief. The County shall serve a copy of such complaint upon. If the contractor by personal service or by certified mail, return receipt requested. The contractor fails to cure or otherwise address the complaint within fifteen (15) days of receiving notice thereof, the County shall be afforded an opportunity to respond to such complaint in writing

~~§ 26-11. Enforcement~~

~~Upon receipt of a complaint by that a contractor has violated the provisions of a County contract, which have been included to comply with the provisions of this article, the Director, in conjunction with the Committee, shall attempt to resolve the matter giving rise to such complaint within 30 days of receipt of the complaint. If efforts to resolve such matter to the satisfaction of all parties are unsuccessful, the matter shall be immediately referred to the Department of Law for appropriate action, including, but not limited to, withholding payment due under the contract, or cancellation, termination or suspension of the right to cancel, terminate, or suspend the contract in whole or in part, and/or seek any other remedy afforded to the County in law or in equity.~~

~~§ 26-12~~ 14. Report

The County Executive, or their designee, shall file a report with the County Legislature no later than April 1st of each year, which details the levels of participation for minority and women-owned business enterprise certified businesses in County contracts for the prior year. The report shall include the name of each project funded County contract, the total dollars spent paid value for the project each contract, and total dollars spent with minority and women-owned certified businesses, respectively.

~~§ 26-13~~ 15. Severability.

If any clause, sentence, paragraph, section or ~~article~~ chapter of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such determination shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or ~~article~~ chapter thereof directly involved in the proceeding in which such adjudication shall have been rendered. This local law shall not supersede any other state or federal laws, rules, or contractual obligations that exceed the goals set forth under § 26-7.

Agenda/Charter Committee – Discharged to Legislature
File No. 20-0340.LL

ADOPTION: Date: _____

Vote: _____