

## CHAPTER 14

**MINORITY AND FEMALE CONTRACTOR AND  
SUBCONTRACTOR PARTICIPATION IN  
STATE CONSTRUCTION CONTRACTS**

**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 27, 1998.  
See: 30 N.J.R. 603(a), 30 N.J.R. 1425(a).

**Executive Order No. 66(1978) Expiration Date**

Chapter 14, Minority and Female Contractor and Subcontractor Participation in State Construction Contracts, expires on March 26, 2003.

**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: Source and Effective Date.

**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 Department of Commerce and Economic Development (hereinafter, "Department of Commerce") 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 requires State agencies with contracting authority to make a good faith effort to award seven percent of public construction contracts and subcontracts to eligible minority-owned businesses and three percent of public construction contracts and subcontracts to eligible female-owned businesses. These percentage goals are overall program goals for each State contracting agency. State contracting agencies are expected to apply their business judgment when establishing set-aside subcontracting 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 minority business or female business should be addressed to:

Set-Aside and Certification Office  
Department of Commerce and Economic Development  
20 West State Street, PO Box 835  
Trenton, New Jersey 08625-0835

New Rule, R.1994 d.310, effective January 3, 1995.  
See: 25 N.J.R. 4461(b), 27 N.J.R. 135(a).

### 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.

“Certification” means that a minority-owned or woman-owned business has been authenticated as being at least 51 percent owned and controlled either by minorities or females for participation in State programs requiring certification, as judged and determined by the Set-aside and Certification Office of the Department of Commerce and Economic Development.

“Commissioner” means the Commissioner of the Department of Commerce and Economic Development or his or her designee.

“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 consultant providing 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 Building and Construction, as established in N.J.S.A. 52:34-7.

“Division of Building and Construction” 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.

“Female business” means a business which has its principal place of business in the State, is independently owned and operated and is at least 51 percent owned and controlled by women.

“Minority business” means a business which has its principal place of business in the State, is independently owned and operated and is at least 51 percent owned and controlled by persons who are African Americans, Latinos or Asian Americans, defined as follows:

1. African American: a person having origins in any of the black racial groups of Africa.
2. Latino: a person of Mexican, Puerto Rican, Cuban, Central or South American, Caribbean Island or other Spanish culture or origin, regardless of race.
3. Asian American: a person having origins in any of the original people of the Far East, southeast Asia, and Indian subcontinent, Hawaii or the Pacific Islands.

“Non-remedial targets” means numerical objectives which a State contracting agency may establish in lieu of or as a supplement to the remedial goals to ensure that discrimination is not presently occurring on publicly funded construction projects.

“Registration” means the process by which any business can have its eligibility for participation in minority and female set-aside determined.

“Remedial goals” means the statutorily determined percentages of contracts awarded by each State contracting agency to eligible minority and female businesses in order to eradicate the effects of past discrimination.

“Set-aside contract” means a contract, or subcontractable portion of a contract when that portion is so allocated, specifically designated by a contracting agency as exclusively available for award to either an eligible minority or female business.

“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  
Commerce and Economic Development  
Community Affairs

Corrections  
Education  
Environmental Protection  
Health  
Higher Education

Human Services  
Insurance  
Labor  
Law and Public Safety

Military and Veterans' Affairs  
 Personnel  
 Public Advocate  
 State  
 Transportation  
 Treasury

State Commission of Investigation

Commission of Science and Technology and all other departments, colleges, authorities and commissions as may be established in the future.

“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.

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

2. COLLEGES

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  
 Rowan College of New Jersey  
 Rutgers, The State University  
 Thomas A. Edison College  
 Trenton State College  
 University of Medicine and Dentistry of New Jersey  
 William Paterson College of New Jersey

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).

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

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”.

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  
 Pinelands Commission

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 MINORITY AND FEMALE BUSINESSES

### 17:14-2.1 Standards of eligibility for minority businesses and female businesses

(a) A business may be eligible for designation as a minority business, a female business, or both.

(b) 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;
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.

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

Recodified from 17:14-1.3 and amended by R.1994 d.310, effective January 3, 1995.

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

### 17:14-2.2 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 Department of Commerce.

(b) When a business has been approved as an eligible female business or minority business on the basis of false information knowingly supplied by the business and the business has been awarded a contract or subcontract on a State construction contract, 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. 17:14-2.2, 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 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.310, effective January 3, 1995.

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

### 17:14-2.3 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. 17:14-2.3 through 3.6.

New Rule, R.1995 d.225, effective May 1, 1995.

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