

CHAPTER 14

**STATE CONSTRUCTION CONTRACTS
FOR SMALL BUSINESSES**

Authority

N.J.S.A. 10:5-36(k) and (v), 52:17 et seq., 52:18A-30(d), 52:25-1 et seq., 52:27C-71(q), 52:27C-73(a), (f) and (h), 52:27H-6(f), 52:27H-21.24, 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.2003 d.381, effective September 4, 2003.
See: 35 N.J.R. 1841(a), 35 N.J.R. 4751(a).

Chapter Expiration Date

Chapter 14, State Construction Contracts for Small Businesses, expires on September 4, 2008.

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, State Construction Contracts for Small Businesses, was readopted as R.2003 d.381, effective September 4, 2003. 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 & Maeve E. Cannon, 180 N.J.Law. 16 (Mag.) (Oct./Nov. 1996).

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. PURPOSE, SCOPE AND DEFINITIONS

- 17:14-1.1 Purpose and scope
- 17:14-1.2 Definitions
- 17:14-1.3 through 17:14-1.12 (Reserved)

SUBCHAPTER 2. ELIGIBILITY REQUIREMENTS FOR SMALL BUSINESSES

- 17:14-2.1 Standards of eligibility for small businesses
- 17:14-2.2 Obligation to provide information and penalties for failure to provide complete and accurate information
- 17:14-2.3 (Reserved)

SUBCHAPTER 3. REGISTRATION

- 17:14-3.1 Registration procedures for small businesses
- 17:14-3.2 Time for application to register as a small business
- 17:14-3.3 Procedures for challenging a business registered as a small business
- 17:14-3.4 Interim registration period

SUBCHAPTER 4. SET-ASIDE CONTRACTING AND SUBCONTRACTING PROGRAMS

- 17:14-4.1 Set-aside program goals and procedures
- 17:14-4.2 Subcontracting target program and procedures
- 17:14-4.3 Good faith efforts of bidders; requirements
- 17:14-4.4 Exemptions from set-aside programs

SUBCHAPTER 5. PLANNING, REPORTING AND REVIEW

- 17:14-5.1 Planning
- 17:14-5.2 Reporting requirements
- 17:14-5.3 Annual review

SUBCHAPTER 1. PURPOSE, SCOPE AND DEFINITIONS

17:14-1.1 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).
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.

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, 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 and Insurance

Personnel

Community Affairs

Corrections

Military and Veterans Affairs

Education

Environmental Protection

Health and Senior Services

Higher Education

Human Services

Labor

Law and Public Safety

State

Transportation