

SUBCHAPTER 3. CERTIFICATION AND REGISTRATION

17:14-3.1 Certification and registration procedures for minority businesses and female businesses

(a) Certification procedures established by the Department of Commerce are as set forth in N.J.A.C. 12A:11. Businesses awarded contracts or subcontracts based on their eligibility as registered minority or female businesses must file an application for certification with the Department of Commerce no later than 60 calendar days after the award of the contract, or by December 1, 1995, when certification will be required for all minority and female businesses seeking set-aside contracts or subcontracts, whichever date comes first. In accordance with N.J.S.A. 52:27H-21.18, small businesses are not required to be certified.

(b) Registration procedures established by the Department of Commerce are as follows:

1. Any business which seeks to register as a minority business and/or female business must apply to the Department of Commerce and pay any applicable fees. For these purposes, the Department of Commerce shall prepare a Vendor Registration Form. This form shall be available from the Department of Commerce and the State contracting agencies.

i. If an applicant fails to complete fully the Vendor Registration Form, registration may be delayed or denied.

2. When an application for registration as a female or minority business is approved by the Department of Commerce, the Department will issue the newly registered business an approval notice and add it to the Department's female or minority vendors list.

3. State agencies awarding contracts will utilize these lists in confirming eligibility for set-aside contracts and subcontracts and in reporting progress toward established goals.

Recodified from 17:14-1.4 and 1.5 and amended by R.1994 d.310, effective January 3, 1995.

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

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

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

17:14-3.2 Time for application to register as a minority business or female business

(a) A business may apply to the Department of Commerce at any time to be registered as a minority business or female business and to be placed on the appropriate vendors list.

(b) If a business is to be considered as a minority or female business contractor or subcontractor on a specific contract for purposes of these rules, it must apply to the Department of Commerce for purposes of registration no later than one day prior to the deadline for bids being received and opened by the State contracting agency.

Recodified from 17:14-1.6 and amended by R.1994 d.310, effective January 3, 1995.

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

17:14-3.3 Procedures for challenging a business registered as a minority business or female business

(a) The qualification under these rules of a business on a vendors list as a minority business or female 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 Department of Commerce, setting forth the factual basis for the challenge. The Department 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 Department shall also provide a copy of the challenge to the contracting agency.

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

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

1. The Department 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 Department 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 Commissioner of the Department of Commerce. This designee will issue a written report to the Commissioner within four working days following the close of the hearing.

4. At the discretion of the Commissioner'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 Commissioner shall issue a final decision on the challenge and notify the parties by certified letter.

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

Recodified from 17:14-1.7 and amended by R.1994 d.310, effective January 3, 1995.

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

SUBCHAPTER 4. STATE AGENCY SET-ASIDE CONTRACTING AND SUBCONTRACTING PROGRAMS

17:14-4.1 Remedial 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 seven percent of the dollar value of its contracts and of all subcontracts thereunder to be awarded to eligible minority businesses and at least three percent of the dollar value of its contracts and of all subcontracts thereunder to be awarded to eligible female businesses, which 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.

(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. Contracts executed under delegated purchasing authority shall be subject to set-aside provisions established by the delegating agency in its formal delegation procedures. Consistent with the requirements of N.J.S.A. 52:32-17 et seq., 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 or subcontracts will be offered as set-aside contracts.

i. A contract or subcontract 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 construction work or services.

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

(c) When an agency has made a determination that a contract in its entirety 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 minority businesses or to female businesses, 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.

i. The 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.

ii. Except in cases of emergency, the State contracting agency shall provide an opportunity for a hearing before contract award to address the reasons for the withdrawal of the set-aside designation. This hearing shall not be considered a contested case under the Administrative Procedures Act.

4. 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.

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

1. The public advertisement shall include the address and telephone number of the New Jersey Department of Commerce's Set-Aside and Certification Office and a notice to prospective bidders that set-aside goals, or reasonable efforts as required in N.J.A.C. 17:14-4.3 (12A:10A-4.3), must be met by any contractor receiving an award.

2. The bid documents shall contain a standard form by which the bidder shall certify that it will comply with New Jersey laws pertaining to set-aside contracts and is aware that it is subject to criminal and civil penalties, including debarment, in the event of non-compliance.

3. The bid documents shall contain a detailed notice to bidders advising the following:

i. The bidding packet includes a set-aside form or forms considered a material and mandatory requirement and which must be completed and included as a part of the bidder's proposal.

ii. Failure to complete and submit the form(s) shall be sufficient basis to deem the bid proposal non-responsive and thus subject to mandatory rejection.