

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

Provisions of emergency amendment R.1989 d.481 readopted without change.

Repealed by R.1994 d.309, effective January 3, 1995.

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

Formerly "Factors in establishing purchasing plans".

12A:10-1.12 (Reserved)

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

Business designations revised.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989.

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

Provisions of emergency amendment R.1989 d.481 readopted without change.

Repealed by R.1994 d.309, effective January 3, 1995.

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

Formerly "Bidders lists".

12A:10-1.13 (Reserved)

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

Business designations revised.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989.

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

Provisions of emergency amendment R.1989 d.481 readopted without change.

Repealed by R.1994 d.309, effective January 3, 1995.

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

Formerly "Set-aside contracts".

12A:10-1.14 (Reserved)

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

Business designations revised.

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Repealed by R.1994 d.309, effective January 3, 1995.

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

Formerly "Purchasing and contracting reports".

12A:10-1.15 (Reserved)

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

In (c), "Division of Development for Small Business and Women and Minority Businesses" added and former business assistance offices deleted.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989.

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

Provisions of emergency amendment, R.1989 d.481 readopted without change.

Repealed by R.1994 d.309, effective January 3, 1995.

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

Formerly "Consultation with industry".

12A:10-1.16 (Reserved)

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

Language updated to reflect current rules.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989.

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

Provisions of emergency amendment R.1989 d.481 readopted without change.

Repealed by R.1994 d.309, effective January 3, 1995.

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

Formerly "Delegation of Treasurer's authority".

SUBCHAPTER 2. SET-ASIDE ELIGIBILITY REQUIREMENTS FOR SMALL BUSINESSES, MINORITY BUSINESSES AND FEMALE BUSINESSES

12A:10-2.1 Standards of eligibility for small businesses, minority businesses and female businesses

(a) A business may be eligible as a small business, a minority business, a female business or a portion or combination of the three.

(b) 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 positions, 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 goods and services which are the subject of the specific contract the business wants to be eligible as a small business.

(c) In order to be eligible as a minority or female business, a business must satisfy all of the following criteria:

1. The principal place of business must be in the State; and

2. At least 51 percent of the ownership of the business must be by minority or female persons; and

3. Control over the daily and long-term operations of the business must be exercised by one or more of the minority or female owners.

(d) Eligibility is formalized by the Department of Commerce's certification and/or registration and approval processes.

Recodified from 12A:10-1.3 and amended by R.1994 d.309, effective January 3, 1995.

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

12A:10-2.2 Obligation to provide information and penalties for failure to provide complete and accurate information

(a) Applicants under these rules shall accurately and honestly supply all information required by the Department of Commerce.

(b) When a business has been approved as an eligible small business, minority business or female business on the basis of false information knowingly supplied by the business and the business has been awarded a State contract or a subcontract thereto, the Commissioner of the Department of Commerce, after notice and opportunity for a contested case hearing pursuant to N.J.S.A. 52:14B-10 and N.J.A.C. 17:1, shall:

1. Assess the business any difference between the contract amount and what the State's cost would have been if the contract had not been awarded in accordance with the provisions of N.J.S.A. 52:32-17 et seq.;
2. In addition, assess the business a penalty in the amount of not more than 10 percent of the amount of the contract or subcontract involved; and
3. Order the business ineligible to transact any business with a State contracting agency for a period of not less than three months and not more than 24 months.

(c) Any business approved by the Department of Commerce as a small business, minority business and/or female business shall immediately apprise the Department of any circumstances which might affect the eligibility of the business under these rules.

(d) The failure of a business to report any such changed circumstances, or the intentional reporting of false information, shall disqualify the business for inclusion on any vendors list under these rules and may subject the business to adverse action by contracting agencies and/or the Attorney General.

New Rule, R.1994 d.309, effective January 3, 1995.
See: 25 N.J.R. 4889(a), 27 N.J.R. 129(a).

12A:10-2.3 Right to hearing upon denial of contract

A bidder or contractor that is denied any contract or the right to bid on any contract because of a determination that it failed to make a good faith effort to solicit and award subcontracts to eligible minority and female businesses shall be entitled to an administrative hearing as provided by N.J.A.C. 17:12-3.1 through 3.6.

New Rule, R.1995 d.224, effective May 1, 1995.

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

12A:10-2.4 through 12A:10-2.7 (Reserved)

Recodified to 12A:10A by R.1994 d.310, effective January 3, 1995.
See: 25 N.J.R. 4461(b), 27 N.J.R. 135(a).

12A:10-2.8 (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 new rule 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".

12A:10-2.9 (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 new rule 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".

12A:10-2.10 (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 new rule 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".

12A:10-2.11 (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".

12A:10-2.12 (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 3. CERTIFICATION AND REGISTRATION

12A:10-3.1 Certification and registration procedures for small businesses, 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, the date established by the Department of Commerce 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 small business, 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.

2. As part of its application to the Department of Commerce, a business shall reasonably document its principal place of business and independent status, and, as appropriate, the number of its employees. Where available, this documentation should include appropriate forms or reports otherwise submitted to or issued by State and Federal agencies, such as employee or affirmative action reports filed with the New Jersey Department of Labor or certificates of incorporation issued by the New Jersey Department of State.

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

ii. If an applicant knowingly supplies incomplete or inaccurate information, the applicant shall be disqualified under these rules and may be subject to other penalties described in N.J.A.C. 17:13-2.2 (12A:10-2.2).

3. When an application for registration as a small, minority or female 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 small, minority or female vendor lists.

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

Recodified from 12A:10-1.4 and 1.5 and amended by R.1994 d.309, effective January 3, 1995.

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

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

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

12A:10-3.2 Time for application to register as a small business, minority business or female business

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

(b) If a business is to be considered as a small, minority or female contractor or subcontractor on a specific contract for the 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 12A:10-1.6 and amended by R.1994 d.309, effective January 3, 1995.

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

12A:10-3.3 Procedures for challenging a business registered as a small business, minority business or female business

(a) The qualification under these rules of a business on a vendors list as a small business, 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 small business, 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 business's eligibility shall not stay the contract award process.

Recodified from 12A:10-1.7 and amended by R.1994 d.309, effective January 3, 1995.

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

SUBCHAPTER 4. SET-ASIDE CONTRACTING AND SUBCONTRACTING PROGRAM

12A:10-4.1 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 percent of the dollar value of its contracts and of all subcontracts thereunder to be awarded to eligible small businesses, 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.

1. The State contracting agencies shall designate specific contracts for each of the three distinct and exclusive set-aside categories.

2. The State contracting agencies shall, when they deem it appropriate, designate subcontracting goals for specific contracts which have not been set aside in their entirety.

(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 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 small businesses, minority businesses or 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 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.

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. 17:13-4.2 (12A:10-4.2), must be met by any contractor receiving an award.

2. The RFP 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 RFP shall contain a detailed notice to bidders advising the following:

i. The RFP includes a set-aside form (or forms) considered a mandatory requirement to 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.