

CHAPTER 14

STATE CONSTRUCTION CONTRACTS
FOR SMALL BUSINESSES

Authority

N.J.S.A. 52:18A-30(d), 52:27H-21.7 et seq., 52:32-17 et seq., 52:34-6 et seq., 52:34-12 and 52:34-13; P.L. 2008, c. 27; and Executive Order No. 71 (2003) and Executive Order No. 34 (2006).

Source and Effective Date

R.2009 d.130, effective April 20, 2009.
See: 40 N.J.R. 5547(a), 41 N.J.R. 1882(a).

Chapter Expiration Date

Chapter 14, State Construction Contracts for Small Businesses, expires on April 20, 2014.

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: 30 N.J.R. 603(a), 30 N.J.R. 1425(a).

Chapter 14, Minority and Female Contractor and Subcontractor Participation in State Construction Contracts, was renamed State Construction Contracts for Small Businesses by R.2003 d.318, effective July 9, 2003 (emergency amendment, to expire September 7, 2003), adopted concurrently by R.2003 d.390, effective September 7, 2003. See: 35 N.J.R. 3694(a), 35 N.J.R. 4746(a).

Chapter 14, State Construction Contracts for Small Businesses, was readopted as R.2003 d.381, effective September 4, 2003. See: 35 N.J.R. 1841(a), 35 N.J.R. 4751(a).

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 14, State Construction Contracts for Small Businesses, expired on March 3, 2009. See: 40 N.J.R. 5547(a).

Chapter 14, State Construction Contracts for Small Businesses, was adopted as new rules by R.2009 d.130, effective April 20, 2009. See: Source and Effective Date. See, also, section annotations.

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 & Maeva 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 promulgated by the Department of the Treasury to implement N.J.S.A. 52:32-17 et seq., P.L. 2008, c. 27, and Executive Order No. 71 (2003), dated October 2, 2003, to establish a set-aside program that, in part, requires State agencies with contracting authority to make a good faith effort to award public construction contracts to small businesses. Executive Order No. 71 (1993) requires at least 25 percent of the total dollar value of State contracts to be set aside for 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. The rules in this chapter, as effective prior to April 20, 2009, were jointly promulgated by the New Jersey Commerce Commission and the Department of the Treasury. Pursuant to P.L. 2008, c. 27, effective July 1, 2008, the New Jersey Commerce Commission was abolished and its responsibilities under this chapter were transferred to the Department of the Treasury. Therefore, after July 1, 2008, this chapter must be promulgated by one department, the Department of the Treasury.

(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:

Department of the Treasury
Division of Minority and Women Business
Development
33 West State St., 1st Floor
PO Box 026
Trenton, NJ 08625-0026

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).

Adopted concurrent amendment, R.2003 d.390, effective September 7, 2003.

See: 35 N.J.R. 1841(a), 3694(a), 4746(a), 4751(a).

Provisions of R.2003 d.318 adopted without change.

Amended by R.2009 d.130, effective April 20, 2009.

See: 40 N.J.R. 5547(a), 41 N.J.R. 1882(a).

Rewrote (a); and in (c), updated the address.

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.

“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 or demolition of or repair or other changes or improvements of any kind whatsoever to any public structure or facility or highway. The term also includes contracts for consultant services, 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 the 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, pursuant to N.J.S.A. 52:34-7, to award contracts on its own pursuant to authority delegated to it by the Director, Division of Property Management and Construction.

“Director” means the head of the Division of Minority and Women Business Development in the Department of the Treasury.

“Division of Minority and Women Business Development” or “Division” means the Division within the Department of the Treasury that administers the registration of small business enterprises, the certification of the minority and women businesses, and provides other services to small, minority and women businesses, pursuant to Executive Order No. 34 (2006), P.L. 2008, c. 27, §18 and the Set-Aside Act.

“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 contracting awarded by each State contracting agency to small businesses in order to comply with the small business provisions of the Set-Aside Act. It further means the percentage of State contracting dollars that the State contracting agency makes a good faith effort to award to small businesses under Executive Order No. 71 (1993).

“Premier Business Services” means online business services provided via the State’s business website at www.newjerseybusiness.gov, which include tax filing and payment services, for which a business must register as part of its small business application.

“Registration” means the process by which any business can have its eligibility for participation in the Division’s small business programs determined.

“Set-Aside Act” means the New Jersey Set-Aside Act for Small Businesses, Female Businesses, and Minority Businesses, P.L. 1983, c. 482; N.J.S.A. 52:32-17 et seq.

“Set-aside contract” means a contract specifically designated by a contracting agency as exclusively available for award to a 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; has gross revenues that do not exceed the applicable Federal revenue standards referenced at N.J.A.C. 17:14-2.1; and