

CHAPTER 335

AN ACT establishing certain standards and requirements for the use of funds from the federal American Recovery and Reinvestment Act of 2009 and supplementing Title 52 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.52:40-1 Findings, declarations relative to the “American Recovery and Reinvestment Act of 2009.”

1. The Legislature finds and declares that all members of the public should be afforded the opportunity to benefit from the federal economic recovery funds provided through the American Recovery and Reinvestment Act of 2009 and associated State spending, and every public contract, whether for construction services, goods, or other services, should provide equal employment opportunities for women and minorities.

C.52:40-2 Definitions relative to the “American Recovery and Reinvestment Act of 2009.”

2. For the purposes of this act, P.L.2009, c.335 (C.52:40-1 et seq.):

“ARRA” means the federal American Recovery and Reinvestment Act of 2009; and

“Reporting agencies” means the State entities whose performance is monitored by the Division of Public Contracts Equal Employment Opportunity Compliance in the Department of the Treasury.

C.52:40-3 Meetings.

3. The Commissioners of the Departments of Community Affairs, Education, Environmental Protection, and Transportation, or their designees; the President of the Board of Public Utilities, or a designee; and the Chief Executive Officers of the Schools Development Authority and the Economic Development Authority, or their designees, shall meet with representatives of the Governor’s office, the Department of the Treasury, and the United States Department of Labor’s Office of Federal Contract Compliance Programs to ensure that those departments receiving the bulk of federal economic recovery funds provide the United States Department of Labor’s Office of Federal Contract Compliance Programs their complete cooperation in complying with its mandates.

C.52:40-4 Determination of fair employment opportunities for minorities and women.

4. The Division of Public Contracts Equal Employment Opportunity Compliance in the Department of the Treasury shall be the entity within the Executive Branch responsible for determining whether minorities and women have been offered a fair opportunity for employment on State contracts. Executive Branch departments and agencies, independent authorities, and State colleges and universities are directed to cooperate fully with the Division of Public Contracts Equal Employment Opportunity Compliance’s enforcement efforts, consistent with law, and to award public contracts only to those businesses that agree to comply with equal employment opportunity and affirmative action requirements.

C.52:40-5 Cooperation.

5. The Division of Public Contracts Equal Employment Opportunity Compliance shall work cooperatively with the United States Department of Labor’s Office of Federal Contract Compliance Programs, including sharing its workforce data to the maximum extent permitted by law, to assist the United States Department of Labor’s Office of Federal Contract Compliance Programs in its enforcement efforts.

C.52:40-6 Determination of compliance.

6. When not restricted by any other State or federal law, the Division of Public Contracts Equal Employment Opportunity Compliance shall determine whether each of the State entities whose performance it monitors have properly allocated and released to the Department of Labor and Workforce Development, as authorized by law, one-half of one percent of the total cost of a construction contract of \$1,000,000 or more, to be used by the department for the New Jersey Builders Utilization Initiative for Labor Diversity program to train minorities and women for employment in construction trades. This provision shall apply to those construction contracts when the funding for the contract consists entirely of appropriated funds or a combination of funds from appropriated funds and other sources.

C.52:40-7 Mandatory contract language.

7. All construction contracts entered into and funded, in whole or in part, by the State shall include mandatory equal employment opportunity and affirmative action contract language that requires contractors to make a good faith effort to recruit and employ minorities and women as required by the provisions of the regulations promulgated in the New Jersey Administrative Code, including but not limited to N.J.A.C.17:27-3.6 to 3.8, and 17:27-7.3 and 7.4. As to the portion of each contract that is State funded, the language of the contract shall provide that payment may be withheld for failure of the contractor to demonstrate to the satisfaction of the reporting agency that the required good faith effort was made. Failure of a contractor to satisfy the good faith effort requirement of its contract may also subject it to assessments imposed pursuant to findings of the Division of Public Contracts Equal Employment Opportunity Compliance, in accordance with administrative regulation N.J.A.C. 17:27-10.

C.52:40-8 Posting of job openings, exceptions.

8. Except as described in subsections a. and b. of this section, each Executive Branch agency that is a recipient of federal economic recovery funds pursuant to the American Recovery and Reinvestment Act of 2009 shall include in any contract, grant, or agreement funded in whole or in part with funds from the American Recovery and Reinvestment Act of 2009 a clause requiring subrecipients, contractors, subcontractors, local education agencies, and vendors to post all job openings created pursuant to the contract, grant, or agreement on the State's Job Bank at least 14 days before hiring is to commence. The clause shall state: "Since the funds supporting this contract, grant, or agreement are provided through the American Recovery and Reinvestment Act of 2009 (ARRA), the subrecipient, contractor, subcontractor, local education agency, or vendor will post any jobs that it creates or seeks to fill as a result of this contract, grant, or agreement. The subrecipient, contractor, subcontractor, local education agency, or vendor shall post jobs to the New Jersey State Job Bank by submitting a job order using the form available on the Internet, notwithstanding any other posting the subrecipient, contractor, subcontractor, local education agency, or vendor might make. Any advertisements posted by the subrecipient, contractor, subcontractor, local education agency, or vendor for positions pursuant to this contract, grant, or agreement must indicate that the position is funded with ARRA funds."

a. Posting shall not be required when the employer intends to fill the job opening with a present employee, a laid-off former employee, or a job candidate from a previous recruitment, when pre-existing, legally binding collective bargaining agreements provide otherwise, or when an exception has been granted to the reporting agency by the Department of Labor and Workforce Development.

b. Nothing in this act, P.L.2009, c.335 (C.52:40-1 et seq.), shall be interpreted to require the employment of apprentices if such employment may result in the displacement of journey workers employed by any employer, contractor or subcontractor.

C.52:40-9 Job postings encouraged for local government entities, education agencies, New Jersey employers.

9. All local government entities and local education agencies that have received or will receive directly from a federal agency federal economic recovery funds are encouraged but not mandated to require their contractors and subcontractors to post job openings on the State's Job Bank at least 14 days before hiring is to commence.

All New Jersey employers that enter into contracts funded with funds from the American Recovery and Reinvestment Act of 2009 received by a local government entity or a local education agency directly from a federal agency are encouraged but not mandated to post job openings created pursuant to the American Recovery and Reinvestment Act of 2009.

C.52:40-10 Required contractual language.

10. The Division of Development for Small Businesses, and Women's and Minority Businesses shall send to the reporting agencies required contractual language. The Division of Development for Small Businesses and Women's and Minority Businesses shall work with each reporting agency to ensure the reporting of and compliance with contract-specific contracting and subcontracting goals for the reporting agency that are consistent with the availability percentages set forth.

C.52:40-11 Responsibilities of reporting agency.

11. Each reporting agency shall:

a. Inform the Division of Development for Small Businesses, and Women's and Minority Businesses of contracting opportunities at the same time that it advertises or otherwise posts public notices of such opportunities, via consistent and timely upload of all-inclusive information to the bid opportunities database services managed by the Division of Development for Small Businesses, and Women's and Minority Businesses. All pre-bid requirements shall be prominently advertised at the time of uploading to the Division of Development for Small Businesses, and Women's and Minority Businesses;

b. Actively and regularly use the databases and other on-line services managed and operated by the Division of Development for Small Businesses, and Women's and Minority Businesses to identify additional potential bidders. The ongoing use of these resources by buyers, procurement agents, and other purchasing staff shall be closely monitored by the reporting agency's senior management;

c. Contact the businesses identified in the Division of Development for Small Businesses, and Women's and Minority Businesses's databases and on-line services to provide them with notice of the contracting opportunities available through the reporting agency; and

d. Report to the Division of Development for Small Businesses, and Women's and Minority Businesses all payments and awards prime contractors have issued to subcontractors, identifying payments and awards to minority and women-owned businesses on at least a quarterly basis.

C.52:40-12 Incorporation of certain language into contracts.

12. To the maximum extent practicable, and when not restricted by any other State or federal law, each reporting agency shall incorporate the substance of required contractual

language regarding small businesses into its contracts, while continuing to follow the State and federal laws and regulations governing its contracting and procurement practices.

C.52:40-13 Policies relative to subcontractors, subconsultants, vendors.

13. Each reporting agency shall, when substitution of subcontractors or sub-consultants is permitted, promulgate policies governing the circumstances under which contractors or consultants may substitute subcontractors or sub-consultants named in bid proposals or otherwise identified as small or women or minority-owned business subcontractors, sub-consultants, or vendors. The substitution policies shall provide that:

- a. The contractor or consultant shall notify and obtain approval from a small or women or minority-owned business subcontractor, sub-consultant, or vendor before including that contractor in a bid proposal or similar contract-related submission;
- b. The contractor or consultant shall notify and obtain authorization from the reporting agency before it substitutes a small or women or minority-owned business subcontractor, sub-consultant, or vendor named in a bid proposal or other contract-related submission; and
- c. If the substitution is approved, the contractor or consultant shall make a good faith effort to utilize another small or women or minority-owned business subcontractor, sub-consultant, or vendor in place of the previous small or women or minority-owned business subcontractor, sub-consultant, or vendor.

C.52:40-14 Reports.

14. Each reporting agency shall report to the Division of Development for Small Businesses, and Women's and Minority Businesses when it incorporates required language in its contracts. It shall also report to the Division of Development for Small Businesses, and Women's and Minority Businesses when it has adopted a substitution policy, when such policy is permitted. The Division of Development for Small Businesses, and Women's and Minority Businesses shall report on the number of reporting agencies that have modified their contracts and adopted a substitution policy at three-month intervals until all of the reporting agencies have completed incorporation of contractual language as may be required and promulgated and, when legally permitted, adoption of the substitution policy.

C.52:40-15 Cooperation with recipients of funding.

15. The Department of Labor and Workforce Development shall work together with all other reporting agencies that will receive funding from the American Recovery and Reinvestment Act of 2009 and with the representatives of the United States Environmental Protection Agency, the Federal Departments of Labor, Energy, Transportation, and Housing and Urban Development, and any other federal agencies distributing funds from the American Recovery and Reinvestment Act of 2009 to:

- a. Coordinate with labor unions that will aggressively recruit minorities and women for apprenticeships and training opportunities;
- b. Increase outreach to and enrollment of minorities and women in apprenticeship, training, and related programs; and
- c. Ensure that, to the greatest extent possible under the law, minorities and women apprentices and trainees are working on State and ARRA-funded work sites.

C.52:40-16 Increased engagement with certain banks, credit unions.

16. The New Jersey Department of the Treasury and other departments, agencies, and independent authorities shall, consistent with law, take steps to increase their engagement of

small, minority, or women-owned or controlled banks and credit unions to meet their financial services needs.

C.52:40-17 Interpretation as compliance with federal law.

17. Nothing in P.L.2009, c.335 (C.52:40-1 et seq.) shall modify existing law, State or federal, or authorize a reporting agency to amend, modify, or otherwise alter pre-existing legal obligations. P.L.2009, c.335 (C.52:40-1 et seq.) shall be interpreted consistently with the American Recovery and Reinvestment Act of 2009, and the federal regulations and guidelines governing its implementation, and in the event of a conflict between P.L.2009, c.335 (C.52:40-1 et seq.) and federal law governing the American Recovery and Reinvestment Act of 2009, P.L.2009, c.335 (C.52:40-1 et seq.) shall be interpreted to comply with federal law.

C.52:40-18 Rules, regulations.

18. The Division of Public Contracts Equal Employment Opportunity Compliance shall promulgate rules and regulations to effectuate the purposes of this act, P.L.2009, c.335 (C.52:40-1 et seq.), that are consistent with Executive Order No. 151 (2009) and its appendices.

C.52:40-19 Preparation of contracting guide.

19. Within 90 days of the effective date of this act, P.L.2009, c.335 (C.52:40-1 et seq.), the Division of Development for Small Businesses and Women's and Minority Businesses shall prepare a contracting guide identifying the management practices that have the greatest success in: increasing the number of small and minority and women-owned businesses made aware of contracting opportunities with the State; and increasing the number of such businesses competing for contracts with the State or subcontracts with entities contracting with the State. As soon as practicable thereafter, the Division of Development for Small Businesses and Women's and Minority Businesses shall distribute the contracting guide to the reporting agencies.

C.52:40-20 Implementation of provisions.

20. As soon as practicable after its receipt of the contracting guide, each reporting agency shall implement those provisions that it views as most likely to have the greatest impact in increasing contracting opportunities for small and minority and women-owned businesses.

C.52:40-21 Reports.

21. Within 15 months of the effective date of this act, P.L.2009, c.335 (C.52:40-1 et seq.), the Division of Development for Small Businesses and Women's and Minority Businesses and the Division of Public Contracts Equal Employment Opportunity Compliance shall each prepare a report describing the reporting agencies' implementation of this act. The Division of Development for Small Businesses and Women's and Minority Businesses and the Division of Public Contracts Equal Employment Opportunity Compliance each shall prepare a second report within 12 months of issuing its first report.

22. This act shall take effect immediately.

Approved January 18, 2010.