

CHAPTER 14

STATE CONSTRUCTION CONTRACTS
FOR SMALL BUSINESSES

Authority

N.J.S.A. 10:5-36(k) and (o), 52:17 et seq., 52:18A-30(d), 52:25-1 et seq., 52:27C-71(q)52:27H-6(f), 52:32-17 et seq., 52:34-6 et seq., 52:34-12, 52:34-13, 52:27C-73(a), (f) and (h); and 52:27H-21.24; and Executive Order No. 84(1993).

Source and Effective Date

R.2003 d.381, effective September 4, 2003.
See: 35 N.J.R. 1841(a), 35 N.J.R. 4751(a).

Chapter Expiration Date

Chapter 14, State Construction Contracts for Small Businesses, expires on September 4, 2008.

Chapter Historical Note

Chapter 14, Minority and Female Contractor and Subcontractor Participation in State Construction Contracts, was adopted jointly with the Department of Commerce, Energy and Economic Development as a part of Emergency R.1989 d.481, effective August 14, 1989 (expired October 13, 1989). Adopted concurrent new rules were filed on October 13, 1989 as R.1989 d.554. 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Subchapter 1, formerly Minority and Female Subcontractor Participation in State Construction Contracts, was redesignated as Purpose, Scope and Definitions by R.1994 d.310, effective January 3, 1995. See: 25 N.J.R. 4461(b), 27 N.J.R. 135(a). Subchapters 2, 3, 4 and 5 were adopted as R.1994 d.310, effective January 3, 1995. See: 25 N.J.R. 4461(b), 27 N.J.R. 135(a).

The expiration date of Chapter 14, Minority and Female Contractor and Subcontractor Participation in State Construction Contracts, was extended by gubernatorial directive from October 13, 1994 to March 31, 1995. See: 26 N.J.R. 4411(a).

Pursuant to Executive Order No. 66(1978), Chapter 14, Minority and Female Contractor and Subcontractor Participation in State Construction Contracts, was readopted as R.1995 d.225, effective March 30, 1995. See: 27 N.J.R. 54(a), 27 N.J.R. 1814(a).

Pursuant to Executive Order No. 66(1978), Chapter 14, Minority and Female Contractor and Subcontractor Participation in State Construction Contracts, was readopted as R.1998 d.200, effective March 27, 1998. See: 30 N.J.R. 603(a), 30 N.J.R. 1425(a).

Chapter 14, State Construction Contracts for Small Businesses, was readopted as R.2003 d.381, effective September 4, 2003. See: Source and Effective Date. See, also, section annotations.

Cross References

Minority and female business participation in department of transportation construction contracts, see N.J.A.C. 16:4.

Urban Development Corporation, women-owned and minority-owned businesses, compliance with rules under this chapter for projects receiving financial assistance from the Corporation, see N.J.A.C. 12A:80-1.7.

Law Review and Journal Commentaries

Battle for state contracts: What process is due in a challenge to a state contract award? Patrick D. Kennedy & Maeve E. Cannon, 180 N.J.Law. 16 (Mag.) (Oct./Nov. 1996).

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SUBCHAPTER 1. PURPOSE, SCOPE AND DEFINITIONS

17:14-1.1 Purpose and scope

(a) The rules in this chapter are jointly promulgated by the Commerce and Economic Growth Commission (hereinafter, "Commerce Commission") and the Department of the Treasury to implement N.J.S.A. 52:32-17 et seq. and Executive Order No. 84, dated March 5, 1993, to establish a set-aside program that, in part, requires State agencies with contracting authority to make a good faith effort to award 15 percent of public construction contracts and subcontracts to eligible small businesses. This percentage goal is an overall program goal for each State contracting agency. State contracting agencies are expected to apply their business judgment when establishing set-aside goals for individual contracts.

(b) These rules apply only to State construction contracts awarded by any State contracting agency and are not applicable to the award of State contracts for the purchase of goods and services not related to construction contracts.

(c) Applications and questions regarding eligibility as a small business should be addressed to:

Set-Aside and Certification Office
Commerce and Economic Growth Commission
20 West State Street, PO Box 820
Trenton, New Jersey 08625-0820

New Rule, R.1994 d.310, effective January 3, 1995.

See: 25 N.J.R. 4461(b), 27 N.J.R. 135(a).

Emergency amendment, R.2003 d.318, effective July 9, 2003 (to expire September 7, 2003).

See: 35 N.J.R. 3694(a).

Rewrote (a) and (c).

Adopted concurrent amendment, R.2003 d.390, effective September 7, 2003.

See: 35 N.J.R. 1841(a), 3694(a), 4746(a), 4751(a).

Provisions of R.2003 d.318 adopted without change.

17:14-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

“Construction contract” means any contract to which the State or any State contracting agency is a party involving any construction, renovation, reconstruction, rehabilitation, alteration, conversion, extension, demolition, repair or other changes or improvements of any kind whatsoever of any public structure or facility or highway. The term also includes contracts for consultant services, the supervision, inspection and other functions incidental to actual construction.

“Consultant” means an architect, engineer, construction manager, or other provider of technical and professional services in support of a design or construction or highway project.

“Contractor” means any party performing or offering to perform a construction contract or consultant contract, or any party providing materials or goods used to perform a construction contract issued by a contracting agency of the State of New Jersey.

“Delegated purchasing authority” means the authority of a State agency to award contracts on its own pursuant to authority delegated to it by the Director, Division of Property Management and Construction, as established in N.J.S.A. 52:34-7.

“Division of Property Management and Construction (DPMC)” means the State agency within the Department of the Treasury which provides a centralized design and construction contract procurement and administration service for other State agencies pursuant to N.J.S.A. 52:18A-151 et seq.

“Goal” means the statutorily determined percentage of contracts awarded by each State contracting agency to eligible small businesses in order to comply with the small business provisions of the Set-Aside Act.

“Registration” means the process by which any business can have its eligibility for participation in the Commerce Commission’s small business programs determined.

“Secretary” means the Chief Executive Officer and Secretary of the Commerce Commission or his or her designee.

“Set-aside contract” means a contract specifically designated by a contracting agency as exclusively available for award to an eligible small business.

“Small business means a business which has its principal place of business in the State, is independently owned and operated, has no more than 100 full-time employees, and has gross revenues that do not exceed either \$1 million or the applicable annual revenue standards set forth in 13 CFR 121.201, whichever is higher.

“State contracting agency” means any board, commission, committee, authority or agency of the State which possesses the legal authority to award and make construction contracts and includes the following except where expressly inconsistent with statutory authority:

1. DEPARTMENTS:

Agriculture
Banking and Insurance
Personnel
Community Affairs
Corrections
Military and Veterans Affairs
Education
Environmental Protection
Health and Senior Services
Higher Education
Human Services
Labor
Law and Public Safety
State
Transportation
Treasury

2. COLLEGES:

New Jersey City University
Kean University
Montclair State University
New Jersey Institute of Technology

Ramapo College of New Jersey
 Richard Stockton State College
 Rowan University
 Rutgers, The State University of New Jersey
 The College of New Jersey
 Thomas A. Edison State Collage
 University of Medicine and Dentistry of New Jersey
 William Paterson University of New Jersey

3. AUTHORITIES

Board of Regulatory Commissioners
 Casino Reinvestment Development Authority
 Development Authority for Small Businesses, Minorities and Women's Enterprises
 N.J. Building Authority
 N.J. Economic Development Authority
 N.J. Educational Facilities Authority
 N.J. Health Care Facilities Financing Authority
 N.J. Highway Authority
 N.J. Housing & Mortgage Finance Agency
 N.J. Sports and Exposition Authority
 N.J. Transit Corporation
 N.J. Turnpike Authority
 N.J. Water Supply Authority
 Public Broadcasting Authority
 South Jersey Transportation Authority
 Urban Development Corporation

4. COMMISSIONS

Beach Erosion Commission
 Casino Control Commission
 Commerce and Economic Growth Commission
 County and Municipal Government Study Commission
 Election Law Enforcement Commission
 Executive Commission on Ethical Standards
 New Jersey Meadowlands Commission
 N.J. Commission on Capital Budgeting & Planning
 N.J. Racing Commission
 North Jersey Water Supply Commission
 Passaic Valley Sewer Commission
 Pinelands Commission
 State Commission of Investigation
 Commission of Science and Technology and all other departments, colleges, authorities and commissions as may be established in the future.

5. MULTI-STATE AGENCIES

Delaware River Basin Commission
 Port Authority of New York and New Jersey
 Delaware River Joint Toll Bridge Commission
 Delaware River Port Authority
 Delaware River and Bay Authority
 Atlantic Interstate Low-Level Radioactive Waste Compact

Delaware Valley Regional Planning Commission
 Interstate Environmental Commission
 Palisades Interstate Park Commission
 Waterfront Commission of New York Harbor
 "Subcontractor" means a third party that is engaged by a contractor to perform all or part of the work or to provide supplies, materials or equipment included in a construction-related contract with a State contracting agency.

"Target" means the numerical objectives which a State contracting agency establishes, on a contract by contract basis, in order to meet its small business goal.

"Treasurer" means the Treasurer of the State of New Jersey or his or her designee.

Adopted concurrent proposal, R.1989 d.554, effective November 6, 1989.

See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted with changes.

Administrative Correction to (a): change reference.

See: 22 N.J.R. 1150(a).

Recodified from 17:14-1.1 and amended by R.1994 d.310, effective January 3, 1995.

See: 25 N.J.R. 4461(b), 27 N.J.R. 135(a).

Formerly "Applicability and scope".

Amended by R.1995 d.225, effective May 1, 1995.

See: 27 N.J.R. 54(a), 27 N.J.R. 1814(a).

Emergency amendment, R.2003 d.318, effective July 9, 2003 (to expire September 7, 2003).

See: 35 N.J.R. 3694(a).

Rewrote the section.

Adopted concurrent amendment, R.2003 d.390, effective September 7, 2003.

See: 35 N.J.R. 1841(a), 3694(a), 4746(a), 4751(a).

Provisions of R.2003 d.318 adopted without change.

Case Notes

Minority set-aside provisions in the Casino Control Act violated equal protection, as statutory definition of minorities was not narrowly tailored; definition included minorities not found to have been subject to discrimination, and adoption of regulations limiting definition of minorities to African-Americans, Latinos, and Asian Americans could not cure defect, as Casino Redevelopment Authority did not have authority to deviate from statutorily-defined minorities eligible for inclusion in set-aside program. *L. Feriozzi Concrete Company v. Casino Reinvestment Development Authority*, 776 A.2d 254 (2001).

Overinclusiveness in the Casino Control Act's minority set-aside program, based on inclusion in set-aside program of minorities who were not found to have been subject to discrimination, could not be cured by striking portions of statute and rewriting definitional scheme, where there were inconsistencies among pertinent statutes and regulations as to which minorities would be entitled to be included in set-aside program. *L. Feriozzi Concrete Company v. Casino Reinvestment Development Authority*, 776 A.2d 254 (2001).

17:14-1.3 (Reserved)

Repealed by R.1994 d.310, effective January 3, 1995.

See: 25 N.J.R. 4461(b), 27 N.J.R. 135(a).

Formerly "Standards of eligibility for minority business and female business".

17:14-1.4 (Reserved)

Repealed by R.1994 d.310, effective January 3, 1995.

See: 25 N.J.R. 4461(b), 27 N.J.R. 135(a).

Formerly "Registration procedures for minority businesses and female businesses".

17:14-1.5 (Reserved)

Repealed by R.1994 d.310, effective January 3, 1995.

See: 25 N.J.R. 4461(b), 27 N.J.R. 135(a).

Formerly "Approval as a minority business or female business".

17:14-1.6 (Reserved)

Adopted concurrent proposal, R.1989 d.554, effective November 6, 1989.

See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted with changes.

Administrative Correction to (c).

See: 21 N.J.R. 3674(b).

Repealed by R.1994 d.310, effective January 3, 1995.

See: 25 N.J.R. 4461(b), 27 N.J.R. 135(a).

Formerly "Time for application to register as a minority business or female business".

17:14-1.7 (Reserved)

Repealed by R.1994 d.310, effective January 3, 1995.

See: 25 N.J.R. 4461(b), 27 N.J.R. 135(a).

Formerly "Procedures for challenging a business registered as a minority business or female business".

17:14-1.8 (Reserved)

Adopted concurrent proposal, R.1989 d.554, effective November 6, 1989.

See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted with changes.

Repealed by R.1994 d.310, effective January 3, 1995.

See: 25 N.J.R. 4461(b), 27 N.J.R. 135(a).

Formerly "Obligation to provide information and penalties for failure to provide complete and accurate information".

17:14-1.9 (Reserved)

Adopted concurrent proposal, R.1989 d.554, effective November 6, 1989.

See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted with changes.

Repealed by R.1994 d.310, effective January 3, 1995.

See: 25 N.J.R. 4461(b), 27 N.J.R. 135(a).

Formerly "Subcontracting targets".

17:14-1.10 (Reserved)

Adopted concurrent proposal, R.1989 d.554, effective November 6, 1989.

See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted with changes.

Repealed by R.1994 d.310, effective January 3, 1995.

See: 25 N.J.R. 4461(b), 27 N.J.R. 135(a).

Formerly "Submission of subcontracting information".

17:14-1.11 (Reserved)

Repealed by R.1994 d.310, effective January 3, 1995.

See: 25 N.J.R. 4461(b), 27 N.J.R. 135(a).

Formerly "Severability".

17:14-1.12 (Reserved)

Repealed by R.1994 d.310, effective January 3, 1995.

See: 25 N.J.R. 4461(b), 27 N.J.R. 135(a).

Formerly "Review".

SUBCHAPTER 2. ELIGIBILITY REQUIREMENTS FOR SMALL BUSINESSES

17:14-2.1 Standards of eligibility for small businesses

(a) In order to be eligible as a small business, a business must satisfy all of the following criteria:

1. The business must be independently owned and operated, as evidenced by its management being responsible for both its daily and long term operation, and its management owning at least 51 percent interest in the business.

2. The business must be incorporated or registered to do business in the State and have its principal place of business in New Jersey, defined as such when either 51 percent or more of its employees work in New Jersey, as evidenced by the payment of New Jersey unemployment taxes or 51 percent or more of its business activities take place in New Jersey, as evidenced by its payment of income or business taxes.

3. The business must be a sole proprietorship, partnership or corporation with 100 or fewer employees in full-time position, not including:

i. Seasonal and part-time employees employed for less than 90 days, if seasonal and casual part-time employment are common to that industry; and

ii. Consultants employed under other contracts not related to the construction and construction-related services that are the subject of the specific contract for which the business wants to be eligible as a small business.

4. The business must have gross revenues that do not exceed \$1 million or the applicable annual revenue standards set forth in 13 CFR 121.201, whichever is higher.

i. Gross revenues of a business which has been in business for three or more completed years means the revenues of the business over its last three completed tax years divided by three.

ii. Gross revenues of a business which has been in business for less than three complete tax years means the revenues for the period the business has been in business divided by the number of weeks in business, multiplied by 52.

iii. Gross revenues of a business which has been in business three or more complete tax years but has a short year as one of those years means the revenues for the short year and the two full years divided by the number of weeks in the short year and the two full years, multiplied by 52.