

## CHAPTER 4

## DISADVANTAGED BUSINESS AND FEMALE BUSINESS PARTICIPATION IN STATE CONSTRUCTION CONTRACTS AS SUBCONTRACTORS

## Authority

N.J.S.A. 27:1A-5, 27:1A-6, and 27:1B-24 et seq.

## Source and Effective Date

R.1991 d.477, effective September 16, 1991  
(operative October 29, 1991).  
See: 22 N.J.R. 2898(a), 23 N.J.R. 2872(a).

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

Chapter 4, Disadvantaged Business and Female Business Participation in State Construction Contracts as Subcontractors, expires on September 16, 1996.

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## SUBCHAPTER 1. GENERAL PROVISIONS

## 16:4-1.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

“Commissioner” means the Commissioner of the Department of Transportation of the State of New Jersey, acting directly or through his or her duly authorized representatives, such representatives acting within the scope of the particular duties delegated to them.

“Construction contract” means any contract funded by 100 percent State funds to which the Department of Transportation of the State of New Jersey is a party and which involves any construction, renovation, reconstruction, rehabilitation, alteration, conversion, extension, demolition, repair or other changes or improvements of any kind whatsoever to any highway, structure or facility. The term also

includes the supervision, inspection and other on-site functions incidental to actual construction.

“Contractor” means the individual, partnership, firm, corporation, or any acceptable combination thereof contracting with the Department for performance of the prescribed work.

“Department” means the Department of Transportation of the State of New Jersey.

“Disadvantaged business” means a sole proprietorship, partnership, or corporation:

1. Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

“Female business” means a sole proprietorship, partnership or corporation:

1. Which is owned by women or in the case of a publicly owned business, at least 51 percent of the stock of which is owned by women; and
2. Whose management and daily business operations are controlled by women who own it.

“Socially and economically disadvantaged individuals” means those individuals who are Black, Hispanic American, Asian American, American Indian, Alaskan Native, or Portuguese defined as follows:

1. Black American is a person having origins in any of the black racial groups of Africa.
2. Hispanic American is a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
3. Asian American is a person having origins in any of the original peoples of the Far East, Southeast Asia, and Indian subcontinent, Hawaii or the Pacific Islands.
4. American Indian or Alaskan Native is a person having origins in any of the original peoples of North America and who maintains cultural identification through tribal affiliation or community recognition.
5. Portuguese is a person of Portuguese, Brazilian, or other Portuguese culture or origin, regardless of race.

“Subcontractor” means an individual, partnership, firm or corporation, or any acceptable combination thereof, to

which the contractor subcontracts part of the work pursuant to the applicable contract specifications.

“Work” means the furnishing of all labor, services, materials, equipment, tools, transportation, supplies and other incidentals necessary or convenient to the successful completion by the contractor of the construction described in the contract documents and the carrying out of all duties and obligations imposed by the contract documents on the contractor.

#### 16:4-1.2 Applicability

(a) These rules apply only to Department construction contracts funded with 100 percent State funds and are not applicable to the award of Department contracts for the purchase of goods and services.

(b) Applications and questions regarding eligibility as a disadvantaged business and/or female business should be addressed to:

Office of Civil Rights/Contract Compliance  
Department of Transportation  
1035 Parkway Avenue  
CN 600  
Trenton, New Jersey 08625

#### 16:4-1.3 Standards of eligibility for disadvantaged business and female business

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

(b) In order to be eligible as a disadvantaged business, a business must satisfy the definition of a disadvantaged business in N.J.A.C. 16:4-1.1.

(c) In order to be eligible as a female business, a business must satisfy the definition of a female business in N.J.A.C. 16:4-1.1.

(d) The certification by the Department of a business as a Disadvantaged Business Enterprise, pursuant to the requirements of 49 CFR Part 23 establishing the Disadvantaged Business Enterprise Program for Federally funded contracts, shall automatically qualify the business to participate in the Department's Disadvantaged Business Enterprise for construction contracts funded with 100 percent State funds for as long as the certification of eligibility for the Federal program is in effect.

#### 16:4-1.4 Registration procedures for disadvantaged business and female business

(a) A business may apply to the Department at any time to be registered as a disadvantaged business or female business. Such application must be made on the application form supplied by the Department.

(b) If a business is to be considered as a disadvantaged business or female business for the purpose of meeting the target levels for a specific contract, it must have submitted an application completed in its entirety to the Department for purposes of registration no later than the day of the bid.

(c) As part of its application to the Department, a business shall document its independent status and character of its ownership and control to the satisfaction of the Department. All applications must be completed in their entirety before they will be considered by the Commissioner.

1. Failure by the applicant to supply additional information as requested by the Department within 15 days of the request shall result in the application being returned without processing to the applicant.

2. If an applicant knowingly supplies false or inaccurate information, the applicant shall be disqualified under these rules, and may be subject to further penalties as provided by law.

#### 16:4-1.5 Approval or rejection as a disadvantaged business or female business

(a) When an applicant is approved by the Commissioner as a disadvantaged business or female business, the business will be notified in writing of such approval. The approval shall be effective as of the date the applicant submitted a completed application and said approval shall be valid for one year unless revoked by the Commissioner. Businesses shall be required to reapply each year for approval as disadvantaged or female businesses.

(b) When an applicant is rejected as a disadvantaged or female business, it shall be notified in writing of the reasons for that decision. The applicant may appeal in writing within 10 days of the receipt of said notice. No applicant shall be eligible to participate in the program during the pendency of its appeal and the rejected applicant may not be used by a contractor to satisfy the target during the pendency of the appeal.

(c) If an applicant appeals the rejection of its application, the Department shall schedule a meeting at which time the applicant may present additional information in support of its application. This additional information shall be reviewed by the Commissioner and the applicant shall be notified of the Commissioner's approval or rejection in writing within 10 State business days of the meeting. If the applicant is approved by the Commissioner such approval shall be effective as of the date of the receipt by the Department of the additional information which was the basis for the approval.

(d) If the Department has reason to believe that there has been a change in the ownership or control of a disadvantaged or female business which has been approved for participation in the program, the Department may request that business demonstrate its continued eligibility for participation in the program. Businesses failing to demonstrate such continued eligibility to the satisfaction of the Commissioner shall have their approval revoked, and shall be ineligible to reapply to the program for one year.

**16:4-1.6 Subcontracting targets**

(a) The Department shall set target levels for participation of disadvantaged businesses and female businesses as subcontractors for each construction contract.

(b) Each contractor submitting a bid for a construction contract shall include the subcontracting target information in the form and at the time required by the bid proposal.

(c) If the target levels are met by the bidder, the bidder will be presumed not to be engaging in unlawful race and sex discrimination in the selection of subcontractors and will be presumed to have engaged in reasonable outreach efforts.

(d) If the target levels are not satisfied by a bidder, the Department shall review the subcontracting practices of the bidder to determine if it has engaged in unlawful race or sex discrimination in the selection of subcontractors and to determine if it has engaged in reasonable outreach efforts. If the review does not indicate that the bidder has engaged in unlawful race or sex discrimination and does indicate that reasonable outreach efforts have been made, the bid will not be rejected for the reason of race or sex discrimination. If it is determined that the bidder has engaged in unlawful race or sex discrimination, the bid may be rejected and the bidder subject to such other penalties as are provided by law, including suspension, debarment or reduced classification.

(e) A bidder which fails to meet the target levels for disadvantaged and female business shall document the reasonable outreach efforts it made to meet the targets. Reasonable outreach efforts shall include, but not be limited to:

1. Attendance at a pre-bid meeting, if any, scheduled by the Department to inform potential bidders and disadvantaged and female businesses of subcontracting opportunities under a given solicitation;

2. Solicitations of disadvantaged and female businesses as subcontractors for the project, including advertisements in general circulation media, trade association publications, and minority focus media. Such solicitations shall be made at a sufficient length of time before the date set for receipt of bids to permit a meaningful response from disadvantaged and female businesses. Contractors shall maintain records regarding each disadvantaged or female business contacted as a potential subcontractor and the reasons why that business was not used by the bidder;

3. Efforts made to identify work categories capable of being performed by disadvantaged or female businesses;

4. Efforts made to use the services of available community organizations, contractor groups and local, State, and Federal agencies that provide assistance in the recruitment and placement of minority and female businesses.

(f) In determining whether a bidder has satisfied the target levels, the award of a subcontract may count toward only one target. For example, the award of a subcontractor to a business owned by a black woman may be counted either toward the disadvantaged business target or the female business target.

**16:4-1.7 Responsibility after award**

(a) The contractor shall advise the Department of change regarding the work to be performed by a disadvantaged or female business which it intended to use to meet the target.

(b) If a disadvantaged or female business which was to be used by the contractor to meet the target does not perform the work, the contractor shall attempt to replace that disadvantaged or female business with another female or disadvantaged business. If the contractor fails to replace the business with a female or disadvantaged business, it shall document to the Department the reason for such a failure and the Department shall review the contractor's subcontracting practices to determine if it is engaging in unlawful race or sex discrimination.

(c) If a contractor is found to have engaged in unlawful race or sex discrimination, it may be subject to all penalties provided by law. Additionally, the contractor may be subject to suspension, debarment, termination, or reduced classification.

**16:4-1.8 Severability**

If any section, subsection, provision, clause or portion of this subchapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this subchapter shall not be affected thereby.

**16:4-1.9 Review**

The operation of the construction subcontract target level program contained in this subchapter and the need for its continuation shall be reviewed by the Commissioner every two years.