

CHAPTER 9**DEVELOPMENT OF SMALL BUSINESSES AND WOMEN AND MINORITY BUSINESSES****Authority**

N.J.S.A. 52:27C-71(q), 52:27C-73(a), (f) and (h), 52:27H-6f, and 52:27H-21.24; and P.L. 1987, c.55, specifically section 9.

Source and Effective Date

R.2003 d.380, effective September 4, 2003.
See: 35 N.J.R. 1831(c), 35 N.J.R. 4734(c).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 9, Development of Small Businesses and Women and Minority Businesses, expires on March 3, 2009. See: 40 N.J.R. 5554(a).

Chapter Historical Note

Chapter 9, Development of Small Businesses and Women and Minority Businesses, was adopted as R.1988 d.95, effective March 7, 1988. See: 19 N.J.R. 2377(b), 20 N.J.R. 534(a). The Executive Order No. 66(1978) expiration date for Chapter 9 was extended by gubernatorial waiver from March 7, 1993 to May 30, 1993. See: 25 N.J.R. 1335(c).

Pursuant to Executive Order No. 66(1978), Chapter 9, Development of Small Businesses and Women and Minority Business, was readopted as R.1993 d.309, effective May 28, 1993. See: 25 N.J.R. 1752(a), 25 N.J.R. 2689(a).

Pursuant to Executive Order No. 66(1978), Chapter 9, Development of Small Businesses and Women and Minority Businesses, was readopted as R.1998 d.312, effective May 22, 1998. See: 30 N.J.R. 1399(a), 30 N.J.R. 2236(a).

Chapter 9, Development of Small Business and Women and Minority Business, was readopted as R.2003 d.380, effective September 4, 2003. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. SERVICES TO SMALL BUSINESSES AND WOMEN AND MINORITY BUSINESSES**12A:9-1.1 Applicability and scope**

(a) The rules in this subchapter are promulgated by the Commerce and Economic Growth Commission to implement P.L. 1987, c.55, an Act to establish within the Commerce and Economic Growth Commission a Division of Development for Small Businesses and Women and Minority Businesses. These rules are promulgated pursuant to the Commission's authority under N.J.S.A. 52:27C-71(q); 52:27C-73(a), (f) and (h); and 52:27H-21.24.

(b) The Act provides for consolidation, in the interest of efficiency, of the State's service to small businesses and women and minority businesses.

(c) The Act provides that the Division shall provide certain services to small businesses and women and minority businesses those services being: the establishment of a loan referral and packaging program; a compiled list of qualified professionals in specific areas of expertise; to coordinate managerial and technical assistance programs in the state; establish internship programs; serve as liaison on behalf of businesses with the agencies and departments of the state, federal, and local governments; provide assistance in obtaining legal counsel; provide financial analysis and accounting assistance; provide assistance in obtaining insurance; provide assistance in arranging contracts with franchisees; provide assistance in arranging for loans from commercial banks; assist in negotiating license agreements; assist in procuring bonding; make referrals to private consultants, institutions, and other business services; assist in finding sources of financing from federal, state and local sources; provide a central resource for eligible businesses in their dealings with various levels of governments; initiate and encourage education programs for eligible businesses; and establish a uniform procedure for certification of minority and women businesses.

(d) The Act also provides for the establishment of the office of the Director of the Division for the Development of Small Businesses and Women and Minority Businesses, and the Office of Women Business Enterprise.

Amended by R.2003 d.380, effective October 6, 2003.
See: 35 N.J.R. 1831(c), 35 N.J.R. 4734(c).
Rewrote (a).

12A:9-1.2 Definitions

The words and terms used in this subchapter shall have the following meanings unless the context clearly indicates otherwise:

“Authority” means the New Jersey Development Authority for Small Businesses and Minority and Women Enterprises.

“CAU” means the Certification and Approvals Unit which has sole authority in the Division to register vendors for the New Jersey Set-Aside program and/or certify businesses under the Uniform Certification Act for State programs.

“Commission” means the Commerce and Economic Growth Commission.

“Director” means the Director of the Division of Development for Small Businesses and Women and Minority Businesses.

“Division” means the Division of Development for Small Businesses and Women and Minority Businesses.

“Eligible businesses” means a minority and/or women business certified and/or registered by CAU or a small business registered by the Division and/or determined to be eligible to receive assistance and/or to participate in various State programs.

“Minority” means a person who is:

1. Black, which is a person having origins in any of the black racial groups of Africa;
2. Hispanic, which is a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean islands, regardless of race;
3. Asian American, which is a person having origins in any of the original people of the Far East, Southeast Asia, the Indian subcontinent, Hawaii, or the Pacific Islands; or
4. American Indian or Alaskan native, which is a person having origins in any of the original peoples of North America.

“Minority business” means a business which is at least 51 percent owned, operated and controlled by a minority or group of minorities and whose ownership is responsible for the daily as well as long term management decisions of the business.

“Secretary” means the Chief Executive Officer and Secretary of the Commerce and Economic Growth Commission.

“Small business” means a sole proprietorship, partnership, or corporation which is a size and type as defined by the Secretary.

“Women” means all women regardless of race.

“Women business” means a business which is at least 51 percent owned, operated, and controlled by a woman or group of women and whose ownership is responsible for a daily as well as long term management decision of the business.

Amended by R.2003 d.380, effective October 6, 2003.

See: 35 N.J.R. 1831(c), 35 N.J.R. 4734(c).

Deleted “Commissioner” and “DCED”; added “Commission” and “Secretary”; in “Small business” substituted “Secretary” for “Commissioner”.

12A:9-1.3 Nature of Division service

The Division shall provide such services to small businesses, minority and women businesses as enumerated by the Act. Where specified, these services shall be subject to standards of Federal programs and be coordinated with the Authority. Services shall be limited in their scope to prevent the Commission from incurring adverse liability and to ensure that the services do not compete with those private businesses traditionally providing services to the enumerated businesses.

Amended by R.2003 d.380, effective October 6, 2003.

See: 35 N.J.R. 1831(c), 35 N.J.R. 4734(c).

Substituted “Commission” for “Department” in the third sentence.

12A:9-1.4 Loan referral and packaging

(a) The Division shall develop a loan referral and packaging program for small businesses, minority and women businesses which shall be subject to standards established by the Authority.

(b) The Division shall make referrals to private sector sources for loans without prejudice to those sources.

1. The referrals shall, where market conditions permit, include a minimum of three private source referrals.
2. The Division shall not directly involve itself in negotiations between the referred business and the private sector financing source.
3. The Division may, based on market conditions and needs, negotiate with private sector financing sources to provide loan packages or programs.

12A:9-1.5 Qualified professional listing

(a) The Division shall compile a list of qualified professionals who can or have provided services to small businesses, minority and women businesses. This list of qualified professionals shall include:

1. Accountants;
2. Financial specialists;

3. Management consultants;
4. Marketing consultants;
5. Employee training and development specialists;
and
6. Other professionals as may be deemed appropriate
by the Director.

(b) The Qualified Professionals List shall be made available upon request by an eligible business. The list shall not be restricted or edited in any manner which would provide favoritism or be detrimental to any professional contained on the list.

(c) There shall be no limit to the number of enumerated qualified professionals on the list.

(d) For purposes of this subchapter, qualified professional shall mean a professional who meets all licensing and qualification standards required by the State of New Jersey.

12A:9-1.6 Internship programs

(a) The Division, in cooperation with institutions of higher education, shall establish internship programs for candidates pursuing undergraduate and graduate degrees.

(b) For purposes of this subchapter, institutions of higher learning shall mean those schools which at a minimum have undergraduate programs which provide recognized associate of arts or science degrees.

(c) The Director may limit the number of interns participating in the internship program.

(d) The Director may choose or limit the number of higher educational institutions in the internship program.

12A:9-1.7 Market research and analysis

(a) The Division shall, in conjunction with or at the request of the authority, undertake market research projects.

(b) To the extent possible, the market research projects pursuant to (a) above shall use existing pools of data and/or be coordinated with other entities within the State which have relevant information or the means of collecting the information.

(c) The Director shall define the scope and nature of the market research project in (a) above as may be necessary based on limitations of funds for such study.

12A:9-1.8 Advertising and marketing

(a) The Division shall, in conjunction with or at the request of the Authority, provide advice to eligible businesses as to advertising, marketing, and selecting sales and distribution channels.

(b) To the extent possible the assistance in (a) above shall use existing pools of data and/or be coordinated with other government entities within the State, which have relevant information or the means of providing the information.

(c) The Director shall define the scope and nature of the services in (a) above as may be necessary based on limitation of funds for such services.

12A:9-1.9 Training for bidding on government contracts

(a) The Division shall, in conjunction with or at the request of the Authority, provide training and information to eligible businesses on bidding for government contracts.

(b) To the extent possible the training referred to in (a) above shall use existing pools of data and/or be coordinated with other government entities within the State.

(c) The training referred to in (a) above shall include but not be limited to:

1. Sponsoring or co-sponsoring seminars and training conferences for eligible businesses; and
2. Providing counseling as may be requested by eligible businesses.

(d) The Director shall define the scope and nature of the training referred to in (a) above as may be necessary based on limitation of funds for training and counseling.

12A:9-1.10 Liaison with other departments and agencies of State, Federal and local government

(a) The Division shall serve as liaison with the Department of Treasury and other departments and agencies of State, Federal and local government to promote procurement of contracts and purchases from eligible businesses.

(b) The Division shall, where requested, provide assistance to the various entities of government to facilitate the procurement of contracts and purchases to eligible businesses.

(c) The Division shall make available a means by which the various government entities may obtain lists of eligible businesses.

(d) Upon request the Division shall provide technical assistance to the various government entities wishing to establish contracting and purchasing set-aside programs for eligible businesses.

(e) The Director shall define the scope and nature of the technical assistance referred to in (d) above as may be necessary based on limitations of funds for technical assistance.

12A:9-1.11 Obtaining legal counsel

(a) The Division shall, in conjunction with or at the request of the Authority, provide assistance in obtaining legal counsel to eligible businesses.

(b) The provision of legal service shall be limited to referrals by the Division to the New Jersey Bar Association referral service, County Bar referral services, legal professional associations referral services, or public or quasi-public legal service associations.

(c) The Division shall make no referrals to individual attorneys or law firms.

12A:9-1.12 Financial analysis and accounting assistance

(a) The Division shall, in conjunction with or at the request of the Authority, provide financial analysis and accounting assistance to eligible businesses.

(b) Financial analysis and accounting assistance shall be limited to:

1. Referrals by the Division to professional associations in the field respective of the eligible business request for assistance;
2. Analysis or assistance provided by staff of the Division;
3. The Division shall make no referrals to individual companies or individuals who are capable of providing financial analysis or accounting assistance.

(c) The Director shall define the scope and nature of this assistance as may be necessary based on limitations of funding for this type of assistance.

12A:9-1.13 Assistance in obtaining insurance

(a) The Division shall in conjunction with, or at the request of the authority, provide assistance to eligible businesses in obtaining insurance.

(b) The assistance referred to in (a) above shall only cover commercial insurance including but not limited to employee benefit packages, product liability insurance, and general commercial liability insurance.

(c) The service in (a) above shall be limited to providing information about the requirements for making an eligible business capable of obtaining insurance or reducing premium levels.

(d) The Division shall not be involved in any negotiations or transactions between an eligible business and an insurance company which is authorized to conduct business under the laws of the United States.

12A:9-1.14 Assistance in arranging contracts with franchisees

(a) The Division shall, in conjunction with or at the request of the Authority, provide assistance to eligible businesses in arranging contracts with franchisees.

(b) The assistance referred to in (a) above shall be limited to providing information on franchises at the request of an eligible business.

(c) The Division shall not be involved in any negotiations or transactions between an eligible business and a franchisee.

12A:9-1.15 Assistance in arranging commercial loans

(a) The Division shall, in conjunction with or at the request of the Authority, provide assistance in arranging for loan referral and packaging programs for eligible businesses.

(b) The Division shall develop commercial loan programs with State or Federal chartered banks, savings banks, or savings and loan associations.

(c) All loan packaging programs, when made in conjunction with State chartered institutions, must be made in accordance with the powers conferred on these institutions pursuant to Title 17 of the revised statutes including bridge loans and cash flow loans.

12A:9-1.16 Assistance in negotiating license agreements

(a) The Division shall, in conjunction with or at the request of the Authority, provide assistance to eligible businesses for purposes of negotiating license agreements.

(b) The Division shall not become directly involved or become a participant in negotiations dealing with license agreements.

(c) The Division shall, at the request of any eligible business, provide counseling and information relevant to the business securing a licensing agreement.

12A:9-1.17 Assistance in procuring bonding

(a) The Division shall, in conjunction with or at the request of the Authority, provide assistance in procuring bonding.

(b) The Division shall at the request of an eligible business provide counseling and information relevant to the procuring of bonding.

(c) The Division where applicable shall seek to ease bonding requirements and availability.

(d) The Division shall, at the request of an eligible business, provide counseling and information relevant to a business procuring substitutes for bonding.

12A:9-1.18 Referrals to private consultants, institutions and other providers of services

(a) The Division shall, in conjunction with or at the request of the Authority, make referrals to private consultants, institutions and other providers of services at the request of eligible business.

(b) All referrals in (a) above shall be made available from the Qualified Professionals List pursuant to N.J.A.C. 12A:9-1.5.

(c) The Division shall make no referrals pursuant to (a) above of individual companies or individuals.

12A:9-1.19 Assistance in finding sources of financing from government sources

(a) The Division shall, in conjunction with or at the request of the Authority, assist eligible businesses in finding sources of financing from Federal, State, and local sources.

(b) For purposes of assistance in finding sources of financing from government entities pursuant to (a) above, the Division shall maintain a listing of these financing sources and make them available to eligible businesses at their request.

12A:9-1.20 Assistance in gaining information about employee training and development programs

(a) The Division shall, in conjunction with or at the request of the Authority, assist eligible businesses in gaining information about employee training and development programs.

(b) The Division shall refer the eligible requesting business in (a) above to the Qualified Professionals List pursuant to N.J.A.C. 12A:9-1.5.

12A:9-1.21 Centralized information concerning laws and rules

(a) The Division shall create a centralized source of information for eligible businesses in their dealings with Federal, State and local governments, which shall include:

1. Government rules affecting eligible businesses;
2. Laws affecting eligible businesses; and
3. Government procurement programs affecting eligible businesses.

(b) The Division shall not provide materials to eligible businesses relevant to pending State legislation except as provided for at the direction of the Secretary.

Amended by R.2003 d.380, effective October 6, 2003.

See: 35 N.J.R. 1831(c), 35 N.J.R. 4734(c).

In (b), substituted "Secretary" for "Commissioner".

12A:9-1.22 Internship programs

(a) The Division, in conjunction with requirements of this subchapter, shall initiate and encourage education programs for eligible businesses.

(b) The Division may sponsor educational seminars and conferences for eligible business to facilitate the Division's ability to accomplish its other duties provided for under the Act.

12A:9-1.23 Uniform certification

(a) The Division shall establish, pursuant to the requirements of the Uniform Certification Act, P.L. 1986, c.195, a uniform procedure for the certification of minority and women businesses wishing to participate in State programs

which require certification of authenticity of ownership and control of a business as a criteria for participation in State programs, state political subdivision programs, and casino set-aside programs pursuant to P.L. 1987, c.137.

(b) The Division shall be the certifying authority for all departments, agencies, and authorities of the State.

(c) Where the certification procedure established by the Division pursuant to (a) above conflicts with Federal certification procedures, and that conflict would adversely affect the Federal funding of a State project, the Federal certification procedure shall take precedence when the Division has been properly and reasonably notified by the affected public agency that such conflict exists and the State's participation in such program is in jeopardy.

(d) The political subdivisions of the State shall certify the eligibility of minority and women businesses for the political subdivision's programs which require certification of the authority of ownership and control of a vendor or firm.

1. The political subdivisions of the State may accept those businesses certified by the Division as eligible to participate in their programs.

2. The political subdivisions of the State may by specific assignment and agreement have the Division serve as its certifying authority pursuant to approval by the Secretary.

(e) The political subdivisions of the State shall utilize the uniform procedures formulated by the Division pursuant to (a) above.

1. Any political subdivision of the State choosing to establish its own certification program shall submit a plan to the Division for review and approval. The plan shall include:

- i. A description of the political subdivision's certification program;
- ii. An analysis of the program as to its compliance with the Division's uniform procedures;
- iii. The amount of funds assigned by the political subdivision for the programs;
- iv. Resumes of the personnel who will supervise and work within the program; and
- v. Any other information the Director or CAU administrator may deem relevant.

2. Any political subdivision of the State choosing to establish its own certification program shall submit annual reports to the Division as to the performance of the program. The report shall include:

- i. The number of minority businesses certified by the political subdivision;
- ii. The number of women businesses certified by the political subdivision;

iii. Total number of applications for certification received by that political subdivision;

iv. The number of site visits conducted by the political subdivision; and

v. The number of businesses decertified by the political subdivision.

3. Any political subdivision of the State choosing to establish its own certification program shall make available, at the request of the Division, any and all information relevant to any businesses applying for status as a certified business.

(f) The authority of the Division in matters relating to certification and vendor set-aside approval shall be vested in the CAU administrator.

1. The ruling of the administrator in these matters shall be final, except as may be provided by appeals of his decisions relating to the status of a business provided in regulation under those programs.

Amended by R.2003 d.380, effective October 6, 2003.

See: 35 N.J.R. 1831(c), 35 N.J.R. 4734(c).

In (d)2, substituted "Secretary" for "Commissioner".

12A:9-1.24 Advisory Council

(a) For the purpose of assisting the Division in development and establishment of financial and technical assistance policy; resource allocation; eligibility for assistance and program participation standards; and coordination of programs with the Authority there is established, pursuant to the Act, the Small Business Advisory Council, the Minority Business Advisory Council, and the Women Business Advisory Council.

(b) Each Council shall consist of members appointed pursuant to and in the manner described in the Act.

(c) The respective Councils shall elect a chairman from among their membership. The chairman shall preside over all Council meetings.

(d) Each Council shall meet at least six times a year.

(e) At their discretion, the Councils may meet together as a group to satisfy the meeting requirements in (d) above.

(f) The Council may not hold an official meeting without a quorum. A quorum shall consist of five members of the board being present.

(g) Each member of a Council shall have one equal vote.

(h) The Councils may form ad hoc committees for specific areas of concern by majority vote.

(i) The Division shall be represented at the Council meetings by the Director or his or her designee.

(j) The Councils shall hold meetings pursuant to the requirements of the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq.