

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 and Executive Order No. 84(1993).

Source and Effective Date

R.1998 d.199, effective March 26, 1998.
See: 30 N.J.R. 602(a), 30 N.J.R. 1424(b).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 10, Goods and Services Contracts for Small Businesses, Minority Businesses and Female Businesses, expires on September 22, 2003. See: 35 N.J.R. 1836(a).

Chapter Historical Note

Chapter 10, Small Business Set-Aside, was adopted jointly with the Department of the Treasury as R.1984 d.421, effective October 1, 1984. See: 16 N.J.R. 1958(a), 16 N.J.R. 2683(a).

Chapter 10, Small Business Set-Aside, was repealed and Chapter 10, "Contracts for Small Businesses, Female Businesses and Minority Businesses", was adopted jointly with the Department of the Treasury as R.1987 d.143, effective March 16, 1987. See: 18 N.J.R. 2306(a), 19 N.J.R. 457(b).

Chapter 10, Contracts for Small Businesses, Female Businesses and Minority Businesses, was readopted and Subchapter 2, "Minority and Female Subcontractor Participation in State Construction Contracts" was adopted as Emergency R.1989 d.481, effective August 14, 1989 (expired October 13, 1989). A concurrent readoption and adopted concurrent new rules were filed on October 13, 1989 as R.1989 d.554. See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Subchapter 1, formerly "Goods and Services Contracts for Small Businesses, Urban Development Enterprises and Micro Businesses", was redesignated as "Purpose, Scope and Definitions", Subchapter 2, formerly "Minority and Female Subcontractor Participation in State Construction Contracts", was redesignated as "Set-Aside Eligibility Requirements for Small Businesses, Minority Businesses and Female Businesses" and Subchapters 3, 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).

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: Source and Effective Date.

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 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 subcontracting 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."

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.

"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. The term is applicable in two situations, when defined in conjunction with the Division of Purchase and Property (see N.J.S.A. 52:34-12.1):

1. Where the volume of business is so large or the geographical distances are so great that more than one vendor is necessary to serve the State's needs; or
2. Where the differences between manufacturers' versions of a product are so significant that it is necessary to have a contract with a vendor of each product.

"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" means a contract, specifically designated by a contracting agency as exclusively being 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 or agency of the State which possesses the legal authority to award contracts for goods and services which include the following entities except where expressly inconsistent with statutory law:

1. DEPARTMENTS:
Agriculture

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

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.

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

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

Formerly "Acceptance as a small business, urban development enterprise or micro business". See 12A:10-3.1, Certification and registration procedures for small businesses, minority businesses and female businesses.

12A:10-1.6 (Reserved)

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

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

Business designations 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 "Time for application to register as a small business, urban development enterprise or micro business". See 12A:10-3.2, Time for application to register as a small business, minority business or female business.

12A:10-1.7 (Reserved)

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

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

In heading and (a), business designations revised; in (b)4, reference to Division of Building and Construction deleted.

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.

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

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

Formerly "Procedures for challenging a business registered as a small business, urban development enterprise or micro business". See 12A:10-3.3, Procedures for challenging a business registered as a small business, minority business or female business.

12A:10-1.8 (Reserved)

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

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

Business designations 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 "Obligation to provide information and penalties for failure to provide complete and accurate information".

12A:10-1.9 (Reserved)

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

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

Business designations revised. In (c), "multiple award" language deleted; in (g), business "owned by a black woman" deleted and language concerning Urban Development Corporation Act qualification and 20 full-time employee limitation 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 "Purchase goals".

12A:10-1.10 (Reserved)

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

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

In (a), "August 1" was "June 1" and "current" fiscal year was "next"; in (c), "current year's" was "next" and "October 1" was "July 1".

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.

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

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

Formerly "Set-aside plans".

12A:10-1.11 (Reserved)

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

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

Business designations 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 "Factors in establishing purchasing plans".

12A:10-1.12 (Reserved)

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

12A:10-1.13 (Reserved)

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).
 See: 21 N.J.R. 2810(a).
 Business designations 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 "Set-aside contracts".

12A:10-1.14 (Reserved)

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).
 See: 21 N.J.R. 2810(a).
 Business designations revised.
 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.
 Repealed by R.1994 d.309, effective January 3, 1995.
 See: 25 N.J.R. 4889(a), 27 N.J.R. 129(a).
 Formerly "Purchasing and contracting reports".

12A:10-1.15 (Reserved)

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).
 See: 21 N.J.R. 2810(a).
 In (c), "Division of Development for Small Business and Women and Minority Businesses" added and former business assistance offices 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.
 Repealed by R.1994 d.309, effective January 3, 1995.
 See: 25 N.J.R. 4889(a), 27 N.J.R. 129(a).
 Formerly "Consultation with industry".

12A:10-1.16 (Reserved)

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).
 See: 21 N.J.R. 2810(a).
 Language updated to reflect current rules.
 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 "Delegation of Treasurer's authority".

SUBCHAPTER 2. ELIGIBILITY REQUIREMENTS FOR SMALL BUSINESSES

12A:10-2.1 Standards of eligibility for small businesses

(a) In order to be eligible as a small business, a business must satisfy all of the following criteria:

1. The business must be independently owned and operated, as evidenced by its management being responsible for both its daily and long term operation, and its management owning at least 51 percent interest in the business.
2. The business must be incorporated or registered to do business in the State and have its principal place of business in New Jersey, defined as such when either 51 percent or more of its employees work in New Jersey, as evidenced by the payment of New Jersey unemployment taxes, or 51 percent or more of its business activities take place in New Jersey, as evidenced by its payment of income or business taxes.
3. The business must be a sole proprietorship, partnership or corporation with 100 or fewer employees in full-time positions, not including:
 - i. Seasonal and part-time employees employed for less than 90 days, if seasonal and casual part-time employment are common to that industry; and
 - ii. Consultants employed under other contracts not related to the goods and services which are the subject of the specific contract for which the business wants to be eligible as a small business.
4. The business must have gross revenues that do not exceed \$12 million.
 - i. Gross revenues of a business which has been in business for three or more completed years means the revenues of the business its last three completed tax years divided by three.
 - ii. Gross revenues of a business which has been in business for less than three complete tax years means the revenues for the period the business has been in business divided by the number of weeks in business, multiplied by 52.
 - iii. Gross revenues of a business which has been in business three or more complete tax years but has a short year as one of those years means the receipts for the short year and the two full years divided by the

number of weeks in the short year and the two full years, multiplied by 52.

(b) In addition to (a) above, the Commerce Commission may limit participation in its small business set-aside programs to businesses whose individual owners do not exceed \$750,000 in personal net worth.

(c) Eligibility is formalized by the Commerce Commission's registration and approval processes.

(d) Small businesses will be registered in one of the following three categories:

1. Small businesses whose gross revenues do not exceed \$500,000;
2. Small businesses whose gross revenues do not exceed \$5 million; or
3. Small businesses whose gross revenues do not exceed \$12 million.

Recodified from 12A:10-1.3 and 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.

12A:10-2.2 Obligation to provide information and penalties for failure to provide complete and accurate information

(a) Applicants under these rules shall accurately and honestly supply all information required by the Commerce Commission.

(b) When a business has been approved as an eligible small business, on the basis of false information knowingly supplied by the business and the business has been awarded a State contract or a subcontract thereto, the Secretary, after notice and opportunity for a contested case hearing pursuant to N.J.S.A. 52:14B-10 and N.J.A.C. 1:1, shall:

1. Assess the business any difference between the contract amount and what the State's cost would have been if the contract had not been awarded in accordance with the provisions of N.J.S.A. 52:32-17 et seq.;
2. Assess the business a penalty in the amount of not more than 10 percent of the amount of the contract or subcontract involved; and
3. Order the business ineligible to transact any business with a State contracting agency for a period of not less than three months and not more than 24 months.

(c) Any business approved by the Commerce Commission as a small business shall immediately apprise the Commerce Commission of any circumstances which might affect the eligibility of the business under these rules.

(d) The failure of a business to report any such changed circumstances, or the intentional reporting of false information, shall disqualify the business for inclusion on any vendors list under these rules and may subject the business to adverse action by contracting agencies and/or the Attorney General.

New Rule, 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 (b) and (c), deleted minority and gender references.

12A:10-2.3 (Reserved)

New Rule, R.1995 d.224, effective May 1, 1995.

See: 27 N.J.R. 52(a), 27 N.J.R. 1811(b).

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

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

Section was "Right to hearing upon denial of contract"

12A:10-2.4 through 12A:10-2.7 (Reserved)

Recodified to 12A:10A by R.1994 d.310, effective January 3, 1995.

See: 25 N.J.R. 4461(b), 27 N.J.R. 135(a).

12A:10-2.8 (Reserved)

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 new rule R.1989 d.481 readopted with changes.

Repealed by R.1994 d.310, effective January 3, 1995.

See: 25 N.J.R. 4461(b), 27 N.J.R. 135(a).

Formerly "Obligation to provide information and penalties for failure to provide complete and accurate information".

12A:10-2.9 (Reserved)

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 new rule R.1989 d.481 readopted with changes.

Repealed by R.1994 d.310, effective January 3, 1995.

See: 25 N.J.R. 4461(b), 27 N.J.R. 135(a).

Formerly "Subcontracting targets".

12A:10-2.10 (Reserved)

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 new rule R.1989 d.481 readopted with changes.

Repealed by R.1994 d.310, effective January 3, 1995.

See: 25 N.J.R. 4461(b), 27 N.J.R. 135(a).

Formerly "Submission of subcontracting information".

12A:10-2.11 (Reserved)

Repealed by R.1994 d.310, effective January 3, 1995.

See: 25 N.J.R. 4461(b), 27 N.J.R. 135(a).

Formerly "Severability".

12A:10-2.12 (Reserved)

Repealed by R.1994 d.310, effective January 3, 1995.

See: 25 N.J.R. 4461(b), 27 N.J.R. 135(a).

Formerly "Review".

SUBCHAPTER 3. REGISTRATION

12A:10-3.1 Registration procedures for small businesses

(a) Registration procedures established by the Commerce Commission are as follows:

1. Any business which seeks to register as a small business must apply to the Commerce Commission and pay any applicable fees. For these purposes, the Commerce Commission shall prepare a Vendor Registration Form. This form shall be available from the Commerce Commission and the State contracting agencies.

2. As part of its application to the Commerce Commission, a business shall reasonably document its principal place of business, independent status, number of employees, and its gross revenues. Where available, this documentation should include appropriate forms or reports otherwise submitted to or issued by State and Federal agencies, such as employee reports filed with the New Jersey Department of Labor or certificates of incorporation issued by the New Jersey Department of State.

3. If an applicant fails to complete fully the Vendor Registration Form, registration may be delayed or denied.

4. If an applicant knowingly supplies incomplete or inaccurate information, the applicant shall be disqualified under these rules and may be subject to other penalties described in N.J.A.C. 17:13-2.2 (12A:10-2.2).

5. When an application for registration as a small business is approved by the Commerce Commission, the Commerce Commission will issue the newly registered business an approval notice and add it to the Commerce Commission's small vendor lists.

6. State contracting agencies will utilize these lists in confirming eligibility for set-aside contracts and subcontracts and in reporting progress toward established goals.

Recodified from 12A:10-1.4 and 1.5 and amended by R.1994 d.309, effective January 3, 1995.

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

Amended by R.1995 d.224, effective May 1, 1995.

See: 27 N.J.R. 52(a), 27 N.J.R. 1811(b).

Amended by R.1997 d.24, effective January 6, 1997.

See: 28 N.J.R. 1184(a), 29 N.J.R. 146(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.

12A:10-3.2 Time for application to register as a small business

(a) A business may apply to the Commerce Commission at any time to be registered as a small business and to be placed on the appropriate vendor list.

(b) If a business is to be eligible to bid on a specific set-aside contract or participate in the subcontracting target programs for the purposes of these rules, it must be registered as a small business by the Commerce Commission on

the date the bid or bid proposal is received and opened by the State contracting agency.

Recodified from 12A:10-1.6 and 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 (b).

12A:10-3.3 Procedures for challenging a business registered as a small business

(a) The qualification under these rules of a business on a vendors list as a small business may be challenged by any other business on that State vendors list or by any of the State contracting agencies subject to these rules.

1. A registration challenge shall be made in writing to the Set-Aside and Certification Office of the Commerce Commission, setting forth the factual basis for the challenge. The Commerce Commission shall provide a copy of the challenge and a notice granting the opportunity for a hearing to the challenged business. Where a particular contract is at issue, the Commerce Commission shall also provide a copy of the challenge to the contracting agency.

2. A registration challenge to the Commerce Commission may concern only the qualification of a business under these rules as a small business. Any challenge to a business's qualifications to perform a contract shall be referred to the appropriate State contracting agency.

(b) When the Commerce Commission receives a challenge, upon request of the business whose registration is at issue, the Commerce Commission shall conduct a hearing on the matter as follows:

1. The Commerce Commission shall notify all interested parties of the time and place of the hearing, and of the right to attend and be represented at the hearing.

2. The burden of proof lies with the challenger. However, the Commerce Commission may use its own resources to ascertain the validity of a challenge and the status of a business.

3. The hearing will be conducted by the designee of the Secretary. This designee will issue a written report to the Secretary within four working days following the close of the hearing.

4. At the discretion of the Secretary's designee, participants at the hearing may be permitted to file written exceptions to the hearing officer's report no later than two working days from the issuance of the report.

5. Thereafter, the Secretary shall issue a final decision on the challenge and notify the parties by certified letter.

6. A challenge to a business's eligibility shall not stay the contract award process.

Recodified from 12A:10-1.7 and 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).
 Substituted "Commission" for "Department" throughout.

SUBCHAPTER 4. SET-ASIDE CONTRACTING AND SUBCONTRACTING PROGRAM

12A:10-4.1 Set-aside program goals and procedures

(a) Each State contracting agency, consistent with its contracting authority, shall establish and administer a set-aside program which provides for at least 15, or the established goal pursuant to the Set-Aside Act, N.J.S.A. 52:32-17 et seq., whichever is greater, percent of the dollar value of its contracts to be awarded to eligible small businesses, as follows: at least five percent shall be awarded to small businesses whose gross revenues do not exceed \$500,000; at least an additional five percent shall be awarded to small businesses whose gross revenues do not exceed \$5 million; and at least an additional five percent shall be awarded to small businesses whose gross revenues do not exceed \$12 million.

1. Percentages shall be measured by the total dollar value of all such set-aside contracts in comparison to the total dollar value of all publicly advertised contracts awarded by the agency within a fiscal year.

2. The State contracting agencies shall designate specific contracts for each of the three set-aside categories.

(b) Each State contracting agency shall establish written procedures and maintain records as necessary to define, document and report its good faith efforts to attain the established set-aside contracting goals, including contracts executed under its bidding threshold, as established by N.J.S.A. 52:34-7 et seq. The set-aside procedures shall include the following provisions:

1. The State contracting agency shall review its schedule of contracting opportunities and establish a method of determining which upcoming contracts will be offered as part of the agency's set-aside program.

i. A contract may be considered suitable for set-aside whenever the contracting agency can establish a reasonable expectation that bids may be obtained from at least three qualified eligible businesses capable of furnishing the specified products or services.

ii. The designation as a set-aside contract shall be made prior to public advertisement for bids.

(c) When a State contracting agency has made a determination that a contract is suitable for set-aside purposes, the following provisions apply:

1. Public advertisement of the set-aside contracting opportunity shall be consistent with the contracting agency's standard bidding procedures and may be supplemented by special notification efforts to maximize participation.

2. Invitations for bids shall be confined to either small businesses whose gross revenues do not exceed \$500,000 or small businesses whose gross revenues do not exceed \$5 million or small businesses whose gross revenues do not exceed \$12 million, and bids from other bidders shall be rejected.

3. The State contracting agency shall reject all bids and withdraw the designation as a set-aside contract when the agency determines that acceptance of the lowest responsive bid would result in the payment of an unreasonable price or in a contract that is otherwise unacceptable pursuant to that agency's contracting statutes and rules.

4. The State contracting agency shall notify all participating bidders of the bid cancellation, stating the reasons for the cancellation and the agency's intent to re-solicit bids on an unrestricted basis.

5. The award of any contract designated as a set-aside contract shall be made in accordance with the agency's contracting statutes, rules and procedures.

Amended by R.1995 d.224, effective May 1, 1995.

See: 27 N.J.R. 52(a), 27 N.J.R. 1811(b).

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

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

Rewrote (a) and (c) and deleted (d).

Administrative correction.

See: 35 N.J.R. 3862(a).

12A:10-4.2 Subcontracting target program and procedures

(a) When it deems appropriate, any State contracting agency, consistent with its contracting authority, may establish and administer a subcontracting target program in lieu of or as a supplement to the set-aside program.

(b) Each State contracting agency shall establish written procedures and maintain records as necessary to define, document and report subcontracts awarded pursuant to this program. The procedures shall include the following provisions:

1. The State contracting agency shall review its schedule of contracting opportunities and establish a method of determining which upcoming contracts are suitable for the subcontracting target program.

i. Factors to be considered when making the determination that a particular contract is suitable for inclusion in this program include, but are not limited to, the total dollar amount of the project and subcontracting opportunities on the project.

ii. The designation of a particular contract as part of the subcontracting target program shall be made prior to the public advertisement for bids or established pursuant to addenda.

(c) Nothing in these rules shall be construed as requiring or permitting a State contracting agency to depart from its statutory restrictions or documented policies governing the percentage of a contract which may be subcontracted.

(d) The bid documents shall contain a detailed notice to bidders advising of the following:

1. The bidding package includes a small business utilization form or forms considered a material and mandatory requirement which must be completed and included as part of the bidder's proposal.

2. Failure to complete and submit the form or forms may render the proposal non-responsive and thus subject to rejection.

3. The small business utilization plan will be used by the State contracting agency to determine, prior to award, whether the bidder's proposal is reasonably designed to meet the targets.

(e) A bidder's proposal failing to identify contracts for small businesses shall include documentation of the bidder's good faith efforts to meet the subcontracting targets. Documentation may include a record of the bidder's attempts to contract with eligible businesses and the reasons for failure to meet the subcontracting targets, or a certification that the bidder does not intend to subcontract any work.

(f) The State contracting agency shall review this documentation in order to determine whether the bidder made reasonable efforts to solicit and award contracts to eligible small businesses.

(g) The State contracting agency will consider the bidders actions taken pursuant to N.J.A.C. 17:14-4.3 (12A:10A-4.3) in determining whether reasonable efforts were made by the bidder to solicit and award subcontracts to eligible small businesses.

(h) The award of any contract pursuant to this program shall be made, in accordance with the State contracting agency's applicable statutes, rules and procedures, to the bidder whose proposal meets or demonstrates a genuine good faith effort to meet the targets.

Emergency New Rule, R.2003 d.317, effective July 9, 2003 (to expire September 7, 2003).
See: 35 N.J.R. 3689(a).

Former N.J.A.C. 12A:10-4.2, Good faith efforts of bidders; requirements, recodified to N.J.A.C. 12A:10-4.3.

12A:10-4.3 Good faith efforts of bidders; requirements

(a) The following actions shall be taken by a bidder in establishing a good faith effort to solicit and award subcontracts to eligible small businesses, as established in the RFP:

1. The bidder shall attempt to locate qualified potential small business subcontractors;

2. The bidder shall request a listing of small businesses from the State contracting agency if none are known to the bidder;

3. The bidder shall keep a record of its efforts, including the names of businesses contacted and the means and results of such contacts;

4. The bidder shall provide all potential subcontractors with detailed information regarding the specifications; and

5. The bidder shall attempt, wherever possible, to negotiate prices with potential subcontractors submitting higher than acceptable price quotes.

(b) Bidders shall maintain adequate records to document their efforts.

Amended by R.1995 d.224, effective May 1, 1995.

See: 27 N.J.R. 52(a), 27 N.J.R. 1811(b).

Emergency recodification from N.J.A.C. 12A:10-4.2 and amended, R.2003 d.317, effective July 9, 2003 (to expire September 7, 2003).
See: 35 N.J.R. 3689(a).

In (a), deleted gender and minority references. Former N.J.A.C. 12A:10-4.3, Good faith efforts of bidders; requirements, recodified to N.J.A.C. 12A:10-4.4.

12A:10-4.4 Exemptions from set-aside program

In those circumstances where Federal law or regulations permit or require a procurement procedure other than those prescribed herein, the State contracting agency may follow the Federal procedures notwithstanding the provisions of these regulations, provided that the State contracting agency issues a written declaration that such Federal laws are in effect.

Emergency recodification from N.J.A.C. 12A:10-4.3, R.2003 d.317, effective July 9, 2003 (to expire September 7, 2003).

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

SUBCHAPTER 5. PLANNING, REPORTING AND REVIEW

12A:10-5.1 Planning

(a) No later than 60 calendar days before the start of each fiscal year, each State contracting agency shall submit to the Secretary a plan for the coming fiscal year to comply with the programs established by these rules. The Commerce Commission will assist any State contracting agency in the development of its plan, upon request.

1. The plan shall include a list of all known procurements and reprocurments scheduled to be bid during that fiscal year, including the following information:

- i. The name of the products or services covered by the contract;
- ii. The expiration date of the current contract and the estimated date of the public bid;
- iii. The term or duration of the contract;
- iv. The estimated dollar value of the contract or the amount expended to date on the current contract;
- v. The contracts that the agency intends to set aside in each of the three small business set-aside categories set forth in N.J.A.C. 12A:10-4.1 (17:13-4.1);
- vi. The contracts which have been identified as appropriate for its set-aside programs and the contracts which have been identified as appropriate for its target programs;
- vii. In addition to the requirements in (a)1i through vi above, the Division of Purchase and Property shall identify those multi-source term contracts included in the Cooperative Purchasing Program and indicate which of the multi-source contracts will be set-aside in their entirety and which will contain select line items set aside for small businesses.

2. Each State contracting agency, with the exception of the Division of Purchase and Property, shall include a list of those products and services typically purchased under the bidding threshold, identifying those deemed appropriate for inclusion in the small business programs.

- i. Each State department served by the Division of Purchase and Property shall provide the Department of Commerce with a list of those products and services typically purchased pursuant to its delegated purchasing authority, or with a list of those products and services purchased during the preceding fiscal year under that authority.

3. Each State contracting agency shall list contracts awarded as the result of Waivers of Advertising.

4. Each State contracting agency shall quarterly update its small business program plans with a list of line item contracts not included in its initial procurement schedules, containing the same information required by N.J.A.C. 17:13-5.1(a)1 (12A:10-5.1(a)1).

5. Copies of contracting plans shall be available for review during normal business hours in the office of each State contracting agency.

(b) The Commerce Commission shall review the plan to determine whether it is reasonably designed to achieve the State contracting agency's goal of awarding five percent of its total contracting dollars to small businesses whose gross revenues do not exceed \$500,000, an additional five percent of its total contracting dollars to small businesses whose gross revenues do not exceed \$5 million, and an additional five percent of its total contracting dollars to small businesses whose gross revenues do not exceed \$12 million.

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

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

Substituted references to small business programs for set-aside; in (a), rewrote 1v through vii and 3; rewrote (b).

12A:10-5.2 Reporting requirements

(a) Within 30 calendar days of the end of each State contracting agency's fiscal quarters, the agency shall file with the Commerce Commission a report containing the following information prescribed by the Commerce Commission:

1. The total number and dollar value of all contracts advertised and awarded, a list of the bidders awarded contracts including the amount of the contract award, delineating which of these contracts and the percentages that were advertised and awarded as set-aside contracts in each of the three categories of small businesses set forth in N.J.A.C. 12A:10-4.1 (17:13-4.1);

- i. The State contracting agencies, in determining compliance with the set-aside goals for the three categories, shall count only those contracts awarded as a result of set-aside designations and only for the categories designated. If a registered small business is awarded a contract that was not set aside, that contract cannot be counted as a set-aside award but shall be counted toward attainment of the agency's overall goal.

- ii. The Division of Purchase and Property shall include a list of multi-source contracts which contain lines set aside for each of the three categories of small businesses, and those contracts extended through the Cooperative Purchasing Program.

2. The total number and dollar value of all advertised and awarded contracts which included subcontract targets, setting forth the number and dollar value of subcontracts awarded to each of the three categories of small businesses, respectively.

3. Each State department served by the Division of Purchase and Property shall report the total number and dollar value of all purchases made under its delegated purchasing authority, delineating purchases and percentages made from each of the three categories of small businesses, respectively.

4. A description of efforts made by the State contracting agency to conduct outreach and educational programs for potential eligible small businesses and any efforts made to assist the business community in achieving the objectives of these programs.

(b) Within 90 calendar days of the close of each State contracting agency's fiscal year, the agency shall file with the Commerce Commission, in a format prescribed by the Commerce Commission, an analysis of actual contracting dollars paid to all contractors and actual contracting dollars paid to each of the three categories of small businesses, pursuant to set-aside contracts and subcontracts.

(c) All reports required by this subchapter shall be considered public records for the purposes of N.J.S.A. 47:1A-1 et seq. and shall be retained as part of the permanent records of the State contracting agency and the Commerce Commission.

Amended by R.1995 d.224, effective May 1, 1995.

See: 27 N.J.R. 52(a), 27 N.J.R. 1811(b).

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

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

Substituted references to each of the three categories for minority business and female business throughout; in (a), rewrote 1 and 2.

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

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

12A:10-5.3 Annual review

The Secretary and the Treasurer of the State of New Jersey shall undertake an annual review of the operation and report to the Governor on the need for continuation or modification of the small business programs contained in this chapter. This report shall be based upon the reports submitted to the Commerce Commission and any other information deemed appropriate. The report will include performance data on compliance and deficiencies for each contracting agency and be publicly distributed as deemed appropriate.