

CHAPTER 27
AFFIRMATIVE ACTION RULES

Authority

N.J.S.A. 10:5-31 et seq., (P.L. 1975, c.127), specifically 10:5-36K.

Source and Effective Date

R.2004 d.450, effective November 9, 2004.
See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Chapter Expiration Date

Chapter 27, Affirmative Action Rules, expires on November 9, 2009.

Chapter Historical Note

Chapter 27, Affirmative Action Rules, was adopted as R.1977 d.364, effective November 27, 1977. 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.

Chapter 27, Affirmative Action Rules, was adopted as new rules by R.1983 d.506, effective November 7, 1983. 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, Affirmative Action Rules, 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, Affirmative Action Rules, was readopted as R.1993 d.531, effective October 6, 1993. See: 25 N.J.R. 3706(a), 25 N.J.R. 4927(a). Pursuant to Executive Order No. 66(1978), Chapter 27 expired on October 6, 1998.

Chapter 27, Affirmative Action Rules, was adopted as new rules by R.1999 d.256, effective August 2, 1999. See: 31 N.J.R. 939(a), 31 N.J.R. 1310(a), 31 N.J.R. 2238(a).

Chapter 27, Affirmative Action Rules, was readopted as R.2004 d.450, effective November 9, 2004. See: Source and Effective Date. See, also, section annotations.

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 AWARDED CONTRACTS

- 17:27-3.1 Awarding of public agency contracts
- 17:27-3.2 Designation of public agency compliance officers
- 17:27-3.3 Advertisement for bids and/or solicitation for proposals
- 17:27-3.4 Mandatory language for goods and services bid specifications and contracts
- 17:27-3.5 Mandatory language for construction bid specifications and contracts
- 17:27-3.6 Mandatory bid specification and contract language for employment goal compliance for goods and services
- 17:27-3.7 Mandatory bid specification and contract language for employment goal compliance for construction contracts
- 17:27-3.8 Emergency purchases
- 17:27-3.9 State-approved public agency affirmative action construction programs

SUBCHAPTER 4. AFFIRMATIVE ACTION PLAN FOR GOODS AND SERVICES CONTRACTORS AND SUBCONTRACTORS

- 17:27-4.1 Goods and services contracts, including professional services contracts, subject to affirmative action plan requirements
- 17:27-4.2 Elements of an affirmative action plan for goods and services contractors
- 17:27-4.3 Procedure for establishing an approved affirmative action plan by contract
- 17:27-4.4 Affirmative action plan requirement for goods and services subcontractors
- 17:27-4.5 Exemptions to requirement for Affirmative Action Plan for goods and services subcontractors
- 17:27-4.6 Procedures for the issuance and renewal of a certificate of employee information report
- 17:27-4.7 Public agency authority to set time periods

SUBCHAPTER 5. MINORITY AND WOMEN EMPLOYMENT GOAL OBLIGATIONS FOR GOODS AND SERVICES CONTRACTORS AND SUBCONTRACTORS

- 17:27-5.1 Exemptions
- 17:27-5.2 Establishment of goals
- 17:27-5.3 Designation of approved minority referral agencies
- 17:27-5.4 Contractor and subcontractor compliance obligations
- 17:27-5.5 Criteria for determining good faith
- 17:27-5.6 (Reserved)

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 (Reserved)

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

- 17:27-7.1 Exemption
- 17:27-7.2 (Reserved)
- 17:27-7.3 Establishment of goals
- 17:27-7.4 Financing minority and women worker outreach and training programs
- 17:27-7.5 Construction project workforce reports
- 17:27-7.6 (Reserved)

SUBCHAPTER 8. (RESERVED)

SUBCHAPTER 9. MONITORING PUBLIC AGENCY CONTRACTS

- 17:27-9.1 Monitoring public works contracts
- 17:27-9.2 Attendance; on-site visits

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

- 17:27-10.1 Scope
- 17:27-10.2 Alert notices for contractors and/or subcontractors
- 17:27-10.3 Correction of alleged violations; violation notice for contractors and/or subcontractors

- 17:27-10.4 Advisement notices for public agencies
- 17:27-10.5 Correction of alleged public agency violations: show cause letter
- 17:27-10.6 Written statements; investigatory conference
- 17:27-10.7 Requested meetings
- 17:27-10.8 (Reserved)
- 17:27-10.9 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 and women referral agencies
- 17:27-12.4 Satisfaction of minority and women obligations

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 was reinforced and expanded by an act of the Legislature, signed into law by the Governor, June 23, 1975. The statute, N.J.S.A. 10:5-31 et seq., (P.L. 1975, c.127) provides that no public works contracts can be awarded nor any moneys paid until the prospective contractor has agreed to contract performance which complies with an approved affirmative action program. The law applies to each political subdivision and agency of the State and encompasses contracts for goods and services, including professional services and construction contracts.

(b) These rules establish the affirmative action employment practices necessary for public agencies, contractors, subcontractors, and business firms to comply with the equal employment opportunity standards of N.J.S.A. 10:5-31 et seq. To assure effective implementation of the affirmative action requirements of N.J.S.A. 10:5-31 et seq., these rules prescribe procedures designed to minimize administrative paperwork, 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.

Amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Rewrote the section.

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 woman worker who is classified by the public agency compliance officer designated by a public agency who has received delegated authority from the Division, a contractor, subcontractor, union, the State training and employment service, apprentice program, referral agency or other party acceptable to the Division as having experience and skills used in a particular craft or occupation, but lacking the skills to be qualified as a journey worker.

“Certificate of employee information report” means the certificate issued by the Division upon the initial receipt of a properly completed employee information report, Form AA302, from a goods and services contractor, including professional services contractors.

“Construction contract” means any contract entered into by a public agency for the construction, alteration or repair of any building or other public work.

“Construction contractor” means any party that enters into or offers to enter into a construction contract with a public agency.

“Construction project” means the construction, alteration or repair of the specific building or other public work that is the subject of a construction contract.

“Contractor” means any party that enters into or offers to enter into a construction or goods and services contract with a public agency. The term also includes consultants and other providers of professional services.

“Director” means the State official in charge of the Division of Contract Compliance and Equal Employment Opportunity in Public Contracts.

“Division” means the Division of Contract Compliance and Equal Employment Opportunity in Public Contracts established in the State of New Jersey, Department of the Treasury.

“Employee information report” means Form AA302, which requires a breakdown of the goods and services contractor’s workforce.

“Goods and services contract” means any contract entered into by a public agency for the acquisition of materials, equipment, supplies or services, including a contract for professional services.

“Goods and services contractor” means any party, including a provider of professional services, that enters into or offers to enter into a goods and services contract with a public agency.

“Initial Project Workforce Report” means Form AA201, which requires a projected breakdown of the number of all workers per trade and of minorities and women on a construction project.

"Journey worker" means a worker who has been certified by the public agency compliance officer designated by a public agency who has received delegated authority from the Division, a contractor, subcontractor, union, the State training and employment service, apprentice program, referral agency, or other party acceptable to the Division 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, not of Hispanic Origin means persons having origins in any of the black racial groups of Africa.
2. Hispanic means persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
3. Asian or Pacific Islander means persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes Hawaii, Pakistan, Korea, China, Japan, Vietnam, Cambodia and the Philippine Islands and Samoa.
4. American Indian or Alaskan Native means persons having origins in any of the original people of North America and who maintain cultural identification through tribal affiliation or community recognition.

"Public agency" means any State, county, municipality, school districts or other political subdivisions 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. 17:27-3.2 and N.J.S.A. 10:5-36(f).

"Public agency contract" means any construction contract or goods and services contract, including a professional services contract. Included in this definition are contracts qualifying for other exemption from formal bidding requirements. Excluded from this definition are contractual agreements between public agencies.

"Public works contract" means any contract to be performed for or 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 or for the acquisition of materials, equipment, supplies or services with respect to which discrimination in the hiring of persons for the performance of work thereunder or under any subcontract thereunder by reason of race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex is prohibited under N.J.S.A. 10:2-1.

"Subcontractor" means a third party that is engaged by a contractor to perform, pursuant to a subcontract, all or part of the work included in a public agency contract.

"Trainee" means a minority or woman worker who is not eligible for an apprentice program and who is certified by the public agency compliance officer designated by a public agency who has received delegated authority from the Division, a contractor, subcontractor, union, the State training and employment service, apprentice program, referral agency, or other party acceptable to the Division 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 or off-site training program approved by a contractor, subcontractor, public agency compliance officer or the Division.

"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".

Amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Rewrote the section.

SUBCHAPTER 3. GENERAL REQUIREMENTS FOR PUBLIC AGENCIES AWARDING CONTRACTS

17:27-3.1 Awarding of public agency contracts

No public agency shall award a contract or pay money to any contractor or subcontractor which has not agreed and guaranteed to afford equal employment opportunity in performance of the contract in accordance with an affirmative action program and, except with respect to affectional or sexual orientation, approved under the terms established in these rules.

Amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Substituted "shall award a contract or pay money" for "contract shall be awarded by a public agency, nor shall any moneys be paid thereunder"; substituted "equal employment opportunity" for "equal opportunity".

17:27-3.2 Designation of public agency compliance officers

Each public agency shall annually designate an officer or employee, who may be an existing officer or employee, to serve as its public agency compliance officer and shall notify the Division of the designation by January 10 of each year. The public agency compliance officer shall perform the duties prescribed in these rules; shall be responsible for ensuring the agency's compliance with these rules; and shall perform any other liaison and assistance functions as may be requested by the Division.

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.

Recodified from N.J.A.C. 17:27-3.5 and amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Former N.J.A.C. 17:27-3.2, Solicitation of bids, recodified to N.J.A.C. 17:27-3.3.

17:27-3.3 Advertisement for bids and/or solicitation for proposals

Public agencies shall include in any advertisement for the receipt of bids, solicitation and/or requests for proposals for a public contract, the following language: Bidders are required to comply with the requirements of N.J.S.A. 10:5-31 et seq.

Recodified from N.J.A.C. 17:27-3.2 and amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Rewrote the section. Former N.J.A.C. 17:27-3.3, Mandatory bid specification language, recodified to N.J.A.C. 17:27-3.4.

17:27-3.4 Mandatory language for goods and services bid specifications and contracts

(a) A public agency shall include in all bid specifications and contracts for goods and services the language required by N.J.A.C. 17:27-3.6(a). Also, bid specifications and contracts for goods and services, that are not subject to a Federally approved or sanctioned affirmative action program, shall include the following additional language:

1. Each contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

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

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

iii. An employee information report (Form AA302) provided by the Division and distributed to the public agency to be completed by the contractor, in accordance with N.J.A.C. 17:27-4.

2. 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, affectional or sexual orientation or sex. Except with respect to affectional or sexual orientation, 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, affectional or sexual orientation 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, affectional or sexual orientation 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 N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time.

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.

Recodified from N.J.A.C. 17:27-3.3 and amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Rewrote the section. Former N.J.A.C. 17:27-3.4, Mandatory contract language and additional mandatory bid specification language, repealed.

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).

17:27-3.5 Mandatory language for construction bid specifications and contracts

(a) A public agency shall include in all bid specifications and contracts for construction the language required by N.J.A.C. 17:27-3.7(a). Also, all bid specifications and contracts for construction that are not subject to a Federally approved or sanctioned affirmative action program shall include the following additional language:

1. After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Division an initial project workforce report (Form AA201) provided to the public agency by the Division for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7.

2. 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, affectional or sexual orientation or sex. Except with respect to affectional or sexual orientation, 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, affectional or sexual orientation 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, affectional or sexual orientation 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 N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time.

(b) The public agency shall also include in all construction contracts and bid specifications, the language required by N.J.A.C. 17:27-3.7, unless the exemption provided under N.J.A.C. 17:27-7.1 is applicable.

(c) If a subcontractor has a total workforce of four or fewer employees or if a contractor or subcontractor is performing under an existing Federally approved or sanctioned affirmative action program, the contract shall contain only the mandatory language required (a) above, except for the language contained in (a)2iv above.

New Rule, R.2004 d.450, effective December 6, 2004.
See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Former N.J.A.C. 17:27-3.5, Designation of public agency compliance officers, recodified to N.J.A.C. 17:27-3.2.

17:27-3.6 Mandatory bid specification and contract language for employment goal compliance for goods and services

(a) Public agencies shall include in all bid specifications and contracts for goods and services, including contracts for professional services, the following mandatory language for employment goal compliance:

1. The contractor or subcontractor agrees to make good faith efforts to employ minority and women workers consistent with:

i. The applicable county employment goals established in accordance with N.J.A.C. 17:27-5.2; or

ii. A binding determination of the applicable county employment goals determined by the Division, pursuant to N.J.A.C. 17:27-5.2.

2. The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, 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, affectional or sexual orientation 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. In conforming with the applicable employment goals, 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, affectional or sexual orientation or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

New Rule, R.2004 d.450, effective December 6, 2004.
See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

17:27-3.7 Mandatory bid specification and contract language for employment goal compliance for construction contracts

(a) Public agencies shall include in contracts and bid specifications the following mandatory language for employment goal compliance:

1. When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women 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 Division may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by (a)1i and 2 below, as long as the Division is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Division that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the applicable employment goal established in accordance with N.J.A.C. 17:27-7.3. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

- i. 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 business 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 N.J.S.A. 10:5-31 et seq., 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 business days prior to the commencement of construction work, the contractor or subcontractor agrees to attempt to hire or schedule minority and women 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 women workers consistent with the applicable employment goal, the contractor or subcontractor agrees to be prepared to hire or schedule minority and women workers directly, consistent with the applicable employment goal, by complying with the hiring or scheduling procedures prescribed under (a)2 below; and the contractor or subcontractor further agrees to take said action immediately if it determines or is so notified by the Division that the union is not referring minority and women workers consistent with the applicable employment goal.

2. If the hiring or scheduling of a workforce consistent with the employment goal has not or cannot be achieved for each construction trade by adhering to the procedures of (a)1 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:

- i. To notify the public agency compliance officer, the Division, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;

- ii. To notify any minority and women workers who have been listed with it as awaiting available vacancies;

- iii. Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;

- iv. To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided 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;

- v. If it is necessary to lay off any 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 women employees remain on the site consistent with the employment goal; and to employ any minority and women workers laid off by the contractor on any other construction site on which its workforce composition is not consistent with an employment goal established pursuant to rules implementing N.J.S.A. 10:5-31 et seq.;

- vi. To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:

- (1) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, 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 hire or schedule those individuals who satisfy appropriate qualification standards. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience as recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Division. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of these requirements, however, are limited by the provisions of (a)3 below.

- (2) If the contractor's or subcontractor's workforce is consistent with the applicable employment goal, the name of any interested women or minority 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.

(3) If, for any reason, a contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Division.

vii. 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 Division and submitted promptly to the Division upon request.

3. The contractor or subcontractor agrees that nothing contained in (a)2 above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union 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. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (a)2 above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women 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 workers 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 (a)2 above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

4. After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Division an initial project workforce report (Form AA201) provided to the public agency by the Division for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7. The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Division 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/or off-the-job programs for outreach and training of minorities and women.

New Rule. R.2004 d.450, effective December 6, 2004.
See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

17:27-3.8 Emergency purchases

A public agency may award a 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 public agency immediately to award a contract for construction or the delivery of goods and services, including professional services, 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 prior to payment.

New Rule. R.2004 d.450, effective December 6, 2004.
See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

17:27-3.9 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 Division for designation as a State-approved affirmative action construction program. Any public agency program so designated shall exclusively establish the State affirmative action procedures and requirements which implement N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time, as applied to construction contracts and subcontracts involving said public agency.

(b) The Division 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. 17:27-3.5(b). 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 N.J.S.A. 10:5-31 et seq.," and said program establishes an employment goal which is not lower than the applicable goal established by N.J.A.C. 17:27-7.3.

(c) A public agency that seeks to have its program designated as a State-approved program shall submit to the Division a complete description of its program, copies of the relevant forms and administrative and regulatory documents and any other information requested by the Division. Within 60 business days of receiving all necessary information, the Division shall either designate a public agency affirmative action program as State-approved for an initial period of one year or reject said program in accordance with the Division's Standard Operating Procedures. Approval shall be conditioned upon the execution of a Memorandum of Understanding between the Division and the public agency. If an affirmative action program submitted by a public agency is disapproved, the Division shall, state in writing, reasons for the disapproval and allow the public agency to seek reconsideration by making a request, in writing, to the

Division and correcting any defects as stated in the Division's written response.

(d) Any change which a public agency intends to make in a State-approved program shall first be submitted in writing to the Division for approval. The Division shall approve all changes to a State-approved program in writing. Any changes to a State-approved program made without the written approval of the Division shall terminate the State approval.

(e) Within 60 business days prior to the expiration of State approval of a public agency's affirmative action program, the public agency may request renewal of the State's approval for a two-year period, in accordance with the procedures for obtaining initial approval set forth in (d) above. The Division shall evaluate the public agency's compliance with the State-approved program in determining whether the approved designation should be renewed.

(f) The Division may review the operation of any State-approved program, and where appropriate, may issue a written notice of termination. Any such termination shall become effective 60 business days after the written notice of termination and opportunity to cure is issued.

(g) Any construction contractor or subcontractor that submits appropriate evidence, in accordance with N.J.A.C. 17:27-3.5(c), that it is operating under an existing Federally approved or sanctioned affirmative action program to a public agency, including a public agency which is operating under its own State-approved affirmative action construction program, shall be deemed to have satisfied the affirmative action requirements of N.J.S.A. 10:5-31 et seq. The determination of the Division as to what constitutes such appropriate evidence shall be binding on the contractor or subcontractor.

New Rule, R.2004 d.450, effective December 6, 2004.
See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

SUBCHAPTER 4. AFFIRMATIVE ACTION PLAN FOR GOODS AND SERVICES CONTRACTORS AND SUBCONTRACTORS

17:27-4.1 Goods and services contracts, including professional services contracts, subject to affirmative action plan requirements

All contractors shall satisfy the affirmative action plan requirements of these rules.

Amended by R.2004 d.450, effective December 6, 2004.
See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

17:27-4.2 Elements of an affirmative action plan for goods and services contractors

(a) An affirmative action plan for goods and services contractors shall consist of the following elements:

1. Provisions in the goods and services contract, including professional services contracts, containing the language required by N.J.A.C. 17:27-3.4(a) and 3.6;

2. An employee information report AA302, submitted in accordance with N.J.A.C. 17:27-4.3, or a certificate of employee information report issued in accordance with N.J.A.C. 17:27-4.5; or

3. 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.

Amended by R.2004 d.250, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Rewrote the section.

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

(a) Upon awarding a goods and services contract, including a professional services contract, 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 3.6, subject to the following:

1. As a condition to entering into a valid and binding contract, said contractor shall submit to the public agency either appropriate evidence that:

i. The contractor is operating under an existing Federally approved or sanctioned affirmative action program;

ii. The contractor has a certificate of employee information report issued in accordance with this subchapter; or

iii. The contractor has an employee information report AA 302, provided by the Division to the public agency for distribution to and completion by the contractor in accordance with this subchapter.

2. 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)2 and by 3.6.

3. A contractor shall not be eligible to submit an employee information report unless the contractor, in an additional provision to the public agency contract, is able to certify and agree as follows: "The Contractor, 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 N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time; and agrees to submit immediately to the Division a copy of the employee information report."

(b) If a goods and services contractor, including a professional services contractor, refuses to sign a contract because it contains the contract language required by N.J.A.C. 17:27-3.4(a), when it is submitted for signing by the public agency and/or if the contractor has failed to satisfy the condition for entering into a contract required by (a)1 above, the public agency shall rescind the award, and these requirements shall apply to any other contractor which the public agency selects in accordance with applicable contract 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".

Amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Rewrote the section.

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 goods and services subcontractors

A goods and services contractor, including a professional services contractor, shall not enter into a subcontract with a 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.

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.

Amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Rewrote the section.

17:27-4.5 Exemptions to requirement for Affirmative Action Plan for goods and services subcontractors

All subcontractors for goods and services contracts, including professional services contracts, with four or fewer employees shall be exempt from the requirements of this subchapter.

New Rule. R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Former N.J.A.C. 17:27-4.5, Procedures for the issuance and renewal of a certificate of employee information report, recodified to N.J.A.C. 17:27-4.6.

17:27-4.6 Procedures for the issuance and renewal of a certificate of employee information report

(a) A contractor that has submitted an employee information report to a public agency pursuant to N.J.A.C.

17:27-4.3, and any subcontractor that has submitted an employee information report pursuant to N.J.A.C. 17:27-4.4, shall immediately provide a copy of said report to the Division.

(b) The Division shall approve or reject an employee information report (Form AA302) within 40 business 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 employee information report was presented to satisfy the condition required by N.J.A.C. 17:27-4.3. Failure of the Division to so act within 40 business days shall constitute approval of the employee information report. If an employee information report submitted by a contractor or subcontractor is rejected, a contractor or subcontractor may submit a corrected employee information report (Form AA302) to the Division. Upon approval of an employee information report submitted by a goods and services contractor or subcontractor who, prior to its submission, had never received a certificate of employee information report, the Division shall issue to said contractor or subcontractor a certificate of employee information report which shall be valid for three years from the date issued by the Division if the contractor has 50 or more employees and for seven years from the date issued by the Division if the contractor or subcontractor has less than 50 employees.

(c) Additional procedures are as follows:

1. As early as 90 business days prior to the expiration of a certificate of employee information report, a goods and services contractor, including a professional services contractor, may submit an application for renewal of the certificate of employee information report to the Division. Said renewal application, in the form specified by the Division, shall be made available to goods and services contractors, including a professional services contractor, by the Division.

2. In accordance with the form specified by the Division, the goods and services contractor, including a professional services contractor, shall submit, along with its 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 Division, the employment goals under which the contractor 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 Division and, 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 and women employment opportunities in pursuit of the applicable employment goals. Notwith-

standing the content and scope of the procedures which a contractor reports in an employee information report that he or she 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 Division pursuant to this chapter.

3. The Division shall approve or reject an application for renewal of a certificate of employee information report within 60 business days of its submission, and the failure of the Division to so act within 60 business days shall constitute approval of the renewal application. If a renewal application submitted by a contractor is rejected, the Division shall state in writing reasons for the rejection and allow the contractor to seek reconsideration by making a request in writing to the Division. The Division, in its sole discretion, may agree to meet with the contractor. A contractor whose application has been rejected 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 Division of a rejection of a renewal application, which reconsideration has been commenced by the Division on the basis of a contractor's response to its rejection of a renewal application. The Division shall have 60 business days from submission of the revised renewal to approve or reject the revised application. Upon approval of a renewal application, the Division shall issue to the contractor a certificate of employee information report which shall be valid for either three years from the date it is issued by the Division for 50 or more employees or seven years from the date it is issued by the Division for less than 50 employees. 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 Division may issue a temporary certificate of employee information report, valid for a time period less than the time period authorized in (b) and (c) above, but at the time the temporary certificate expires, the Division shall either issue a certificate of employee information report that 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".

Recodified from N.J.A.C. 17:27-4.5 and amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Rewrote the section. Former N.J.A.C. 17:27-4.6. Public agency authority to set time periods, recodified to N.J.A.C. 17:27-4.7.

17:27-4.7 Public agency authority to set time periods

A public agency may require a goods and services contractor, including a professional services contractor, to seek immediate renewal of its certificate of information report if the contractor will be preparing a bid or proposal within 90 business days of the expiration of its certificate or to seek such renewal at the time its certificate is within 90 business 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.

Recodified from N.J.A.C. 17:27-4.6 and amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Former N.J.A.C. 17:27-4.7, Emergency purchases, repealed.

SUBCHAPTER 5. MINORITY AND WOMEN EMPLOYMENT GOAL OBLIGATIONS FOR GOODS AND SERVICES CONTRACTORS AND SUBCONTRACTORS

17:27-5.1 Exemptions

The requirements of this subchapter shall not apply to any goods and services contractor or subcontractor, including professional services contractors and subcontractors, performing under an existing Federally approved or sanctioned affirmative action program which is exempted from the affirmative action plan requirements under N.J.A.C. 17:27-4.3(a), or to any subcontractor which is exempted under N.J.A.C. 17:27-4.5.

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.

Amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Inserted "which is exempted from the affirmative action plan requirements under N.J.A.C. 17:27-4.3(a)" preceding "affirmative action plan" and deleted "N.J.A.C. 17:27-4.1 from the affirmative action plan requirements of" preceding "N.J.A.C. 17:27-4.5."

17:27-5.2 Establishment of goals

(a) The Division shall individually establish the minority and women employment goals for each goods and services contractor or subcontractor, including professional services contractors and subcontractors. The Division shall analyze the types of jobs offered by each goods and services contractor or subcontractor and compare that analysis to the number of qualified minorities and women available by county in 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 goods and services, including professional services, contractor and/or subcontractor submits an employee information report, as required by N.J.A.C. 17:27-4.3, the Division may schedule an orientation and profile visit upon the issuance of a certificate of employee information report to obtain detailed information on which of the occupation classes comprise each of the nine Federal equal employment opportunity (EEO) categories in the goods and services contractor's or subcontractor's workforce. The Division shall compare that information to the availability data for the county in which the goods and services contractor's or subcontractor's offices, plants or distribution centers are located to establish the employment goals based upon the occupational mix within the goods and services contractor's or subcontractor's workforce. When a goods and services contractor or subcontractor has offices, plants or distribution centers located in more than one county, the Division shall establish goals for each county.

(c) The Division shall establish overall goals for goods and services contractors and subcontractors based upon the average of the individually established goals for the EEO categories in which the contractors or subcontractors have employees.

(d) Goods and services contractor and subcontractor submitting an application for renewal of a certificate of employee information report, pursuant to N.J.A.C. 17:27-4.6(c), shall include information detailing the occupational classes that comprise each EEO category within their workforce to provide the Division 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 woman worker submits in writing a request to the Division for a determination of what employment goals should apply for goods and services contractors or subcontractors, the Division shall determine the proper employment goals. Any such employment goal determination by the Division shall be binding on the goods and services contractor or subcontractor.

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).

Amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

In (b), substituted "upon" for "within 30 business days" preceding "orientation and profile visit"; in (c) and (d), deleted "each" preceding "goods".

17:27-5.3 Designation of approved minority referral agencies

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

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.

Recodified from N.J.A.C. 17:27-5.4 and amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Inserted "and women" following "approved minority". Former N.J.A.C. 17:27-5.3, Mandatory contract language for employment goal compliance, repealed.

17:27-5.4 Contractor and subcontractor compliance obligations

A goods and services contractor or subcontractor shall be deemed to be in compliance with the employment goals pursuant to this subchapter, if the contractor or subcontractor is employing minority and women 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 if 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. 17:27-3.6, to achieve the minority and women employment goal percentages established in accordance with this subchapter.

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".

Recodified from N.J.A.C. 17:27-5.5 and amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Amended the N.J.A.C. reference and deleted the remainder of the paragraph starting with "provided, however". Former N.J.A.C. 17:27-5.4, Designation of approved minority referral agencies, recodified to N.J.A.C. 17:27-5.3.

17:27-5.5 Criteria for determining good faith

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

1. Whether the contractor or subcontractor has knowledge of and has considered the general availability of minorities and women having requisite skills in the immediate labor area;

2. Whether the contractor or subcontractor has knowledge of and has considered the percentage of minorities and women in the total workforce in the immediate labor area;

3. Whether, when the opportunity has presented itself, the contractor or subcontractor has considered promoting minority and women employees within its organization;

4. Whether the contractor or subcontractor attempted to hire minorities and women based upon the anticipated expansion, contraction and turnover of its workforce;

5. Whether the contractor or subcontractor has the ability to consider undertaking training as a means of making all job classifications available to minorities and women and whether it has done so;

6. Whether the contractor or subcontractor has utilized the available recruitment resources to attract minorities and women with requisite skills, including but not limited to training institutions, job placement services, referral agencies, newspapers, trade papers, faith-based organizations, and community-based organizations; and

7. Whether the contractor or subcontractor has documented its 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.

Recodified from N.J.A.C. 17:27-5.6 and amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Rewrote the section. Former N.J.A.C. 17:27-5.5. Contractor and subcontractor compliance obligations, recodified to N.J.A.C. 17:27-5.4.

17:27-5.6 (Reserved)

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.

Recodified to N.J.A.C. 17:27-5.5 by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Section was "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

All construction contractors and subcontractors 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.

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. 17:27-3.5 and 3.7; or
2. Any existing Federally approved or sanctioned affirmative action program.

Amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

In (a)1, amended the N.J.A.C. reference.

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

(a) Upon awarding a construction contract, the public agency shall submit to the contractor for signing a contract which contains the contract language required by N.J.A.C. 17:27-3.5(b), except that the language required by N.J.A.C. 17:27-3.5(b) 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 because it contains the contract language required by N.J.A.C. 17:27-3.5(a) and 3.7, when it is submitted for signing by the public agency, then the public agency shall rescind the award and these requirements shall apply to any other contractor which the public agency selects in accordance with applicable contracting laws and procedures.

Amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

In (a), amended the N.J.A.C. references throughout; in (b), inserted "because it contains the contract language required by N.J.A.C. 17:27-3.5(a)" following "refused to sign said contract".

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

A construction contractor operating under a construction contract shall not enter into a subcontract with a construction subcontractor, unless the subcontract 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 (Reserved)

Repealed by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Section was "State-approved public agency affirmative action construction programs".

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

17:27-7.1 Exemption

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 N.J.A.C. 17:27-6; 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 N.J.A.C. 17:27-6.

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

(b) The contractor shall obtain the employment goals from the Division's website at www.state.nj.us/treas/contract-compliance or request the employment goals from the Division after submitting the initial project workforce report to the Division.

(c) During the initial job site meeting or first site monitoring visit, the Division 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 Division shall evaluate compliance with the employment goals by reviewing the utilization of minorities and women as reported in the work hours per trade and the good faith efforts of each construction contractor or subcontractor. The Division shall calculate the work hours per trade based upon information in the monthly project workforce report submitted pursuant to N.J.A.C. 17:27-7.5 and verified by site visits.

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

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).

Amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Rewrote (b) and (d).

17:27-7.4 Financing minority and women worker outreach and training programs

(a) When the total cost of a construction project, that is the subject of one or more construction contracts, entered into by a State agency is equal to or greater than \$1,000,000, or when the total cost of a construction project entered into by any other public agency is equal to or greater than \$2,500,000, the public agency shall allocate one half of one percent of the value of that construction project to the financing of minority and women worker outreach and training programs. If the construction contractor is not in

compliance with the affirmative action goals established for that construction project, the public agency shall pay the outreach and training allocation, either directly or through the affected contractor, to approved training agencies in return for the provision of on-the-job and/or off-the-job outreach and training programs for minorities and women. Such outreach and training programs shall not be limited to the term of the construction project or the minorities and women who may be employed on the construction project. No part of the outreach and training allocation shall be used to pay the salary of any trainee.

(b) The Division may determine that an amount less than one half of one percent of the value of a construction project is sufficient for funding minority and women outreach programs where the contractor is not in compliance with its affirmative action goals and relieve the public agency of its obligation to allocate the full amount to outreach and training programs.

(c) The Division may authorize the reallocation of the one half of one percent training funds back to the agency under the following circumstances:

1. When it determines, upon written request from a public agency, that the full allocation would jeopardize the completion of some aspect of the construction project, provided that the project is at least 80 percent complete and no sanctions have been issued; or

2. When it determines, upon written request from the public agency, that the project is 100 percent complete and no sanctions have been issued.

(d) Off-the-job training programs eligible for the one half of one percent outreach and training fund allocation include programs designed to increase both the skills of trainees in a particular trade or craft and the skills related to contracting work, as well as related academic or remedial education programs. Training agencies are eligible to provide on-the-job and/or off-the-job outreach and training services pursuant to this subchapter if they are public or private training institutions, agencies or organizations approved by the Division.

As amended, R.1978 d.185, effective June 2, 1978.

See: 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).

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".

Recodified from N.J.A.C. 17:27-7.5 and amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Rewrote the section. Former N.J.A.C. 17:27-7.4, Mandatory language for employment goal compliance, repealed.

17:27-7.5 Construction project workforce reports

The Division shall provide to the public agency that has awarded a construction contract initial project workforce reports (Form AA201) to be distributed to the contractor. Each initial project workforce report shall identify the estimated employment requirements, by trade or craft, of the construction contractors and subcontractors for the duration of the construction contract. The Division shall provide construction contractors and subcontractors monthly project workforce reports that must be submitted to the public agency and the Division by the seventh business day of each month. The Division, the public agency compliance officer, construction contractors and subcontractors shall use these project workforce reports in accordance with N.J.A.C. 17:27-3.6, to monitor compliance with the requirements of this subchapter, and the Division and the public agency compliance officer also may use these reports to engage in other related enforcement, compliance and reporting procedures as provided for in N.J.A.C. 17:27-9 and 10.

Recodified from N.J.A.C. 17:27-7.6 and amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Former N.J.A.C. 17:27-7.5, Financing minority and female worker outreach and training programs, recodified to N.J.A.C. 17:27-7.4.

17:27-7.6 (Reserved)

Recodified to N.J.A.C. 17:27-7.5 by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Section was "Project workforce reports".

SUBCHAPTER 8. (RESERVED)

SUBCHAPTER 9. MONITORING PUBLIC AGENCY 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 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 Division to insure compliance with these rules and its affirmative action plan.

Amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

17:27-9.2 Attendance; on-site visits

(a) An official of the Division shall be allowed to conduct on-site visits and/or to attend all project meetings 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 the purpose of determining, in accordance with the Division's standard operating procedures, whether the contractor or subcontractor is complying with the affirmative action plan.

(b) An official of the Division, with reasonable advance notice, shall be allowed to enter the public agency's business facility or facilities for the purpose of determining, in accordance with the Division's standard operating procedures, whether the public agency is complying with the affirmative action rules.

Amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Rewrote the section.

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

17:27-10.1 Scope

(a) The provisions of this subchapter shall apply to contractors and subcontractors, awarded public contracts and public agencies that award public contracts.

(b) The Division and those public agencies to whom it has delegated authority in accordance with N.J.A.C. 17:27-3.9 have the authority to issue sanctions pursuant to this subchapter.

Amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Rewrote the section.

17:27-10.2 Alert notices for contractors and/or subcontractors

The Division or public agency compliance officer designated by a public agency who has received authority from the Division, on its own initiative or in response to an allegation from a public agency compliance officer, or in response to a written complaint or allegation from an interested party, shall investigate the complaint or allegation of violation of this chapter or of an applicable affirmative action plan. If the Division or public agency compliance officer designated by a public agency who has received authority from the Division determines there is substantial probability that a violation is occurring, it may issue a written alert notice to a contractor or subcontractor and provide a copy to the public agency. The alert notice shall explain in sufficient detail the fact 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".

Amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).
Rewrote the section.

17:27-10.3 Correction of alleged violations; violation notice for contractors and/or subcontractors

If the alleged violation explained in the alert notice has not been corrected to the satisfaction of the Division or public agency compliance officer designated by a public agency who has received authority from the Division issuing the notice within three business days after it is received by the contractor or subcontractor, said Division or public agency compliance officer designated by a public agency who has received authority from the Division shall issue a violation notice to said contractor or subcontractor. Said violation notice shall explain in sufficient detail the facts of the continuing violation.

Amended by R.2004 d.450, effective December 6, 2004.
See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).
Rewrote the section.

17:27-10.4 Advisement notices for public agencies

The Division, acting on its own initiative or in response to a written complaint or allegation from an interested party, shall investigate any written complaint or allegation of a violation of this chapter by a public agency. If the Division determines there is a substantial probability that a violation is occurring, it may issue an advisement letter to a public agency. The advisement letter shall explain in sufficient detail the facts of the alleged violation.

New Rule, R.2004 d.450, effective December 6, 2004.
See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).
Former N.J.A.C. 17:27-10.4, Written statements; hearing, recodified to N.J.A.C. 17:27-10.6.

17:27-10.5 Correction of alleged public agency violations; show cause letter

(a) If the alleged public agency violation explained in the letter of advisement has not been corrected to the satisfaction of the Division, the Division may conduct a review or issue a show cause letter to said public agency or refer the matter to the Attorney General's Office for further processing. Said show cause letter shall explain in sufficient detail the facts of the continuing violation.

(b) Within 10 business days of receiving a show cause letter, the public agency shall submit a written statement explaining why it should not be referred to the Attorney General's Office for further resolution. If the Division determines that the public agency has not adequately explained why it is not in violation or if the Division determines that the violation is continuing to occur, then it shall refer said public agency to the Attorney General's Office for further enforcement consistent with N.J.S.A. 10:5-31 et seq.

New Rule, R.2004 d.450, effective December 6, 2004.
See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).
Former N.J.A.C. 17:27-10.5, Requested meetings, recodified to N.J.A.C. 17:27-10.7.

17:27-10.6 Written statements; investigatory conference

(a) After issuing a notice of violation, the Division or public agency compliance officer designated by a public

agency who has received authority from the Division shall notify the alleged violator that it shall submit within seven business days a written statement explaining why it is not in violation of this chapter or the affirmative action plan or an explanation of how it will correct any such violation. If the Division or public agency compliance officer designated by a public agency who has received authority from the Division determines that the contractor or subcontractor has not adequately explained why it is not in violation or if the Division or public agency compliance officer designated by a public agency who has received authority from the Division determines that the violation is continuing to occur, then it shall conduct an investigatory conference to determine whether there is a violation and/or if corrective measures must be taken. The conference may also be conducted to discuss and resolve issues before imposing financial penalties in accordance with N.J.S.A. 10:5-35 and 36. Such investigatory conference shall be conducted within 30 business days of the contractor's and/or subcontractor's submission of its written statement. The Division 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.

Amended by R.1988 d.522, effective November 7, 1988.
See: 20 N.J.R. 1780(a), 20 N.J.R. 2795(b).
Recodified from N.J.A.C. 17:27-10.4 and amended by R.2004 d.450, effective December 6, 2004.
See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).
Rewrote the section. Former N.J.A.C. 17:27-10.6, Reserved, recodified to N.J.A.C. 17:27-10.8.

17:27-10.7 Requested meetings

A meeting with, or technical assistance provided by an official of the Division may be requested by a contractor and/or subcontractor or public agency at any time, whether or not a violation has been alleged.

Recodified from N.J.A.C. 17:27-10.5 and amended by R.2004 d.450, effective December 6, 2004.
See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).
Rewrote the section. Former N.J.A.C. 17:27-10.7, Enforcement; violations, recodified to N.J.A.C. 17:27-10.9.

17:27-10.8 (Reserved)

Recodified from N.J.A.C. 17:27-10.6 by R.2004 d.450, effective December 6, 2004.
See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

17:27-10.9 Enforcement; violations

(a) If the Division determines that a contractor, subcontractor or public agency is in violation of this chapter or the affirmative action plan, it may enforce the obligations of N.J.S.A. 10:5-31, et seq. as implemented by this chapter and the requirement of the affirmative action plan by ordering or taking part in any or all of the remedial actions in (a)1 through 6 below. A public agency acting under delegated authority may also enforce the obligations of the N.J.S.A. 10:5-31 et seq. as implemented by this chapter and the requirement of the affirmative action plan by ordering these remedial actions except with regards to other public agencies.

1. Subject the contractor or subcontractor or public agency to a fine of up to \$1,000 for each violation for each day during which the violation continues, said fine to be collected in a summary manner pursuant to the Penalties Enforcement Law of 1999, N.J.S.A. 2A:58-10 et seq.;

2. Withhold part or all of the contract or subcontract payments then due and owing;

3. Debar 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 Division; 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;

4. Terminate or suspend the construction contract; provided, however, that a contract termination or suspension may only be ordered after the Treasurer or his or her designee, who is not a member of the Division, holds a hearing for the contractor or subcontractor, and the Treasurer, or said designee, determines that a contract termination or suspension would be appropriate;

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

6. The Director of the Division, as the designee of the Treasurer, may enforce in a court of law the provisions of N.J.S.A. 10:5-31, et seq., or join in or assist any enforcement proceeding initiated by any aggrieved person under said Act. A public agency acting under delegated authority also has said enforcement authority except with respect to other public agencies.

Recodified from N.J.A.C. 17:27-10.7 and amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).
Rewrote the section.

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 and other documents to the Division as may be requested by the Division from time to time in order to carry out the purposes of these rules, and public agencies shall furnish such information as may be requested by the Division for conducting a compliance investigation pursuant to N.J.A.C. 17:27-10.

Amended by R.2004 d.450, effective December 6, 2004.
See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

SUBCHAPTER 12. TRAINING AND OUTREACH

17:27-12.1 Assistance

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

Amended by R.2004 d.450, effective December 6, 2004.
See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

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, WIB's (Workforce Investment Boards), Urban League, community action agencies, faith-based organizations, community based organizations, including, but not limited to, urban women centers, hispanic resource centers and displaced homemaker centers, county vocational schools and Workforce Investment Act (WIA) One Stop Career Centers, in order to facilitate the recruitment, referral and training of women and minorities for all employment positions.

Amended by R.2004 d.450, effective December 6, 2004.
See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Rewrote the section.

17:27-12.3 Minority and women referral agencies

The Division shall designate approved minority and women referral, training and outreach agencies for each region. Contractors and subcontractors shall list, as is appropriate, employment opportunities with the minority and women referral agency or agencies designated for its region.

Amended by R.2004 d.450, effective December 6, 2004.
See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).
Inserted "and women" following "minority" throughout.

17:27-12.4 Satisfaction of minority and women obligations

Contractors and subcontractors shall satisfy their minority and women worker outreach and training obligations by complying with the requirements of N.J.A.C. 17:27-5 and 7.

Amended by R.2004 d.450, effective December 6, 2004.
See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).
Amended the N.J.A.C. reference.