

1. Provisions in the construction contract containing language required by N.J.A.C. 17:27-3.4(a) and N.J.A.C. 17:27-7.4; or
2. Any existing Federally approved or sanctioned affirmative action program.

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

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

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

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

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

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

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

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

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

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

**17:27-7.1 Exemptions**

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

**17:27-7.2 (Reserved)**

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

**17:27-7.3 Establishment of goals**

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

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

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

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

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

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

Substantially amended.

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

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

#### **17:27-7.4 Mandatory language for employment goal compliance**

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

(b) When hiring workers in each construction trade, the contractor or subcontractor agrees to attempt in good faith to employ minority and female workers in each construction trade consistent with the applicable employment goal prescribed by N.J.A.C. 17:27-7.3; provided, however, that the affirmative action office may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by 1, 2 and 3 below, as long as the affirmative action office is satisfied that the contractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the affirmative action office, that its percentage of active "card carrying" members who are minority and female workers is equal to or greater than the applicable employment goal prescribed by N.J.A.C. 17:27-7.3, promulgated by the Treasurer pursuant to P.L. 1975, c.127, as amended and supplemented from time to time. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

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

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

1. To notify the public agency compliance officer, affirmative action office, and at least one approved minority referral organization of its manpower needs, and request referral of minority and female workers;
2. To notify any minority and female workers who have been listed with it as awaiting available vacancies;
3. Prior to commencement of work, to request the local construction trade union, if the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, to refer minority and female workers to fill job openings;

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

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

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

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

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

iii. If, for any reason, said contractor or subcontractor determines that a minority individual or a female is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing with the reasons for the determination, maintain a copy in its files, and send a copy to the public agency compliance officer and to the affirmative action office.

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

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

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

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

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.

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

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

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

Substituted "affirmative action office" for "public agency" and added "female".

### 17:27-7.6 Project manning reports

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

---

## SUBCHAPTER 8. ADVISORY BOARDS

### 17:27-8.1 Advisory boards

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

---

## SUBCHAPTER 9. MONITORING PUBLIC WORKS CONTRACTS

### 17:27-9.1 Monitoring public works contracts

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

### 17:27-9.2 Attendance; project meetings

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