

CHAPTER 27

AFFIRMATIVE ACTION RULES

Authority

N.J.S.A. 10:5-31 et seq., specifically 10:5-36K.

Source and Effective Date

R.1993 d.531, effective October 6, 1993.
See: 25 N.J.R. 3706(a), 25 N.J.R. 4927(a).

Executive Order No. 66(1978) Expiration Date

Chapter 27, Affirmative Action Rules, expires on October 6, 1998.

Chapter Historical Note

All provisions of this chapter were adopted pursuant to authority of N.J.S.A. 10:5-31 et seq., and became effective November 27, 1977 as R.1977 d.364. See: 9 N.J.R. 191(a), 9 N.J.R. 543(c).

Pursuant to Executive Order No. 66(1978), Chapter 27 expired on May 24, 1983, and subsequently was adopted as new rules by R.1983 d.506, effective November 7, 1983. Former Subchapter 13, Effective Date, was not adopted as a part of the new chapter. See: 15 N.J.R. 1459(a), 15 N.J.R. 1872(a). Pursuant to Executive Order No. 66(1978), Chapter 27 was readopted as R.1988 d.522, effective October 7, 1988. See: 20 N.J.R. 1780(a), 20 N.J.R. 2795(b), 20 N.J.R. 2934(a).

Pursuant to Executive Order No. 66(1978), Chapter 27 was readopted as R.1993 d.531. See: Source and Effective Date. See, also, section annotations for specific rulemaking activity.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. INTRODUCTION AND POLICY

17:27-1.1 Policy

SUBCHAPTER 2. DEFINITIONS

17:27-2.1 Definitions

SUBCHAPTER 3. GENERAL REQUIREMENTS FOR PUBLIC AGENCIES AWARDING CONTRACTS

- 17:27-3.1 Awarding of public contracts
- 17:27-3.2 Solicitation of bids
- 17:27-3.3 Mandatory bid specification language
- 17:27-3.4 Mandatory contract language and additional mandatory bid specification language
- 17:27-3.5 Designation of public agency compliance officers

SUBCHAPTER 4. AFFIRMATIVE ACTION PLAN FOR PROCUREMENT AND SERVICE CONTRACTORS AND SUBCONTRACTORS

- 17:27-4.1 Procurement service contracts subject to affirmative action plan requirements
- 17:27-4.2 Elements of an affirmative action plan for procurement and service contractors and subcontractors
- 17:27-4.3 Procedure for establishing an approved affirmative action plan by contract
- 17:27-4.4 Affirmative action plan requirement for procurement and service subcontractors
- 17:27-4.5 Procedures for the issuance and renewal of a certificate of employee information report
- 17:27-4.6 Public agency authority to set time periods

17:27-4.7 Emergency purchases

SUBCHAPTER 5. MINORITY AND FEMALE EMPLOYMENT GOAL OBLIGATIONS FOR PROCUREMENT AND SERVICE CONTRACTORS AND SUBCONTRACTORS

- 17:27-5.1 Exemptions
- 17:27-5.2 Establishment of goals
- 17:27-5.3 Mandatory contract language for employment goal compliance
- 17:27-5.4 Designation of approved minority referral agencies
- 17:27-5.5 Contractor and subcontractor compliance obligations
- 17:27-5.6 Criteria for determining good faith

SUBCHAPTER 6. AFFIRMATIVE ACTION PLAN FOR CONSTRUCTION CONTRACTORS AND SUBCONTRACTORS

- 17:27-6.1 Construction contracts subject to affirmative action plan requirements
- 17:27-6.2 Elements of an affirmative action plan for construction contractors and subcontractors
- 17:27-6.3 Procedure for establishing an approved affirmative action plan by contract
- 17:27-6.4 Affirmative action plan requirement for construction subcontractors
- 17:27-6.5 State-approved public agency affirmative action construction programs

SUBCHAPTER 7. MINORITY AND FEMALE EMPLOYMENT GOAL OBLIGATIONS FOR CONSTRUCTION CONTRACTORS AND SUBCONTRACTORS

- 17:27-7.1 Exemptions
- 17:27-7.2 (Reserved)
- 17:27-7.3 Establishment of goals
- 17:27-7.4 Mandatory language for employment goal compliance
- 17:27-7.5 Financing minority worker outreach and training programs
- 17:27-7.6 Project manning reports

SUBCHAPTER 8. ADVISORY BOARDS

17:27-8.1 Advisory boards

SUBCHAPTER 9. MONITORING PUBLIC WORKS CONTRACTS

- 17:27-9.1 Monitoring public works contracts
- 17:27-9.2 Attendance; project meetings

SUBCHAPTER 10. COMPLIANCE PROCEDURES AND SANCTIONS APPLICABLE TO PUBLIC WORKS CONTRACTS

- 17:27-10.1 Scope
- 17:27-10.2 Alert notices
- 17:27-10.3 Correction of alleged violations; violation notice
- 17:27-10.4 Written statements; violations
- 17:27-10.5 Requested meetings
- 17:27-10.6 Determination of violations
- 17:27-10.7 Enforcement; violations

SUBCHAPTER 11. REPORT FOR PUBLIC WORKS CONTRACTORS, SUBCONTRACTORS AND PUBLIC AGENCIES

17:27-11.1 General provisions

SUBCHAPTER 12. TRAINING AND OUTREACH

17:27-12.1 Assistance

17:27-12.2 Use of established public and private agencies

17:27-12.3 Minority referral agencies

17:27-12.4 Satisfaction of minority obligations

SUBCHAPTER 13. (RESERVED)

SUBCHAPTER 1. INTRODUCTION AND POLICY

17:27-1.1 Policy

(a) It has long been the policy of the State of New Jersey to promote equal employment opportunity by prohibiting discrimination in employment and requiring affirmative action in the performance of contracts funded by the State. That policy has been reinforced and expanded by an act of the Legislature, signed into law by the Governor, June 23, 1975. The new statute, P.L.1975, c.127, provides that no public work contracts can be awarded nor any moneys paid until the prospective contractor has agreed to contract performance which complies with an approved affirmative action plan. The law applies to each political subdivision and agency of the State and includes service and procurement contracts and construction contracts.

(b) These regulations establish the affirmative action employment standards and practices necessary for public agencies, contractors, subcontractors, and business firms to comply with the equal employment opportunity standards required by P.L.1975, c.127, and the administrative procedures of the Department of the Treasury for achieving compliance with the affirmative action employment requirements. To assure effective and expeditious implementation of the affirmative action requirements of P.L.1975, c.127, these regulations prescribe procedures designed to minimize administrative paper work, delays and unproductive red-tape.

As amended, R.1983 d.506, effective November 7, 1983.

See: 15 N.J.R. 1459(a), 15 N.J.R. 1872(a).

Original text deleted, text at 1.2 recodified to 1.1.

SUBCHAPTER 2. DEFINITIONS

17:27-2.1 Definitions

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

“Advanced trainee” means a minority worker or female worker who is classified by the public agency compliance officer, a contractor, subcontractor, union, the State training and employment service, apprentice program, referral agency or other party acceptable to the affirmative action office as having experience and skills used in a particular craft or occupation, but lacking the skills to be qualified as a journey worker.

“Affirmative action office” means the affirmative action office established in the State of New Jersey, Department of the Treasury.

“Affirmative action officer” means the State official in charge of the affirmative action office.

“Contractor” means any party performing or offering to perform a prime contract with the State of New Jersey or any county or municipality or other political subdivision of the State, or any agency or authority created by any of the foregoing.

“Journey worker” means a worker who has been certified by the public agency compliance officer, a contractor, subcontractor, union, the State training and employment service, apprentice program, referral agency, or other party acceptable to the affirmative action office as having mastered a craft or trade.

“Minority worker” means a worker who is Black, Hispanic, Asian, or American Indian defined as follows:

1. Black American means a person having origins in any of the black racial groups of Africa.

2. Hispanic American means a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

3. Asian American means a person having origins in any of the original people of the Far East, southeast Asia, and Indian subcontinent, Hawaii or the Pacific Islands.

4. American Indian means a person having origins in any of the original people of North America and who maintains cultural identification through tribal affiliation or community recognition.

“Project” means the geographical location where the contract or subcontract work is performed.

“Public agency” means any State, county, municipality or other political subdivision of the State, or any agency of or authority created by any of the foregoing.

“Public agency compliance officer” means the officer or employee, who may be an existing officer or employee, designated by the public agency awarding a contract in accordance with N.J.A.C. 17:27-3.5 and subsection 6(f) of P.L.1975, c.127.

“Public works contract” means any contract to be performed for on behalf of the State or any county or municipality or other political subdivision of the State, or any agency or authority created by any of the foregoing, for the construction, alteration or repair of any building or public work for the acquisition of materials, equipment, supplies, or services. Contracts qualifying for a waiver or an exemption from bidding requirements are included in this definition.

“Subcontract” means a binding legal relationship involving performance of a contract that is part of a prime contract.

“Subcontractor” means a third party that is engaged by the prime contractor to perform under a subcontract, all or part of the work included in an original contract.

“Trainee” means a minority or female worker who is not eligible for an apprentice program and who is certified by the public agency compliance officer, a contractor, subcontractor, union, the State training and employment service, apprentice program, referral agency, or other party acceptable to the affirmative action office as having no previous experience and skills used in a particular craft or occupation, but has demonstrated an interest in acquiring same and has agreed to enter into an on-site and off-site training program approved by a contractor, subcontractor, public agency compliance officer or the affirmative action office.

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

Amended by R.1988 d.522, effective November 7, 1988.
See: 20 N.J.R. 1780(a), 20 N.J.R. 2795(b).

Amended definitions “minority worker”, “public works contract” and “treasurer”.

Amended by R.1990 d.160, effective March 19, 1990.
See: 21 N.J.R. 3439(b), 22 N.J.R. 981(b).

Definition of “minority worker” amended to delete “Portuguese” and “Alaskan”.

SUBCHAPTER 3. GENERAL REQUIREMENTS FOR PUBLIC AGENCIES AWARDED CONTRACTS

17:27-3.1 Awarding of public contracts

No public works contracts for which bids have been solicited and no negotiated public works contracts which are subject to the requirements of section 3 of this subchapter shall be awarded by the State, a county, municipality or other political subdivision of the State or any agency or any authority created by the foregoing, nor shall any moneys be paid thereunder to any contractor, subcontractor or business firm which has not agreed and guaranteed to afford equal

opportunity in performance of the contract in accordance with an affirmative action plan approved under the terms established in these regulations.

17:27-3.2 Solicitation of bids

(a) Public agencies shall include in any advertisement and solicitation of bids for a public works contract the following language:

Bidders are required to comply with the requirements of P.L.1975, c.127.

17:27-3.3 Mandatory bid specification language

(a) A public agency shall include in any bid specifications for a public works contract the language required by N.J.A.C. 17:27-3.4(a). Also, for procurement and service contracts which are not subject to a Federally approved or sanctioned affirmative action program, the public agency bid specifications shall include the language required by N.J.A.C. 17:27-5.3, and the following language:

1. All bidders and all contractors who are negotiating for a contract as a precondition to entering into a valid and binding procurement or service contract with the public agency, are required to submit to the public agency, prior to or at the time the contract is submitted for signing by the public agency (in accordance with N.J.A.C. 17:27-4.3 promulgated by the Treasurer pursuant to P.L. 1975, c. 127), one of the following three documents:

i. Appropriate evidence that the contractor is operating under an existing federally approved or sanctioned affirmative action program; or

ii. A certificate of employee information report approval issued in accordance with N.J.A.C. 17:27-4;

iii. An initial employee information report consisting of forms provided by the affirmative action office and completed by the contractor in accordance with N.J.A.C. 17:27-4.

(b) For construction contracts which are not subject to a Federally approved or sanctioned affirmative action program, the public agency bid specifications shall include the language required by N.J.A.C. 17:27-7.4 and the following language:

1. No later than three (3) days after signing a construction contract said bidders or contractors are required to submit to the public agency compliance officer and the affirmative action office an initial project manning table consisting of forms provided by the affirmative action office and completed by the contractor in accordance with N.J.A.C. 17:27-7.

(c) The public agency also shall provide a statement containing the same mandatory language as provided by this section for procurement or service contracts or for construction contracts to any contractor negotiating for a contract, even if the contract qualifies for a waiver or exemption from bidding requirements, if said contract involves a dollar amount equal to or greater than the appropriate threshold dollar amount, which generally requires the public agency generally to solicit bids.

Amended by R.1988 d.522, effective November 7, 1988.
See: 20 N.J.R. 1780(a), 20 N.J.R. 2795(b).
Substantially amended.

Case Notes

Joint venture's bid and contract set aside due to failure of city to comply with requirement that bids be advertised for at least 10 days prior to date fixed for bid receipt, and joint venture's failure to comply with affirmative action bidding requirements. *Impac Inc. v. City of Paterson*, 178 N.J.Super. 195, 428 A.2d 553 (App.Div.1981), certification denied 87 N.J. 414, 434 A.2d 1089 (1981).

17:27-3.4 Mandatory contract language and additional mandatory bid specification language

(a) Public agencies shall include in all public works contracts, and in all bid specifications and in statements to certain contractors negotiating contracts, as prescribed in, N.J.A.C. 17:27-3.3 the following language:

1. During the performance of this contract, the contractor agrees as follows:

i. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status or sex. The contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the public agency compliance officer setting forth provisions of this nondiscrimination clause;

ii. The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status or sex;

iii. The contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

iv. The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to P.L.1975, c.127, as amended and supplemented from time to time.

(b) The public agency shall also include in each procurement and service contract the language required by N.J.A.C. 17:27-5.3, unless the exemption provided in N.J.A.C. 17:27-5.1 is applicable, and in each construction contract the language required by N.J.A.C. 17:27-7.4, unless the exemption provided under N.J.A.C. 17:27-7.1 is applicable.

(c) A public works contract for a subcontractor with a total work force of four or fewer employees or for a contractor or subcontractor performing under an existing Federally approved or sanctioned affirmative action program shall contain as mandatory language required by P.L. 1975, c.127, all of the language of (a) above, except for the language contained in (a)iv above, and said contract shall not contain any other mandatory language prescribed by these rules.

Amended by R.1988 d.522, effective November 7, 1988.
See: 20 N.J.R. 1780(a), 20 N.J.R. 2795(b).
Substantially amended.

17:27-3.5 Designation of public agency compliance officers

Each public agency shall annually designate an office or employee, who may be an existing officer or employee, to serve as its public agency compliance officer and shall notify the Department of the Treasury, State Affirmative Action Office, of the designation by January 10. The officer shall perform the duties prescribed in these rules, shall be responsible for ensuring the agencies' compliance with these rules and may perform any other liaison and assistance functions as may be requested by the affirmative action office.

Amended by R.1988 d.522, effective November 7, 1988.
See: 20 N.J.R. 1780(a), 20 N.J.R. 2795(b).
Substantially amended.

SUBCHAPTER 4. AFFIRMATIVE ACTION PLAN FOR PROCUREMENT AND SERVICE CONTRACTORS AND SUBCONTRACTORS

17:27-4.1 Procurement service contracts subject to affirmative action plan requirements

All procurement and service contractors bidding for public agency public works contracts and all contractors entering into negotiated public works contracts subject to the requirements of N.J.A.C. 17:27-3.3 shall satisfy the affirmative action plan requirements of these regulations.

17:27-4.2 Elements of an affirmative action plan for procurement and service contractors and subcontractors

(a) An affirmative action plan for procurement and service contractors and subcontractors shall consist of the following elements:

1. Generally:

i. Provisions in the procurement or service contract, containing the language required by N.J.A.C. 17:27-3.4(a) and 17:27-5.3; and

ii. An initial employee information report, submitted in accordance with N.J.A.C. 17:27-1.3 or a certificate of employee information report issued in accordance with N.J.A.C. 17:27-4.5; or

2. Any existing federally approved or sanctioned affirmative action program.

Amended by R.1988 d.522, effective November 7, 1988.
See: 20 N.J.R. 1780(a), 20 N.J.R. 2795(b).
Removed the word "approval" from (a)ii.

17:27-4.3 Procedure for establishing an approved affirmative action plan by contract

(a) Upon designating a procurement or service contractor as the lowest responsible bidder, the public agency shall submit to the contractor for signing a contract which contains the contract language required by N.J.A.C. 17:27-3.4(a) and 17:27-5.3. As a precondition to entering into a valid and binding contract, said contractor shall submit to the public agency either appropriate evidence that the contractor is operating under an existing Federally approved or sanctioned affirmative action program; or a certificate of employee information report issued in accordance with this subchapter; or an initial employee information report consisting of forms provided by the affirmative action office and completed by the contractor in accordance with this subchapter; provided, however, that if the contractor submits appropriate evidence of an existing Federally approved or sanctioned affirmative action program, the contract shall not include the mandatory language required by N.J.A.C. 17:27-3.4(a)iv and by N.J.A.C. 17:27-5.3; and further provided that a contractor shall not be eligible to submit an initial employee information report unless the contractor, in an additional provision to the public works contract, is able to certify and agrees as follows: "The contractor, or subcontractor, where appropriate, certifies that he or she has never before applied for a certificate of employee information report in accordance with rules promulgated by the Treasurer pursuant to P.L.1975, c.127, as amended and supplemented from time to time; and agrees to submit immediately to the affirmative action office a copy of the initial employee information report."

(b) If a procurement or service contractor refuses to sign said contract when it is submitted for signing by the Public Agency or if the contractor has failed to satisfy the precondition for entering into a contract as established by subsection (a) of this section, prior to the time the contract is submitted for signing by the Public Agency or within seven (7) days after receipt of notification of intent to award the contract or receipt of the contract, whichever is sooner, then the Public Agency shall reject the contractor's bid as non-responsive, and these requirements shall apply to any other contractor which the Public Agency selects in accordance with applicable contracting laws and procedures.

As amended, R.1978 d.185, effective June 2, 1978.
See: 10 N.J.R. 209(a), 10 N.J.R. 305(a).
Amended by R.1988 d.522, effective November 7, 1988.
See: 20 N.J.R. 1780(a), 20 N.J.R. 2795(b).

Deleted text in (a) "Any contractor who ..." and deleted the word "approval".

Case Notes

Joint venture's bid and contract set aside due to failure of city to comply with requirement that bids be advertised for at least 10 days prior to date fixed for bid receipt, and joint venture's failure to comply with affirmative action bidding requirements. *Impac Inc. v. City of Paterson*, 178 N.J.Super. 195, 428 A.2d 553 (App.Div.1981), certification denied 87 N.J. 414, 434 A.2d 1089 (1981).

17:27-4.4 Affirmative action plan requirement for procurement and service subcontractors

A procurement or service contractor operating under a public works contract pursuant to the provisions of this chapter shall not enter into a subcontract with a procurement or service subcontractor, unless the subcontractor has submitted to said contractor one of the three documents which is also required from contractors in accordance with all provisions of N.J.A.C. 17:27-4.3; provided, however, that any subcontractor located outside of the State of New Jersey and subcontractors with four or fewer employees shall be exempt from the requirements of N.J.A.C. 17:27-4.

Amended by R.1988 d.522, effective November 7, 1988.
See: 20 N.J.R. 1780(a), 20 N.J.R. 2795(b).
Substantially amended.

17:27-4.5 Procedures for the issuance and renewal of a certificate of employee information report

(a) A contractor that has submitted an initial employee information report to a public agency pursuant to N.J.A.C. 17:27-4.3 and any subcontractor that has submitted an initial employee information report pursuant to N.J.A.C. 17:27-4.4 shall immediately provide a copy of said report to the affirmative action office.

(b) The affirmative action office shall approve or reject an initial employee information report within 40 days of its submission, provided, however, that such a rejection, if it is independent of a noncompliance determination pursuant to N.J.A.C. 17:27-10, shall in no way affect the validity of a contract for which said initial employee information report was presented to satisfy the precondition required by N.J.A.C. 17:27-4.3. Failure of the affirmative action office to so act within 40 days shall constitute approval of the employee information report. If an initial employee information report submitted by a contractor is rejected, a contractor or subcontractor may submit a corrected initial employee information report to the affirmative action office. Upon approval of an initial employee information report submitted by a procurement or service contractor or subcontractor who, prior to its submission, had never received a certificate of employee information report, the affirmative action office shall issue to said contractor or subcontractor an initial certificate of employee information report which shall be valid for one year from the date it is issued by the affirmative action office.

(c) Additional procedures are as follows.

1. As early as 90 days prior to the expiration of a certificate of employee information report, a procurement or service contractor may submit an application for renewal of the certificate of employee information report to the affirmative action office. Said renewal application, in the form specified by the affirmative action office, shall be made available to procurement and service contractors by the affirmative action office.

2. In accordance with the form specified by the affirmative action office, the procurement or service contractor shall submit along with his or her application for renewal an updated employee information report which shall contain current employee data, the employee data contained in the prior employee information report approved by the affirmative action office, the employment goals under which the contractor or subcontractor has been operating during the period covered by the certificate or employee information report approval for which renewal is requested, any additional information requested by the affirmative action office; if necessary, an explanation of why the hiring and other personnel procedures employed by the contractor have failed to achieve the employment goals established pursuant to N.J.A.C. 17:27-5.2; and an explanation of changes in hiring and personnel practices, if any, which the contractor plans to implement expeditiously to increase minority employment opportunities in pursuit of the applicable employment goals. Notwithstanding the content and scope of said procedures which a contractor states in an employee information report that he will implement in pursuit of the applicable employment goals, said contractor is obligated to implement and comply with any hiring procedures and personnel practices required by this chapter including, but not limited to, procedures required by the affirmative action office pursuant to this chapter.

3. The affirmative action office shall approve or reject an application for renewal of a certificate of employee information report within 60 days of its submission, and the failure of the affirmative action office to so act within 60 days shall constitute approval of the renewal application. If a renewal application submitted by a contractor is rejected, the affirmative action office shall state in writing reasons for the rejection and allow the contractor or subcontractor who submitted the rejected application to respond in writing, or if the affirmative action office agrees, to meet with an official of the affirmative action office. Said contractor or subcontractor also may resubmit a renewal application accompanied by a revised, current employee information report pursuant to the same procedures and conditions applicable to the original submission, provided, however, that any such resubmission shall serve to terminate any reconsideration by the affirmative action office of a rejection of a renewal application, which reconsideration has been commenced by the affirmative action office on the basis of a contractor's or subcontractor's response to its rejection of a renewal application. Upon approval of a renewal application, the affirmative action office shall issue to the contractor a certificate of employee information report which shall be valid for two years from the date it is issued by the affirmative action office. Any rejection of a renewal application, if it is independent of a noncompliance determination pursuant to N.J.A.C. 17:27-10, shall in no way affect the validity of an existing contract which has already been signed in accordance with N.J.A.C. 17:27-4.3.

(d) Where necessary to manage an exceptionally difficult administrative schedule, the affirmative action office may issue a temporary certificate of employee information report, valid for a time period less than the authorized time period, but at the time the temporary certificate expires, the affirmative action office shall either issue a certificate of employee information report which is valid for the appropriate time period as authorized by (b) and (c) above, or reject said application, provided however, that any rejection of a renewal application, if it is independent of a noncompliance determination pursuant to N.J.A.C. 17:27-10, shall in no way affect the validity of an existing contract which has already been signed in accordance with N.J.A.C. 17:27-4.3.

Amended by R.1988 d.522, effective November 7, 1988.
See: 20 N.J.R. 1780(a), 20 N.J.R. 2795(b).

Removed the word "approval"; substituted "procedures" for "rules"; substituted "employee information" for "employment".

17:27-4.6 Public agency authority to set time periods

A public agency may require a procurement and service contractor, as a condition for submitting a bid or negotiating for a contract, in accordance with the provisions of this section 4 of this subchapter to seek immediate renewal of its certificate of information report approval if the contractor will be preparing a bid within 90 days of the expiration of its certificate or to seek such renewal at the time its certificate is within 90 days of expiration, except that a public agency may not require a contractor to seek immediate renewal if there is a reasonable probability that said contractor's current certificate will be valid at the time when the public agency expects to award said contract.

17:27-4.7 Emergency purchases

A public agency may award a public contract without an approved affirmative action plan in an emergency situation. In such a situation, the public agency shall document that an actual or imminent emergency exists, which requires the agency immediately to award a contract for the delivery of an article or performance of a service, and that to delay the award of the contract would endanger public health, safety, welfare or property. The contractor shall be required to comply with the affirmative action rules no later than 14 days after the award.

Amended by R.1988 d.522, effective November 7, 1988.

See: 20 N.J.R. 1780(a), 20 N.J.R. 2795(b).

Added text "The contractor shall ...".

SUBCHAPTER 5. MINORITY AND FEMALE EMPLOYMENT GOAL OBLIGATIONS FOR PROCUREMENT AND SERVICE CONTRACTORS AND SUBCONTRACTORS

17:27-5.1 Exemptions

The requirements of this subchapter shall not apply to any procurement or service contractor or subcontractors performing under an existing Federally approved or sanctioned affirmative action program or to any subcontractor which is exempted under N.J.A.C. 17:27-4.1 from the affirmative action plan requirements of N.J.A.C. 17:27-4.

Amended by R.1988 d.522, effective November 7, 1988.

See: 20 N.J.R. 1780(a), 20 N.J.R. 2795(b).

Uppercased Federally.

17:27-5.2 Establishment of goals

(a) The affirmative action office shall individually establish the minority and female employment goals for each procurement or service contractor or subcontractor. The affirmative action office shall analyze the types of jobs offered by each procurement or service contractor or subcontractor and compare that analysis to the number of qualified minorities and females available by county in 503 occupational classes as reported by the New Jersey Department of Labor, Division of Planning and Research in its report, EEO Tabulation—Detailed Occupations by Race/Hispanic Groups.

(b) When a procurement or service contractor or subcontractor submits an initial employee information report as required by N.J.A.C. 17:27-4.3, the affirmative action office shall schedule an orientation and profile visit within 30 business days of the issuance of a certificate of employee information report to obtain detailed information on which of the 503 occupation classes comprise each of the nine Federal equal employment opportunity (EEO) categories in that procurement or service contractor's or subcontractor's work force. The affirmative action office shall compare that information to the availability data for the county in which the procurement or service contractor's or subcontractor's offices, plants or distribution centers are located to establish the employment goals based upon the occupational mix within the procurement or service contractor's or subcontractor's work force. When a procurement or service contractor or subcontractor has offices, plants or distribution centers located in more than one county, the affirmative action office shall establish goals for each county.

(c) The affirmative action office shall establish overall goals for each procurement or service contractor or subcontractor based upon the average of the individually established goals for the EEO categories in which that contractor has employees.

(d) Each procurement or service contractor or subcontractor submitting an application for renewal of a certificate of employee information report pursuant to N.J.A.C. 17:27-4.5(c), shall include information detailing the occupational classes that comprise each EEO category within their workforce to provide the affirmative action office with information to establish the individualized goals prior to the compliance review.

(e) In cases in which a public agency, contractor, subcontractor, or affected minority or female worker submits in writing a request to the affirmative action office for a determination of what employment goals should apply for a procurement or service contractor or subcontractor, the affirmative action office shall determine the proper employment goals. Any such employment goal determination by the affirmative action office shall be binding.

Amended by R.1988 d.522, effective November 7, 1988.

See: 20 N.J.R. 1780(a), 20 N.J.R. 2795(b).

Amended chart.

Repeal and New Rule, R.1990 d.160, effective March 19, 1990.

See: 21 N.J.R. 3439(b), 22 N.J.R. 981(b).

17:27-5.3 Mandatory contract language for employment goal compliance

(a) Public agencies shall include in all contracts the following language:

1. The contractor or subcontractor agrees to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L.1975, c.127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the affirmative action office pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L.1975, c.127, as amended and supplemented from time to time.

2. The contractor or subcontractor agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

3. The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

4. The contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status or sex, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

Amended by R.1988 d.522, effective November 7, 1988.

See: 20 N.J.R. 1780(a), 20 N.J.R. 2795(b).

Deleted (b); renumbered (a)(1)-(4) as (a)1.-4.

17:27-5.4 Designation of approved minority referral agencies

The affirmative action office shall compile and maintain a listing of approved minority referral agencies for each county or multi-county area of the State.

17:27-5.5 Contractor and subcontractor compliance obligations

A procurement or service contractor or subcontractor shall be deemed to be in compliance with the employment goals prescribed in accordance with this subchapter if the contractor or subcontractor is employing minority and female workers in the percentages established as employment goals pursuant to this subchapter, and achievement of said employment percentages shall constitute compliance for purposes of this Chapter, regardless of any other percentages established by a public agency, or the contractor or subcontractor has acted and continues to act in good faith, including the use of the procedures required by the mandatory language prescribed by N.J.A.C. 17:27-5.3 to achieve the minority and female employment goal percentages established in accordance with this subchapter; provided, however, that nothing provided in this chapter shall prevent a municipality or other unit of local government from enforcing municipal or local government enforcement goal obligations involving employment goals which are higher than those applied under this chapter.

Amended by R.1988 d.522, effective November 7, 1988.

See: 20 N.J.R. 1780(a), 20 N.J.R. 2795(b).

Substituted "this chapter" for "regulations".

17:27-5.6 Criteria for determining good faith

(a) When compliance challenges are initiated pursuant to N.J.A.C. 17:27-10, the affirmative action office shall consider the following factors in its determination of whether a contractor or subcontractor has acted in good faith.

1. The general availability of minorities and women having requisite skills in the immediate labor area;

2. The percentages of minority and female workers in the total workforce in the immediate labor area;

3. The availability of promotable minority and women employees within the contractor's or subcontractor's organization;

4. The anticipated expansion, contraction and turnover of the contractor's or subcontractor's workforce;

5. The existence of training institutions capable of training minorities and women in the requisite skills;

6. The degree of training which the contractor or subcontractor is reasonably able to undertake as a means of making all job classifications available to minorities and women;

7. The availability and use of recruitment resources to attract minorities and women; and

8. The contractor's documentation of attempts to attain the goals.

Amended by R.1988 d.522, effective November 7, 1988.

See: 20 N.J.R. 1780(a), 20 N.J.R. 2795(b).

Added (a)8.

SUBCHAPTER 6. AFFIRMATIVE ACTION PLAN FOR CONSTRUCTION CONTRACTORS AND SUBCONTRACTORS

17:27-6.1 Construction contracts subject to affirmative action plan requirements

All construction contractors bidding for public agency public works contracts and all contractors entering into negotiated public works contracts subject to the requirements of N.J.A.C. 17:27-3.3 shall satisfy the affirmative action plan requirements of this chapter, with the exception of construction subcontractors with a total workforce of four or fewer employees, which shall be exempt from said requirements.

17:27-6.2 Elements of an affirmative action plan for construction contractors and subcontractors

(a) An affirmative action plan for construction contractors and subcontractors shall consist of the following elements.

1. Provisions in the construction contract containing language required by N.J.A.C. 17:27-3.4(a) and N.J.A.C. 17:27-7.4; or

2. Any existing Federally approved or sanctioned affirmative action program.

17:27-6.3 Procedure for establishing an approved affirmative action plan by contract

(a) Upon designating a construction contractor as the lowest responsible bidder, the public agency shall submit to the contractor for signing a contract which contains the contract language required by N.J.A.C. 17:27-3.4(a) and 17:27-7.4, except that the language required by N.J.A.C. 17:27-3.4(a) and by 1iv and by N.J.A.C. 17:27-7.4 shall not be included in a contract with a contractor which submits to the public agency, prior to or at the time the contract is submitted by the public agency for signing, appropriate evidence that the contractor is operating under an existing Federally approved or sanctioned affirmative action program.

(b) If a contractor refuses to sign said contract when it is submitted for signing by the public agency, then the public agency shall reject the contractor's bid as non-responsive, and these requirements shall apply to any other contractor which the public agency selects in accordance with applicable contracting laws and procedures.

17:27-6.4 Affirmative action plan requirement for construction subcontractors

A construction contractor operating under a public works contract pursuant to the provisions of this chapter shall not enter into a subcontract with a construction subcontractor, unless the contract contains the language required by N.J.A.C. 17:27-6.3; provided, however, that subcontractors with a total workforce of four or fewer employees shall be exempt from the requirements of this subchapter.

17:27-6.5 State-approved public agency affirmative action construction programs

(a) Notwithstanding any other provisions of this subchapter, a public agency may establish its own affirmative action program for construction contracts and submit said program to the affirmative action office for designation as a State-approved affirmative action construction program. Any public agency program so designated, in accordance with the provisions of this section, shall exclusively establish the State affirmative action procedures and requirements which implement P.L. 1975, c.127, as amended and supplemented from time to time, as applied to construction contracts and subcontracts involving said public agency.

(b) The affirmative action office may designate a public agency's affirmative action construction program as State-approved only if the program requires the public agency's

construction contracts to conform to the mandatory contract language requirements of N.J.A.C. 17:27-3.4(a), except for the language contained in N.J.A.C. 17:27-3.4(a)1iv; said program requires the public agency's advertisement and solicitation of construction contract bids to contain the following language: "Bidders are required to comply with requirements of P.L. 1975, c.127"; and said program establishes an employment goal which is not lower than the applicable goal established by N.J.A.C. 17:27-7.

SUBCHAPTER 7. MINORITY AND FEMALE EMPLOYMENT GOAL OBLIGATIONS FOR CONSTRUCTION CONTRACTORS AND SUBCONTRACTORS

17:27-7.1 Exemptions

The requirements of this subchapter shall not apply to any construction contractor or subcontractor performing under an existing federally approved or sanctioned affirmative action program; or to any subcontractor which is exempted under N.J.A.C. 17:27-6.1 from the affirmative action plan requirements of subchapter 6 of this chapter; or to any construction contractor or subcontractor bidding on or negotiating with a public agency operating under its own affirmative action program which has been designated as a State-approved affirmative action construction program pursuant to subchapter 6 of this chapter.

17:27-7.2 (Reserved)

Amended by R.1988 d.522, effective November 7, 1988.
See: 20 N.J.R. 1780(a), 20 N.J.R. 2795(b).
This section was "definition of minority".

17:27-7.3 Establishment of goals

(a) The affirmative action office shall individually establish the minority and female employment goals for each construction contractor and subcontractor for each trade on each contract. The affirmative action office shall review the trades to be utilized during the completion of the work as reported on the initial project manning report and determine the employment goals based upon the number of qualified minorities and females available as reported by the New Jersey Department of Labor, Division of Planning and Research in its report, EEO Tabulation—Detailed Occupations by Race/Hispanic Groups.

(b) The affirmative action office shall provide written notification of the employment goals within seven working days of receipt of the initial project manning report to each construction contractor and public agency awarding the contract.

(c) During the initial job site meeting or first site monitoring visit, the affirmative action office representative shall discuss the construction contractor's and/or subcontractor's plans for attaining the employment goals and the good faith criteria used in determining compliance with this chapter. The affirmative action office shall evaluate compliance with the employment goals by reviewing the utilization of minorities and females as reported in the work hours per trade and the good faith efforts of each construction contractor or subcontractor. The affirmative action office shall calculate the work hours per trade based upon information on monthly project manning report submitted pursuant to N.J.A.C. 17:27-7.6 and verified by site visits.

(d) Public agencies, contractors, subcontractors or affected minority or female workers may submit written requests to the affirmative action office for a determination of what employment goals should apply for a particular contract. The determination made by the affirmative action office in such cases shall be binding.

Amended by R.1988 d.522, effective November 7, 1988.

See: 20 N.J.R. 1780(a), 20 N.J.R. 2795(b).

Substantially amended.

Repeal and New Rule, R.1990 d.160, effective March 19, 1990.

See: 21 N.J.R. 3439(b), 22 N.J.R. 981(b).

17:27-7.4 Mandatory language for employment goal compliance

(a) Public agencies shall include in all construction contracts the language set forth in (b) through (e) below.

(b) When hiring workers in each construction trade, the contractor or subcontractor agrees to attempt in good faith to employ minority and female workers in each construction trade consistent with the applicable employment goal prescribed by N.J.A.C. 17:27-7.3; provided, however, that the affirmative action office may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by (b)1, (c) and (d) below, as long as the affirmative action office is satisfied that the contractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the affirmative action office, that its percentage of active "card carrying" members who are minority and female workers is equal to or greater than the applicable employment goal prescribed by N.J.A.C. 17:27-7.3, promulgated by the Treasurer pursuant to P.L. 1975, c.127, as amended and supplemented from time to time. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

1. If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to P.L. 1975, c.127, as supplemented and amended from time to time. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five days prior to the commencement of construction work, the contractor or subcontractor agrees to attempt to hire minority and female workers directly, consistent with the applicable employment goal. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and female workers consistent with the applicable employment goal, the contractor or subcontractor agrees to be prepared to hire minority and female workers directly, consistent with the applicable employment goal, by complying with the hiring procedures prescribed under (c) below; and the contractor or subcontractor further agrees to take said action immediately if it determines or is so notified by the affirmative action office that the union is not referring minority and female workers consistent with the applicable employment goal.

(c) If the hiring of a workforce consistent with the employment goal has not or cannot be achieved for each construction trade by adhering to the procedures of (b) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions consistent with the applicable county employment goals:

1. To notify the public agency compliance officer, affirmative action office, and at least one approved minority referral organization of its manpower needs, and request referral of minority and female workers;

2. To notify any minority and female workers who have been listed with it as awaiting available vacancies;

3. Prior to commencement of work, to request the local construction trade union, if the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, to refer minority and female workers to fill job openings;

4. To leave standing requests for additional referral to minority and female workers with the local construction trade union, if the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State training and employment service and other approved referral sources in the area until such time as the workforce is consistent with the employment goal;

5. If it is necessary to lay off some of the workers in a given trade on the construction site, to assure, consistent with the applicable State and Federal statutes and court decisions, that sufficient minority and female employees remain on the site consistent with the employment goal; and to employ any minority and female workers so laid off by the contractor or any other construction site in the area on which its workforce composition is not consistent with an employment goal established pursuant to rules implementing P.L. 1975, c.127;

6. To adhere to the following procedure when minority and female workers apply or are referred to the contractor or subcontractor:

i. If said individuals have never previously received any document or certification signifying a level of qualification lower than that required, the contractor or subcontractor shall determine the qualifications of such individuals and if the contractor's or subcontractor's workforce in each construction trade is not consistent with the applicable employment goal, it shall employ such persons which satisfy appropriate qualification standards; provided however, that a contractor or subcontractor shall determine that the individual at least possesses the skills and experience recognized by any worker skills and experience classification determination which may have been made by a public agency compliance officer, union, apprentice program or a referral agency, provided the referral agency is acceptable to the affirmative action office and provided further, that, if necessary, the contractor or subcontractor shall hire minority and female workers who qualify as trainees pursuant to these rules. All of these requirements, however, are limited by the provisions of (d) below.

ii. If the contractor's or subcontractor's workforce is consistent with the applicable employment goal, the name of said female or minority group individual shall be maintained on a waiting list for the first consideration, in the event the contractor's or subcontractor's workforce is no longer consistent with the applicable employment goal.

iii. If, for any reason, said contractor or subcontractor determines that a minority individual or a female is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing with the reasons for the determination, maintain a copy in its

files, and send a copy to the public agency compliance officer and to the affirmative action office.

7. To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the affirmative action office and submitted promptly to that office upon request.

(d) The contractor or subcontractor agrees that nothing contained in (c) above shall preclude the contractor or subcontractor from complying with the hiring hall or apprenticeship provisions in any applicable collective bargaining agreement or hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement; provided, however, that where the practices of a union or apprenticeship program will result in the exclusion of minorities and females or the failure to refer minorities and females consistent with the county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (c) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ female and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (c) above, it shall, where applicable, employ minority and female workers residing within the geographical jurisdiction of the union.

(e) The contractor agrees to complete an Initial Project Manning Report on forms provided by the Affirmative Action Office or in the form prescribed by the Affirmative Action Office and submit a copy of said form no later than three days after signing a construction contract; provided, however, that the Public Agency may extend in a particular case the allowable time for submitting the form to no more than 14 days; and to submit a copy of the Monthly Project Manning Report once a month thereafter for the duration of this contract to the Affirmative Action Office and to the Public Agency Compliance Officer. The contractor agrees to cooperate with the Public Agency in the payment of budgeted funds, as is necessary, for on-the-job and off-the-job programs for outreach and training of minority and female trainees employed on the construction projects.

As amended, R.1978 d.185, effective June 2, 1978.
Sec: 10 N.J.R. 209(a), 10 N.J.R. 305(a).
As amended, R.1979 d.191, effective May 30, 1979.

See: 11 N.J.R. 208(c), 11 N.J.R. 305(c).
 Amended by R.1988 d.522, effective November 7, 1988.
 See: 20 N.J.R. 1780(a), 20 N.J.R. 2795(b).
 Substantially amended.
 Administrative correction.
 See: 30 N.J.R. 1425(b).

17:27-7.5 Financing minority worker outreach and training programs

When the total cost of a construction project by any public agency except a municipality, county, or school district, is equal to or greater than \$1,000,000, or when the total cost of a construction project by a municipality, county, or school district is equal to or greater than \$2,500,000, the authorized appropriation of the public agency or the total project development cost recognized by the public agency shall include one half of one percent of the total project cost from which amount the public agency shall pay out to an approved training agency or to an affected contractor or subcontractor for payment to an approved training agency, during the course of the construction project, as much of said amount as is necessary for on-the-job and off-the-job programs for outreach and training programs for minority and female trainees employed on the construction project, provided that said funds shall not be used to pay the salary for any trainees. Whenever the Affirmative Action Office determines that an amount less than one half of one percent of the total program cost is sufficient for funding said outreach and training programs, the public agency may reallocate such residual funds as appropriate. If said allocation would impose an extraordinary burden on the feasibility of a construction project and it was not possible to take advance action to avoid extraordinary feasibility problems, the affirmative action office, in response to a request from a public agency, may take said factors into account to grant a waiver from some or all of said requirements to allocate funds for minority and female outreach and training programs. Off-the-job training programs eligible for this funding include programs designed to increase the skills of trainees in a particular trade or craft, skills relating to contracting work, related academic or remedial education programs; and eligible agencies for these funds include State, regional or local public or private training institutions, agencies or organizations as approved by the affirmative action office. A public agency may apply to the affirmative action office for funds to use to satisfy the training program requirements of this section; and the affirmative action office, from such funds which may be available for said purpose, may allocate said funds among such applicants. Failure to receive such funds from the affirmative action office shall in no way relieve a public agency of its training program obligations under this section.

Amended by R.1988 d.522, effective November 7, 1988.
 See: 20 N.J.R. 1780(a), 20 N.J.R. 2795(b).
 Substituted "affirmative action office" for "public agency" and added "female".

17:27-7.6 Project manning reports

The affirmative action office shall provide forms or prescribe forms for monthly project manning reports. Each project manning report shall identify the estimated employment requirements, by trade or craft, of the construction contractors and subcontractors for the duration of the construction project work by each contractor and subcontractor. The affirmative action office, construction contractors and subcontractors shall use these project manning reports, which shall be submitted by construction contractors in accordance with N.J.A.C. 17:27-6.2(a) and 17:27-7.4, to monitor compliance with the requirements of this subchapter; and the public agency compliance officer also may use said reports to monitor compliance and to engage in other related enforcement, compliance and reporting procedures as provided in subchapter 9 and 10 of this chapter.

SUBCHAPTER 8. ADVISORY BOARDS

17:27-8.1 Advisory boards

If a local advisory board consisting of local officials, representatives of minority communities, union officials and/or construction contractors and subcontractors is in existence or is established, the affirmative action office may, on an area or case-by-case basis, request from the advisory board recommendations concerning affirmative action plan compliance issues and dispute settlement involving construction projects with a total project cost equal to or greater than \$1,000,000.

SUBCHAPTER 9. MONITORING PUBLIC WORKS CONTRACTS

17:27-9.1 Monitoring public works contracts

If a contractor or subcontractor is operating under an affirmative action plan prescribed by N.J.A.C. 17:27-4.2(a) or 17:27-6.2(a), said contractor or subcontractor shall designate a principal officer of its firm who shall meet, when necessary, with its staff, subcontractors, union representatives, the public agency compliance officer, and the affirmative action office to insure compliance with these regulations and its affirmative action plan.

17:27-9.2 Attendance; project meetings

An official of the affirmative action office and the public agency compliance officer shall be allowed to attend all project meetings and, with notice and at reasonable times and in a reasonable manner, to enter the contractor's or subcontractor's business facility or facilities or construction project site for determining whether the contractor is complying with the affirmative action plan.

**SUBCHAPTER 10. COMPLIANCE PROCEDURES
AND SANCTIONS APPLICABLE TO PUBLIC
WORKS CONTRACTS**

17:27-10.1 Scope

The provisions of this subchapter only apply to a contractor or subcontractor operating under affirmative action plan prescribed by N.J.A.C. 17:27-4.2(a) or 17:27-6.2(a), and also as provided by N.J.A.C. 17:27-6.5.

17:27-10.2 Alert notices

A public agency operating under a State approved affirmative action construction program may issue a written alert notice to a contractor or subcontractor or the affirmative action office, acting on its own initiative or in response to a written statement from an interested party, may issue a written alert notice to a contractor or subcontractor whenever, in the agency's or office's opinion, the contractor or subcontractor has violated this chapter or the applicable affirmative action plan. The alert notice shall explain in sufficient detail the facts of the alleged violation.

Amended by R.1988 d.522, effective November 7, 1988.
See: 20 N.J.R. 1780(a), 20 N.J.R. 2795(b).

Deleted text "The public agency compliance officer" and substituted "A public agency ... action construction program".

17:27-10.3 Correction of alleged violations; violation notice

If the alleged violation explained in the alert notice has not been corrected to the satisfaction of the official issuing the notice within three days after it is received by the contractor or subcontractor, said official shall then issue a violation notice to said contractor or subcontractor, and in the case of a notice issued by a public agency compliance officer, submit a copy of the violation notice to the affirmative action office. Said violation notice shall explain in sufficient detail the facts of the alleged, continuing violation.

17:27-10.4 Written statements; violations

Upon either receiving a copy of a notice of violation from a public agency compliance officer or after issuing a notice on its own, the affirmative action office shall notify the alleged violator that it shall submit within four days after it is received by the contractor or subcontractor a written statement explaining why it is not in violation of this chapter or the affirmative action plan or any explanation of how it will correct any such violation. If the affirmative action office determines there is a substantial probability that a violation is occurring, it may direct the withholding of some

or all of the contract payments then due and owing pending a determination pursuant to N.J.A.C. 17:27-10.6 and 10.7.

Amended by R.1988 d.522, effective November 7, 1988.
See: 20 N.J.R. 1780(a), 20 N.J.R. 2795(b).

17:27-10.5 Requested meetings

If a meeting with an official of the affirmative action office is requested by the alleged violator, after the alleged violator has made a timely submission of the written explanation required pursuant to this section, an official of the affirmative action office or the public agency compliance official, acting at the request of the affirmative action office, shall meet with the alleged violator to discuss the alleged violations. Said meeting shall be requested no later than two days after the alleged violator has submitted said written explanation. The affirmative action office may conduct interviews and request from appropriate parties the submission of additional information as is considered necessary to determine whether the alleged violation has occurred.

17:27-10.6 Determination of violations

Upon completion of the procedures required and authorized pursuant to N.J.A.C. 17:27-10.3, but no later than 30 days after a violation notice has been submitted to the affirmative action office, the affirmative action office shall issue a determination of whether the contractor or subcontractor is in violation of this chapter or an affirmative action plan; and if the affirmative action office determines that there is a current violation, it shall prescribe, where appropriate, corrective measures.

Amended by R.1988 d.522, effective November 7, 1988.
See: 20 N.J.R. 1780(a), 20 N.J.R. 2795(b).

17:27-10.7 Enforcement; violations

(a) If the affirmative action office determines that a contractor or subcontractor is in violation of this chapter or the affirmative action plan, it may enforce the obligations of P.L. 1975, c.127, as implemented by this chapter and the requirement of the affirmative action plan by ordering or taking part in any or all of the following remedial actions:

1. Withholding of part or all of the contract or subcontract payments then due and owing;
2. Debarment of the contractor from all public contracts for a period of up to five years and/or until the contractor complies with the required obligations or agrees to adhere to a compliance schedule approved by the affirmative action office; provided, however, that a debarment may only be ordered after a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1;

3. Termination or suspension of the contract or sub-contract; provided, however, that a contract termination or suspension may only be ordered after the Treasurer or his designee, who is not a member of the affirmative action office, holds a hearing for the contractor or sub-contractor, and the Treasurer, or said designee, determines that a contract termination or suspension would be appropriate;

4. Refer the record of the violation determination proceeding to the Attorney General or his designee for enforcement action under the "Law Against Discrimination"; and/or

5. The chief of the affirmative action office, as the designee of the Treasurer, may enforce in a court of law the provisions of P.L. 1975, c.127, as amended and supplemented from time to time, or join in or assist any enforcement proceeding initiated by any aggrieved person under said act.

(b) If at the end of the 30-day period prescribed in N.J.A.C. 17:27-10.6, the affirmative action office has not determined that a contractor or subcontractor is in violation of this chapter or an affirmative action plan, the public agency shall immediately pay to said contractor or subcontractor all payments then due and owing.

Amended by R.1988 d.522, effective November 7, 1988.
See: 20 N.J.R. 1780(a), 20 N.J.R. 2795(b).

Deleted text in (a)2 "the Treasurer or ..." and substituted "a hearing pursuant ..."

SUBCHAPTER 11. REPORT FOR PUBLIC WORKS CONTRACTORS, SUBCONTRACTORS AND PUBLIC AGENCIES

17:27-11.1 General provisions

The contractor and its subcontractors shall furnish such reports or other documents to the affirmative action office as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the affirmative action office for conducting a compliance investigation pursuant to subchapter 10 of this chapter.

SUBCHAPTER 12. TRAINING AND OUTREACH

17:27-12.1 Assistance

The public agency compliance officer, in accordance with instructions from the affirmative action office, may assist contractors in the use of outreach, referral and training programs for minority and female workers.

17:27-12.2 Use of established public and private agencies

Public works contractors and subcontractors shall make use of established public and private agencies, such as the New Jersey State Employment Service, local and county CETA (comprehensive employment and training agencies), outreach apprentice program, Urban League, community action agencies, county vocational schools and Newark Construction Trades Training Corporation in order to facilitate the recruitment, referral and training of minority members for all employment positions.

17:27-12.3 Minority referral agencies

The affirmative action office shall designate approved minority referral, training and outreach agencies for each region. Procurement and service contractors and subcontractors shall list, as is appropriate, employment opportunities with the minority referral agency or agencies designated for its region.

17:27-12.4 Satisfaction of minority obligations

Construction contractors and subcontractors shall satisfy their minority worker outreach and training obligations by complying with the requirements of subchapter 7 of this chapter.

SUBCHAPTER 13. (RESERVED)

Historical Note

This subchapter entitled "Effective Date", was originally adopted pursuant to authority of N.J.S.A. 10:5-31 et seq. and was filed on September 28, 1977 as R.1977 d.364 to become effective November 27, 1977. See: 9 N.J.R. 191(a), 9 N.J.R. 543(c). It was repealed as R.1983 d.506, effective November 7, 1983. See: 15 N.J.R. 1459(a), 15 N.J.R. 1872(a).