

CHAPTER 10

**GOODS AND SERVICES CONTRACTS
FOR SMALL BUSINESSES**

Authority

N.J.S.A. 10:5-36(k) and (o), 52:18A-30(d), 52:25-1 et seq., 52:27H-6(f), 52:32-17 et seq., 52:34-6 et seq., 52:34-12, 52:34-13, 52:27H-6(f), 52:27H-21.24, 52:27C-71(q), 52:27C-73(a), (f) and (h) and Executive Order No. 84(1993).

Source and Effective Date

R.2003 d.382, effective September 4, 2003.
See: 35 N.J.R. 1836(a), 35 N.J.R. 4735(a).

Chapter Expiration Date

Chapter 10, Goods and Services Contracts for Small Businesses, expires on September 4, 2008.

Chapter Historical Note

The expiration date of Chapter 10, Goods and Services Contracts for Small Businesses, Minority Businesses and Female Businesses, was extended by gubernatorial directive from October 13, 1994 to March 31, 1995. See: 26 N.J.R. 4411(a).

Pursuant to Executive Order No. 66 (1978), Chapter 10, Goods and Services Contracts for Small Businesses, Minority Businesses and Female Businesses, was readopted as R.1995 d.224, effective March 30, 1995. See: 27 N.J.R. 52(a), 27 N.J.R. 1811(b).

Pursuant to Executive Order No. 66 (1978), Chapter 10, Goods and Services Contracts for Small Businesses, Minority Businesses and Female Businesses, was readopted as R.1998 d.199, effective March 26, 1998. See: 30 N.J.R. 607(a), 30 N.J.R. 1424(b).

Chapter 10, Contract for Small Businesses, Female Businesses and Minority Businesses, was adopted jointly by the Department of Treasury and the Department of Commerce and Economic Development as new rule by R.1987 d.143, effective March 16, 1987. See: 18 N.J.R. 2306(a), 19 N.J.R. 457(b).

Chapter 10, Contract for Small Businesses, Female Businesses and Minority Businesses was repealed by R.1989 d.481.

Chapter 10, Goods and Services Contract for Small Businesses, Urban Development Enterprises and Micro Businesses, was adopted as emergency rule by R.1989 d.481, effective August 14, 1989. See: 21 N.J.R. 2819(a). Chapter 10, was readopted by R.1989 d.554, effective October 13, 1989. See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Pursuant to Executive Order No. 84(1993), Chapter 10, Goods and Services Contracts for Small Businesses, Minority Businesses and Female Businesses was redesignated and Subchapters 4 and 5 were adopted by R.1994 d.309, effective January 3, 1995. See: 25 N.J.R. 4889(a), 27 N.J.R. 129(a).

Law Review and Journal Commentaries

Battle for state contracts: What process is due in a challenge to a state contract award? Patrick D. Kennedy & Maeve E. Cannon, 180 N.J.Law. 16 (Mag.) (Oct./Nov. 1996).

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SUBCHAPTER 1. PURPOSE, SCOPE AND DEFINITIONS

12A:10-1.1 Purpose and scope

(a) The rules in this chapter are jointly promulgated by the Commerce and Economic Growth Commission (hereinafter, "Commerce Commission") and the Department of the Treasury to implement N.J.S.A. 52:32-17 et seq. and Executive Order No. 84, dated March 5, 1993, to establish a set-aside program that, in part, requires State agencies with contracting authority to make a good faith effort to award 15 percent of State contracts and subcontracts to eligible small businesses. This percentage goal is an overall program goal for each State contracting agency. State contracting agencies are expected to apply their business judgment when establishing set-aside goals for individual contracts.

(b) These rules apply only to State contracts for goods and services awarded by any State contracting agency and are not applicable to the award of State contracts for construction and construction related services.

(c) Applications and questions regarding eligibility as a small business should be addressed to:

Commerce and Economic Growth Commission
Set-Aside and Certification Office
20 West State Street
PO Box 820
Trenton, New Jersey 08625-0820

Questions concerning the award of contracts under these rules should be directed to the State contracting agency issuing the particular contract.

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).
See: 21 N.J.R. 2810(a).

(a): contract award goals of 15 percent, seven percent, and three percent set for small business, urban development enterprise, and micro business, respectively. (b): "urban development enterprise and micro business" replaced "minority and female businesses". (c): cross-references changed. (d): addresses revised. (e): "except where expressly inconsistent with statutory law" added; department names updated. Adopted concurrent proposal, R.1989 d.554, effective November 6, 1989.

See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted with changes.

Amended by R.1994 d.309, effective January 3, 1995.

See: 25 N.J.R. 4889(a), 27 N.J.R. 129(a).

Emergency amendment, R.2003 d.317, effective July 9, 2003 (to expire September 7, 2003).

See: 35 N.J.R. 3689(a).

In (a), inserted ", in part" following "set-aside program that" in the first sentence, amended the language in the second sentence to singular from plural, and deleted "set-aside" following "establishing" in the third sentence; in (c), deleted ", minority business and/or female business" following "small business".

Adopted concurrent amendment, R.2003 d.389, effective September 7, 2003.

See: 35 N.J.R. 3689(a), 35 N.J.R. 4740(a).

Provisions of R.2003 d.317 adopted without change.

12A:10-1.2 Definitions

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

"Bidding threshold" means the dollar limit placed on all public contracting agencies pursuant to N.J.S.A. 52:34-7 to establish when public advertisement of bids is required.

"Contractor" means any party providing goods and/or services or performing or offering to perform under a contract issued by a State contracting agency.

"Cooperative purchasing" means an extension of certain State contracts awarded by the Division of Purchase and Property for the use of either local governing authorities, pursuant to N.J.S.A. 52:25-16.1 et seq., volunteer fire departments, volunteer first aid squads and rescue squads, pursuant to N.J.S.A. 52:25-16.2, county colleges, pursuant to N.J.S.A. 18A:64A-25.9(b), State colleges, pursuant to N.J.S.A. 18A:64-60, or quasi-State agencies, pursuant to N.J.S.A. 52:27B-56.1. Such an award is made as an adjunct to an award of a contract for State agency purchases.

"Delegated purchasing authority" means the authority of a State agency to award contracts below the bid threshold amount pursuant to authority delegated by the Director, Division of Purchase and Property. (See N.J.S.A. 52:25-23.)

"Division of Purchase and Property" means the State agency within the Department of the Treasury which provides centralized purchasing of goods and services for other State departments, pursuant to N.J.S.A. 52:27B-56.

"Goal" means the statutorily determined percentage of contracts awarded by each State contracting agency to eligible small businesses in order to comply with the small business provisions of the Set-Aside Act.

"Invitation for Bids" or "IFB" means the document issued by a State contracting agency to initiate an advertised bidding and contract award process, and includes Requests for Proposals (RFPs) and Requests for Quotations (RFQs). The IFB establishes the contract's terms and conditions, the product and/or service specifications, and the bidding eligibility to businesses approved as small business entities.

"Line item contract" means an award in which a specific one-time purchase of goods or services is established.

"Multi-source contract" means a term contract awarded by the Division of Purchase and Property wherein more than one vendor is awarded a contract in accordance with the provisions of N.J.S.A. 52:34-12.1.

"Registration" means the process by which any business can have its eligibility for participation in the Commerce Commission's small business programs determined.

"Request for Proposals" or "RFP" means the document issued by a State contracting agency to initiate an advertising bidding and contract award process.

"Secretary" means the Chief Executive Officer and Secretary of the Commerce Commission or his or her designee.

"Set-aside contract," for the purposes of construing and applying these rules only, means a contract, specifically designated by a contracting agency as exclusively available for award to a small business.

"Small business" means a business which has its principal place of business in the State, is independently owned and operated, has no more than 100 full-time employees, and has gross revenues that do not exceed \$12 million.

"State contracting agency" means any board, commission, committee, authority, division, department or agency of the State which possesses the legal authority to enter into or award contracts for goods and services including, but not limited to, the following entities except where expressly inconsistent with New Jersey or Federal statutory law:

1. DEPARTMENTS:

Agriculture	Development Authority for Small Businesses, Minorities and Women's Enterprises
Banking and Insurance	Expressway Authority
Personnel	Health Care Facilities Financing Authority
Community Affairs	Highway Authority
Corrections	N.J. Economic Development Authority
Education	N.J. Educational Facilities Authority
Environmental Protection	N.J. Health Care Facilities Financing Authority
Health and Senior Services	N.J. Housing and Mortgage Finance Agency
Human Services	N.J. Transit Corp.
Labor	N.J. Water Supply Authority
Law and Public Safety	Public Broadcasting Authority
Military and Veterans Affairs	Sports and Exposition Authority
State	Turnpike Authority
Transportation	Urban Development Corporation
Treasury	4. COMMISSIONS:
2. COLLEGES:	Beach Erosion Commission
College of New Jersey	Casino Control Commission
Kean University	County and Municipal Government Study Commission
Montclair State University	Commerce and Economic Growth Commission
New Jersey City University	Election Law Enforcement Commission
New Jersey Institute of Technology	Executive Commission on Ethical Standards
Ramapo College of New Jersey	New Jersey Meadowlands Commission
Richard Stockton College of New Jersey	N.J. Commission on Capital Budgeting and Planning
Rowan University	N.J. Racing Commission
Rutgers the State University of New Jersey	North Jersey Water Supply Commission
Thomas A. Edison State College	Passaic Valley Sewer Commission
University of Medicine and Dentistry of New Jersey	Pinelands Commission
William Paterson University of New Jersey	State Commission of Investigation
3. AUTHORITIES:	5. MULTI-STATE AGENCIES:
Board of Public Utilities	Delaware River Basin Commission
Casino Redevelopment Authority	Port Authority of New York and New Jersey

Delaware River Joint Toll Bridge Commission

Delaware River Port Authority

Delaware River and Bay Authority

Atlantic Interstate Low-Level Radioactive Waste Compact

Delaware Valley Regional Planning Commission

Interstate Environmental Commission

Palisades Interstate Park Commission

Waterfront Commission of New York Harbor

6. All other departments, colleges, authorities and commissions that are established or may be established in the future.

“Subcontractor” means a third party that is engaged by a contractor to perform all or part of the goods and/or services included in a contract with the State.

“Target” means the numerical objectives which a State contracting agency establishes, on a contract by contract basis, in order to meet its small business goal.

“Term contract” means an award made by a State contracting agency in which a source of supply for a product or service is established for a specific period of time. A term contract is generally applied when a State contracting agency:

1. Establishes a fixed unit price or discount for items to be purchased thereunder;
2. Provides for some estimated dollar volume or minimum quantities to be purchased; or
3. Provides for the rebidding of any single purchase which exceeds a specified maximum amount.

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

“Waiver of advertising” means an award process authorized by N.J.S.A. 52:34-9 and 52:34-10, which does not require public advertisement and which is subject to approval by the State Treasurer. Whenever possible, competition is sought prior to issuance of a waiver of advertising.

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).
See: 21 N.J.R. 2810(a).

In “Cooperative purchasing”, volunteer entities and colleges added. In “Delegated Purchased Authority”, 2. deleted concerning Director, Division of Building and Construction. “Division of Building and Construction” deleted. “Multi source contract” was “Multiple award contract”. In “Request for Proposals”, “urban development enterprise or micro business” replaced “minority or female businesses”. In “Set-aside contract”, the term “subcontract” deleted and business designations revised. “Vendors with the Division of Building and Construction” deleted. In “Waiver”, statutory authorization revised. Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989. See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

Amended by R.1994 d.309, effective January 3, 1995.

See: 25 N.J.R. 4889(a), 27 N.J.R. 129(a).

Emergency amendment, R.2003 d.317, effective July 9, 2003 (to expire September 7, 2003).

See: 35 N.J.R. 3689(a).

Rewrote the section.

Adopted concurrent amendment, R.2003 d.389, effective September 7, 2003.

See: 35 N.J.R. 3689(a), 35 N.J.R. 4740(a).

12A:10-1.3 (Reserved)

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

(a) and (b) revised; new (c) added; existing (c) redesignated (d); old (d) and (e) deleted; new (e) through (i) added.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989. See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

Repealed by R.1994 d.309, effective January 3, 1995.

See: 25 N.J.R. 4889(a), 27 N.J.R. 129(a).

Formerly “Standards of eligibility for small businesses, urban development enterprises and micro businesses”. See 12A:10-2.1, Standards of eligibility for small businesses, minority businesses and female businesses.

12A:10-1.4 (Reserved)

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

In (a), business designations revised; in (b), “character of its ownership” and “employee or affirmative action reports” deleted from documentation requirements; in (b)2, cross-reference revised.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989. See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

Repealed by R.1994 d.309, effective January 3, 1995.

See: 25 N.J.R. 4889(a), 27 N.J.R. 129(a).

Formerly “Registration procedures for small businesses, urban development enterprises and micro businesses”. See 12A:10-3.1, Certification and registration procedures for small businesses, minority businesses and female businesses.

12A:10-1.5 (Reserved)

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

New (a) added; existing (a) redesignated (b); old (b) deleted.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989. See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

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