

17:13-3.2 Time for application to register as a small business

(a) A business may apply to the Commerce Commission at any time to be registered as a small business and to be placed on the appropriate vendor list.

(b) If a business is to be eligible to bid on a specific set-aside contract or participate in the subcontracting target programs for the purposes of these rules, it must be registered as a small business by the Commerce Commission on the date the bid or bid proposal is received and opened by the State contracting agency.

Recodified from 17:13-1.6 and amended by R.1994 d.309, effective January 3, 1995.

See: 25 N.J.R. 4889(a), 27 N.J.R. 129(a).

Emergency amendment, R.2003 d.317, effective July 9, 2003 (to expire September 7, 2003).

See: 35 N.J.R. 3689(a).

Rewrote (b).

17:13-3.3 Procedures for challenging a business registered as a small business

(a) The qualification under these rules of a business on a vendors list as a small business may be challenged by any other business on that State vendors list or by any of the State contracting agencies subject to these rules.

1. A registration challenge shall be made in writing to the Set-Aside and Certification Office of the Commerce Commission, setting forth the factual basis for the challenge. The Commerce Commission shall provide a copy of the challenge and a notice granting the opportunity for a hearing to the challenged business. Where a particular contract is at issue, the Commerce Commission shall also provide a copy of the challenge to the contracting agency.

2. A registration challenge to the Commerce Commission may concern only the qualification of a business under these rules as a small business. Any challenge to a business's qualifications to perform a contract shall be referred to the appropriate State contracting agency.

(b) When the Commerce Commission receives a challenge, upon request of the business whose registration is at issue, the Commerce Commission shall conduct a hearing on the matter as follows:

1. The Commerce Commission shall notify all interested parties of the time and place of the hearing, and of the right to attend and be represented at the hearing.

2. The burden of proof lies with the challenger. However, the Commerce Commission may use its own resources to ascertain the validity of a challenge and the status of a business.

3. The hearing will be conducted by the designee of the Secretary. This designee will issue a written report to the Secretary within four working days following the close of the hearing.

4. At the discretion of the Secretary's designee, participants at the hearing may be permitted to file written exceptions to the hearing officer's report no later than two working days from the issuance of the report.

5. Thereafter, the Secretary shall issue a final decision on the challenge and notify the parties by certified letter.

6. A challenge to a business's eligibility shall not stay the contract award process.

Recodified from 17:13-1.7 and amended by R.1994 d.309, effective January 3, 1995.

See: 25 N.J.R. 4889(a), 27 N.J.R. 129(a).

Emergency amendment, R.2003 d.317, effective July 9, 2003 (to expire September 7, 2003).

See: 35 N.J.R. 3689(a).

SUBCHAPTER 4. SET-ASIDE CONTRACTING AND SUBCONTRACTING PROGRAM**17:13-4.1 Set-aside program goals and procedures**

(a) Each State contracting agency, consistent with its contracting authority, shall establish and administer a set-aside program which provides for at least 15, or the established goal pursuant to the Set-Aside Act, N.J.S.A. 52:32-17 et seq., whichever is greater, percent of the dollar value of its contracts to be awarded to eligible small businesses, as follows: a least five percent shall be awarded to small businesses whose gross revenues do not exceed \$500,000; at least an additional five percent shall be awarded to small businesses whose gross revenues do not exceed \$5 million; and at least an additional five percent shall be awarded to small businesses whose gross revenues do not exceed \$12 million.

1. Percentages shall be measured by the total dollar value of all such set-aside contracts in comparison to the total dollar value of all publicly advertised contracts awarded by the agency within a fiscal year.

2. The State contracting agencies shall designate specific contracts for each of the three set-aside categories.

(b) Each State contracting agency shall establish written procedures and maintain records as necessary to define, document and report its good faith efforts to attain the established set-aside contracting goals, including contracts executed under its bidding threshold, as established by N.J.S.A. 52:34-7 et seq. The set-aside procedures shall include the following provisions:

1. The State contracting agency shall review its schedule of contracting opportunities and establish a method of determining which upcoming contracts will be offered as part of the agency's set-aside program.

i. A contract may be considered suitable for set-aside whenever the contracting agency can establish a reasonable expectation that bids may be obtained from

at least three qualified eligible businesses capable of furnishing the specified products or services.

ii. The designation as a set-aside contract shall be made prior to public advertisement for bids.

(c) When a State contracting agency has made a determination that a contract is suitable for set-aside purposes, the following provisions apply:

1. Public advertisement of the set-aside contracting opportunity shall be consistent with the contracting agency's standard bidding procedures and may be supplemented by special notification efforts to maximize participation.

2. Invitations for bids shall be confined to either small businesses whose gross revenues do not exceed \$500,000 or small businesses whose gross revenues do not exceed \$5 million or small businesses whose gross revenues do not exceed \$12 million, and bids from other bidders shall be rejected.

3. The State contracting agency shall reject all bids and withdraw the designation as a set-aside contract when the agency determines that acceptance of the lowest responsive bid would result in the payment of an unreasonable price or in a contract that is otherwise unacceptable pursuant to that agency's contracting statutes and rules.

4. The State contracting agency shall notify all participating bidders of the bid cancellation, stating the reasons for the cancellation and the agency's intent to re-solicit bids on an unrestricted basis.

5. The award of any contract designated as a set-aside contract shall be made in accordance with the agency's contracting statutes, rules and procedures.

Amended by R.1995 d.224, effective May 1, 1995.

See: 27 N.J.R. 52(a), 27 N.J.R. 1811(b).

Emergency amendment, R.2003 d.317, effective July 9, 2003 (to expire September 7, 2003).

See: 35 N.J.R. 3689(a).

Rewrote (a) and (c) and deleted (d).

17:13-4.2 Subcontracting target program and procedures

(a) When it deems appropriate, any State contracting agency, consistent with its contracting authority, may establish and administer a subcontracting target program in lieu of or as a supplement to the set-aside program.

(b) Each State contracting agency shall establish written procedures and maintain records as necessary to define, document and report subcontracts awarded pursuant to this program. The procedures shall include the following provisions:

1. The State contracting agency shall review its schedule of contracting opportunities and establish a method of determining which upcoming contracts are suitable for the subcontracting target program.

i. Factors to be considered when making the determination that a particular contract is suitable for inclusion in this program include, but are not limited to, the total dollar amount of the project and subcontracting opportunities on the project.

ii. The designation of a particular contract as part of the subcontracting target program shall be made prior to the public advertisement for bids or established pursuant to addenda.

(c) Nothing in these rules shall be construed as requiring or permitting a State contracting agency to depart from its statutory restrictions or documented policies governing the percentage of a contract which may be subcontracted.

(d) The bid documents shall contain a detailed notice to bidders advising of the following:

1. The bidding package includes a small business utilization form or forms considered a material and mandatory requirement which must be completed and included as part of the bidder's proposal.

2. Failure to complete and submit the form or forms may render the proposal non-responsive and thus subject to rejection.

3. The small business utilization plan will be used by the State contracting agency to determine, prior to award, whether the bidder's proposal is reasonably designed to meet the targets.

(e) A bidder's proposal failing to identify contracts for small businesses shall include documentation of the bidder's good faith efforts to meet the subcontracting targets. Documentation may include a record of the bidder's attempts to contract with eligible businesses and the reasons for failure to meet the subcontracting targets, or a certification that the bidder does not intend to subcontract any work.

(f) The State contracting agency shall review this documentation in order to determine whether the bidder made reasonable efforts to solicit and award contracts to eligible small businesses.

(g) The State contracting agency will consider the bidders actions taken pursuant to N.J.A.C. 17:14-4.3 (12A:10A-4.3) in determining whether reasonable efforts were made by the bidder to solicit and award subcontracts to eligible small businesses.

(h) The award of any contract pursuant to this program shall be made, in accordance with the State contracting agency's applicable statutes, rules and procedures, to the bidder whose proposal meets or demonstrates a genuine good faith effort to meet the targets.