

CHAPTER 39**AFFIRMATIVE ACTION RULES****Authority**

P.L. 2007, c. 137, specifically, §§6 and 36.

Source and Effective Date

R. 2007 d.380, effective November 14, 2007.
See: 39 N.J.R. 2003(a), 39 N.J.R. 5369(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1.c(2), Chapter 39, Affirmative Action Rules, expires on May 13, 2015. See: 47 N.J.R. 452(a).

Chapter Historical Note

Chapter 39, Affirmative Action and Set Asides in Authority-Financed School Facilities Construction Projects Financed and Contracted For by the Authority, was recodified from N.J.A.C. 19:32-5 and renamed Affirmative Action Rules by R.2007 d.380, effective December 17, 2007. As a part of R.2007 d.380, Subchapter 3, Enforcement, was adopted as new rules, effective December 17, 2007. See: Source and Effective Date. See, also, section annotations.

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 39, Affirmative Action Rules, was scheduled to expire on November 14, 2014. See: 43 N.J.R. 1203(a).

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SUBCHAPTER 1. GENERAL PROVISIONS**19:39-1.1 Purpose**

The purpose of this chapter is to implement section 6 of the Act, which mandates the adoption of rules to establish and provide for the administration and enforcement of an affirmative action program for the schools construction program. In addition, this chapter implements Executive Order No. 71(2003), which requires the Authority to set aside 25 percent of its total purchases and contracts for construction and goods and services for small business enterprises; and, in accordance with Executive Order No. 34 (2006), encourages every construction contractor and goods and services contractor to afford equal opportunity for minority- and women-owned business enterprises to participate in the purchasing and procurement opportunities available through the schools construction program.

New Rule, R.2007 d.380, effective December 17, 2007.
See: 39 N.J.R. 2003(a), 39 N.J.R. 5369(a).

19:39-1.2 Definitions

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

“Abbott district” means an Abbot district as defined in section 3 of P.L. 1996, c.138 (N.J.S.A. 18A:7F-3).

“Act” means the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72, N.J.S.A. 18A:7G-1.1 et seq. as amended.

“Authority” or “SDA” means the New Jersey Schools Development Authority, established pursuant to section 3 of P.L. 2007, c. 137, the successor entity to the New Jersey Schools Construction Corporation.

“Certified payroll report” means the form completed by the construction contractor awarded a contract by the Authority that indicates the race, gender and hours worked by each tradesperson during a pay period, certified by the construction contractor.

“Construction contract” means any contract between a firm and the Authority for the construction of a school facilities project in accordance with N.J.A.C. 19:38.

“Construction contractor” means a firm that enters into or offers to enter into a construction contract with the Authority.

“Contract” means the entire and integrated agreement between a firm and the Authority.

“Director” means the Authority’s Director of Contractor and Workforce Compliance.

“Division” means the Division of Contract Compliance and Equal Employment Opportunity in Public Contracts established in the State of New Jersey, Department of the Treasury, or successor entity.

“Employee Information Report” means Form AA302, or successor form, which provides a breakdown of the goods and services contractor’s workforce.

“Firm” means any association, company, contractor, corporation, joint stock company, limited liability company, partnership, sole proprietorship, or other business entity, including their assignees, lessees, receivers or trustees.

“Good faith” means with respect to goods and services contractors’ obligations pursuant to N.J.A.C. 19:39-2.3, the actions set forth in N.J.A.C. 19:39-2.3(c); with respect to construction contractors’ obligations pursuant to N.J.A.C. 19:39-2.4, the actions set forth in N.J.A.C. 19:39-2.4(b); and, with respect to contractors’ obligations pursuant to N.J.A.C. 19:39-2.5, the actions set forth in N.J.A.C. 19:39-2.6.

“Goods and services contract” means any contract entered into by the Authority for fixtures, furnishings, equipment and any other tangible items, and/or professional, technical, or other types of services, in accordance with N.J.A.C. 19:38D and/or 19:38C. For purposes of this definition, “goods and services” shall not include construction services and materials in connection with a contract.

“Goods and services contractor” means a firm that enters into or offers to enter into a goods and services contract with the Authority.

“Initial Project Workforce Report” means Form AA201, which is filed by the construction contractor and provides a projected breakdown of the number of all workers per trade and of minorities and women on a construction project.

“Minority-owned business enterprise” or “MBE” means a business that is certified by the New Jersey Commerce and Economic Growth and Tourism Commission or successor entity, as a minority-owned business enterprise.

“Minority worker” means any worker as defined by the New Jersey Department of Treasury rule N.J.A.C. 17:27-2.1.

“Monthly Project Workforce Report” means Form 202, which provides an analysis of a contractor’s and its subcontractors’ workforce.

“Performance evaluation” means the Act-mandated uniform performance evaluation of construction or goods and services contractors on all school facilities projects that must be utilized in reviewing bid submissions.

“SBE Form A—Schedule of Participation” or “Form A” means the form completed by the construction contractor awarded a contract by the Authority that lists all of the SBEs that will participate in the contract, including scope of work, actual dollar amount and percent of total contract to be performed.

“SBE Form B—Schedule of Participation” or “Form B” means the form completed by a goods and services contractor awarded a contract by the Authority that lists all of the SBEs that will participate in the contract, including the scope of

work, actual dollar amount and percent of total contract to be performed.

“SBE Form C—Confirmation Statement of SBE Status” or “Form C” means the form completed by a proposed subcontractor or goods and services provider that has been named in a construction or goods and services contractor’s Form A or Form B, respectively, which identifies the subcontractor or goods and services provider as a proposed SBE on said school facilities project, specifies the subcontract bid amount and attaches a current and valid copy of that subcontractor’s or goods and services provider’s SBE registration form issued by the Department of Commerce and Economic Growth and Tourism, or successor agency.

“School construction program” refers to the overall program mandated by the Act for the design, renovation, repair and new construction of early childhood, primary and secondary public schools throughout the State, through the implementation of school facilities projects.

“School facilities project” means the planning, acquisition, demolition, construction, improvement, alteration, modernization, renovation, reconstruction or capital maintenance of all or any part of a school facility or of any other personal property necessary for, or ancillary to, any school facility and shall include fixtures, furnishings and equipment, and shall also include, but is not limited to, site acquisition, site development, the services of design professionals, such as engineers and architects, construction management, legal services, financing costs and administrative costs and expenses incurred in connection with the project.

“Small business enterprise” or “SBE” means a business that is registered with the New Jersey Commerce and Economic Growth and Tourism Commission (Commerce Commission) as a small business enterprise, or any other race and gender neutral business enterprise to be registered by the Commerce and Commission, or successor entity.

“Subcontractor Projection Report” or “Form 201A” means the form completed by the construction contractor awarded a contract by the Authority that provides information concerning each of the subcontractors that will participate in the contract, including a Federal identification number and status as an MBE, WBE and/or SBE.

“Women-owned business enterprise” or “WBE” means a business that is certified by the New Jersey Commerce and Economic Growth and Tourism Commission or successor entity, as a women-owned business enterprise.

“Workforce compliance inspector” means an employee of the Authority who is responsible for monitoring compliance with this chapter.

Recodified from N.J.A.C. 19:32-5.1 and amended by R.2007 d.380, effective December 17, 2007.

See: 39 N.J.R. 2003(a), 39 N.J.R. 5369(a).

In the introductory paragraph, substituted “chapter” for “subchapter”; in definition “Act”, substituted “c. 72” for “c.72” and inserted “as amended”; deleted former definition “Authority” and added new definition “Authority”; in definition “Construction contract”, substituted “between a firm and the Authority” for “, subcontract or agreement” and

"in accordance with N.J.A.C. 19:38" for "that is entered into by the Authority" and inserted "the construction of"; in definition "Minority-owned business enterprise", inserted "and Tourism" and "or successor entity"; in definition "Performance evaluation", inserted "construction or goods and services"; in definition "Small business enterprise", inserted "and Tourism", "(Commerce Commission)" and "or successor entity" and substituted "Commerce and Commission" for "New Jersey Commerce and Economic Growth Commission"; in definition "Women-owned business enterprise", inserted "and Tourism" and "or successor entity"; deleted definitions "Consultant", "Office of Affirmative Action", "School facility"; added definitions "Certified payroll report", "Contract", "Director", "Division", "Employee Information Report", "Firm", "Good faith", "Goods and services contract", "Goods and services contractor", "Initial Project Workforce Report", "Monthly Project Workforce Report", "SBE Form A-Schedule of Participation", "SBE Form B-Schedule of Participation", "SBE Form C-Confirmation State of SBE Status", "School construction program", "Subcontractor Projection Report", and "Workforce compliance officer"; substituted definition "Construction contractor" for definition "Contractor"; in definition "Construction contractor", substituted "a firm that" for "any party who" and inserted "or offers to enter into"; and rewrote definition "School facilities project".

19:39-1.3 Application

This chapter applies to any firm which enters into or offers to enter into a goods and services or construction contract with the Authority.

New Rule, R.2007 d.380, effective December 17, 2007.
See: 39 N.J.R. 2003(a), 39 N.J.R. 5369(a).

SUBCHAPTER 2. REQUIREMENTS FOR CONTRACTOR COMPLIANCE

19:39-2.1 Affirmative action and small business compliance

(a) Each construction or goods and services contractor shall designate an employee who shall serve as a liaison with the Authority's workforce compliance inspector and who shall be responsible for coordinating the firm's affirmative action program, maintaining all records required by this chapter and submitting the forms required by this chapter through the Authority's website, or as otherwise directed, to the SDA's designated employee or representative.

(b) Every construction contractor shall complete and submit the following forms at the times indicated:

1. An SBE Form A, together with all SBE Forms C, at the time of bid or at any other time prior to the Authority's execution of a construction contract, as specified by the Authority;
2. An initial project workforce report, Form AA-201, upon notification of award, and prior to the Authority's execution of a construction contract;
3. A subcontractor projection report, Form 201A, within seven business days of the Notice to Proceed issued to the construction contractor by the Authority, and as updated during the duration of the contract;

4. A monthly project workforce report, Form AA-202, no later than the seventh business day of each month for the duration of the contract; and

5. A certified payroll report within 10 days of the end of each pay period.

(c) Every goods and services contractor, after notification of award, but prior to the Authority's execution of the goods and services contract, shall submit to the Authority an SBE Form B and an SBE Form C, as well as one of the following documents:

1. A Letter of approval that the contractor is operating under an existing Federally-approved or sanctioned affirmative action program;
2. A Certificate of Employee Information Report approval issued in accordance with N.J.A.C. 17:27; or
3. An Employee Information Report, Form AA-302.

(d) If a contractor fails to satisfy the requirements (b)1 or (c) above, as applicable, the Authority shall rescind the award of contract to the firm.

(e) A goods and services contractor shall not enter into a subcontract unless the subcontractor has submitted to said contractor one of the three documents required by (c)1 through 3 above, unless the subcontractor, for a goods and services contract, has four or fewer employees.

New Rule, R.2007 d.380, effective December 17, 2007.
See: 39 N.J.R. 2003(a), 39 N.J.R. 5369(a).

19:39-2.2 Contract provisions

(a) All goods and services contractors shall include in every subcontract the following mandatory language concerning affirmative action employment practices:

1. The affirmative action language set forth in N.J.A.C. 17:27-3.4(a)2i through iv, as applicable; and
2. The employment goal compliance language set forth in N.J.A.C. 17:27-3.6(a)2 through 4, as applicable.

(b) All construction contractors shall include in every subcontract the following mandatory language concerning affirmative action employment practices:

1. The affirmative action language set forth in N.J.A.C. 17:27-3.5(a)2i through iv, as applicable; and
2. The employment goal compliance language set forth in N.J.A.C. 17:27-3.7(a)1 through 3, as applicable.

(c) Notwithstanding the mandatory subcontract language required in (b)1 above, if a subcontractor has a total workforce of four or fewer employees or is performing under an existing Federally-approved or sanctioned affirmative action program, the subcontract need only include the mandatory language set forth in N.J.A.C. 17:27-3.5(a)2iv.

New Rule, R.2007 d.380, effective December 17, 2007.
See: 39 N.J.R. 2003(a), 39 N.J.R. 5369(a).