

CHAPTER 10A

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., 52:27H-6(f), 52:32-17 et seq., 52:34-6 et seq., 52:34-12, 52:34-13 and Executive Order No. 84(1993).

Source and Effective Date

R.1998 d.200, effective March 26, 1998.
See: 30 N.J.R. 603(a), 30 N.J.R. 1425(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 10A, Minority and Female Contractor and Subcontractor Participation in State Construction Contracts, expires on September 22, 2003. See: 35 N.J.R. 1841(a).

Chapter Historical Note

Subchapters 1, 2 and 3, were recodified from N.J.A.C. 12A:10-2, Minority and Female Subcontractor Participation in State Construction Contracts, and Subchapters 4 and 5 were adopted as new rules by 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 10A, 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 10A, 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 10A, Minority and Female Contractor and Subcontractor Participation in State Construction Contracts, was readopted as R.1998 d.200, effective March 26, 1998. See: Source and Effective Date.

Cross Reference

Special rules regarding disputes arising under the New Jersey Lemon Law, see N.J.A.C. 1:13A.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. PURPOSE, SCOPE AND DEFINITIONS

- 12A:10A-1.1 Purpose and scope
12A:10A-1.2 Definitions

SUBCHAPTER 2. ELIGIBILITY REQUIREMENTS FOR
SMALL BUSINESSES

- 12A:10A-2.1 Standards of eligibility for small businesses
12A:10A-2.2 Obligation to provide information and penalties for failure to provide complete and accurate information
12A:10A-2.3 (Reserved)

SUBCHAPTER 3. REGISTRATION

- 12A:10A-3.1 Registration procedures for small businesses
12A:10A-3.2 Time for application to register as a small business
12A:10A-3.3 Procedures for challenging a business registered as a small business

SUBCHAPTER 4. SET-ASIDE CONTRACTING AND
SUBCONTRACTING PROGRAMS

- 12A:10A-4.1 Set-aside program goals and procedures
12A:10A-4.2 Subcontracting target program and procedures
12A:10A-4.3 Good faith efforts of bidders; requirements
12A:10A-4.4 Exemptions from set-aside programs

SUBCHAPTER 5. PLANNING, REPORTING AND
REVIEW

- 12A:10A-5.1 Planning
12A:10A-5.2 Reporting requirements
12A:10A-5.3 Annual review

SUBCHAPTER 1. PURPOSE, SCOPE AND
DEFINITIONS

12A:10A-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).

12A:10A-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
 - Personnel
 - Commerce, Energy and Economic Development
 - Community Affairs
 - Corrections
 - Military and Veterans Affairs
 - Education
 - Environmental Protection
 - Health
 - Higher Education
 - Human Services
 - Insurance
 - Labor
 - Law and Public Safety
 - Public Advocate
 - State
 - Transportation
 - Treasury
2. COLLEGES:
 - Glassboro State College
 - Jersey City State College
 - Kean College of New Jersey
 - Montclair State College
 - New Jersey Institute of Technology
 - Ramapo College of New Jersey
 - Richard Stockton State College
 - Rutgers the State University
 - Thomas E. Edison College
 - Trenton State College
 - University of Medicine and Dentistry of New Jersey
 - William Paterson College of New Jersey
3. AUTHORITIES:
 - Board of Public Utilities
 - Casino Redevelopment Authority
 - Development Authority for Small Businesses, Minorities and Women’s Enterprises
 - Expressway Authority
 - Health Care Facilities Financing Authority
 - Highway Authority
 - N.J. Economic Development Authority
 - N.J. Educational Facilities Authority
 - N.J. Health Care Facilities Financing Authority
 - N.J. Housing & Mortgage Finance Agency
 - N.J. Transit Corp.
 - N.J. Water Supply Authority
 - Public Broadcasting Authority
 - Sports and Exposition Authority
 - Turnpike Authority
 - Urban Development Corporation
4. COMMISSIONS:
 - Beach Erosion Commission
 - Casino Control Commission
 - County and Municipal Government Study Commission
 - Election Law Enforcement Commission
 - Executive Commission on Ethical Standards
 - Hackensack Meadowlands Development 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 new rule R.1989 d.481 readopted with changes.

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).

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.

SUBCHAPTER 2. ELIGIBILITY REQUIREMENTS FOR SMALL BUSINESSES

12A:10A-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.

(b) In addition to (a) above, the Commerce Commission may limit participation in its small business set-aside programs to businesses whose individual owners do not exceed \$750,000 in personal net worth.

(c) Eligibility is formalized by the Commerce Commission’s registration and approval process.

(d) Small businesses will be registered in one of the following two categories:

i. Small businesses whose gross revenues do not exceed \$1 million; or

ii. Small businesses whose gross revenues do not exceed the applicable annual revenue standards set forth in 13 CFR 121.201.

Amended by 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 the section.

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

(a) Applicants shall accurately and honestly supply all information required by the Commerce Commission.

(b) When a business has been approved as an eligible small business on the basis of false information knowingly supplied by the business and the business has been awarded a State construction contract or subcontract, the Secretary, after notice and opportunity for a contested case hearing pursuant to N.J.S.A. 52:14B-10 and N.J.A.C. 17:27, 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. 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 Commerce Commission as a small business shall immediately apprise the Commerce Commission 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.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), (b)2 and (c).

12A:10A-2.3 (Reserved)

New Rule, R.1995 d.225, effective May 1, 1995.
See: 27 N.J.R. 54(a), 27 N.J.R. 1814(a).
Emergency repeal, R.2003 d.318, effective July 9, 2003 (to expire September 7, 2003).
See: 35 N.J.R. 3694(a).
Section was "Right to hearing upon denial of contract".

SUBCHAPTER 3. REGISTRATION

12A:10A-3.1 Registration procedures for small businesses

(a) Registration procedures established by the Commerce Commission are as follows:

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

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

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

4. When an application for registration as a small business is approved by the Commerce Commission, the Commerce Commission will issue the newly registered business an approval notice and add it to the Commerce Commission's small vendors list.

5. 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).

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

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).
Amended by R.1997 d.52, effective February 3, 1997.
See: 28 N.J.R. 1184(b), 29 N.J.R. 447(a).
In (a), deleted reference to December 1, 1995 as an alternative filing deadline.
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.

12A:10A-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 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.