

CHAPTER 10A**MINORITY AND FEMALE CONTRACTOR AND
SUBCONTRACTOR PARTICIPATION IN
STATE CONSTRUCTION CONTRACTS****Authority**

N.J.S.A. 10:5-36(k) and (o), 52:17 et seq., 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.200, effective March 26, 1998.
See: 30 N.J.R. 603(a), 30 N.J.R. 1425(a).

Executive Order No. 66(1978) Expiration Date

Chapter 10A, Minority and Female Contractor and Subcontractor Participation in State Construction Contracts, expires on March 26, 2003.

Chapter Historical Note

Subchapters 1, 2 and 3, were recodified from N.J.A.C. 12A:10-2, Minority and Female Subcontractor Participation in State Construction Contracts, and Subchapters 4 and 5 were adopted as new rules by 1994 d.310, effective January 3, 1995. See: 25 N.J.R. 4461(b), 27 N.J.R. 135(a).

The expiration date of Chapter 10A, Minority and Female Contractor and Subcontractor Participation in State Construction Contracts, 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 10A, Minority and Female Contractor and Subcontractor Participation in State Construction Contracts, was readopted as R.1995 d.225, effective March 30, 1995. See: 27 N.J.R. 54(a), 27 N.J.R. 1814(a).

Pursuant to Executive Order No. 66(1978), Chapter 10A, Minority and Female Contractor and Subcontractor Participation in State Construction Contracts, was readopted as R.1998 d.200, effective March 26, 1998. See: Source and Effective Date.

Cross Reference

Special rules regarding disputes arising under the New Jersey Lemon Law, see N.J.A.C. 1:13A.

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**SUBCHAPTER 1. PURPOSE, SCOPE AND
DEFINITIONS****12A:10A-1.1 Purpose and scope**

(a) The rules in this chapter are jointly promulgated by the Department of Commerce and Economic Development (hereinafter, "Department of Commerce") 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 requires State agencies with contracting authority to make a good faith effort to award seven percent of public construction contracts and subcontracts to eligible minority-owned businesses and three percent of public construction contracts and subcontracts to eligible female-owned businesses. These percentage goals are overall program goals for each State contracting agency. State contracting agencies are expected to apply their business judgment when establishing set-aside subcontracting goals for individual contracts.

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

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

Set-Aside and Certification Office
Department of Commerce and Economic Development
20 West State Street, PO Box 835
Trenton, New Jersey 08625-0835

New Rule, R.1994 d.310, effective January 3, 1995.
See: 25 N.J.R. 4461(b), 27 N.J.R. 135(a).

12A:10A-1.2 Definitions

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

“Certification” means that a minority-owned or woman-owned business has been authenticated as being at least 51 percent owned and controlled either by minorities or females for participation in State programs requiring certification, as judged and determined by the Set-Aside and Certification Office of the Department of Commerce and Economic Development.

“Commissioner” means the Commissioner of the Department of Commerce and Economic Development or his or her designee.

“Construction contract” means any contract to which the State or any State contracting agency is a party involving any construction, renovation, reconstruction, rehabilitation, alteration, conversion, extension, demolition, repair or other changes or improvements of any kind whatsoever of any public structure or facility or highway. The term also includes contracts for consultant services, the supervision, inspection and other functions incidental to actual construction.

“Consultant” means an architect, engineer, construction manager, or other consultant providing technical and professional services in support of a design or construction or highway project.

“Contractor” means any party performing or offering to perform a construction contract or consultant contract, or any party providing materials or goods used to perform a construction contract issued by a contracting agency of the State of New Jersey.

“Delegated purchasing authority” means the authority of a State agency to award contracts on its own pursuant to authority delegated to it by the Director, Division of Building and Construction, as established in N.J.S.A. 52:34-7.

“Division of Building and Construction” means the State agency within the Department of the Treasury which provides a centralized design and construction contract procurement and administration service for other State agencies pursuant to N.J.S.A. 52:18A-151 et seq.

“Female business” means a business which has its principal place of business in the State, is independently owned and operated and is at least 51 percent owned and controlled by women.

“Minority business” means a business which has its principal place of business in the State, is independently owned and operated and is at least 51 percent owned and controlled by persons who are African Americans, Latinos or Asian Americans, defined as follows:

1. African American: a person having origins in any of the black racial groups of Africa.
2. Latino: a person of Mexican, Puerto Rican, Cuban, Central or South American, Caribbean Island or other Spanish culture or origin, regardless of race.
3. Asian American: a person having origins in any of the original peoples of the Far East, Southeast Asia, and Indian subcontinent, Hawaii or the Pacific Islands.

“Non-remedial targets” means numerical objectives which a State contracting agency may establish in lieu of or as a supplement to the remedial goals to ensure that discrimination is not presently occurring on publicly funded construction projects.

“Registration” means the process by which any business can have its eligibility for participation in minority and female set-aside determined.

“Remedial goals” means the statutorily determined percentages of contracts awarded by each State contracting agency to eligible minority and female businesses in order to eradicate the effects of past discrimination.

“Set-aside contract” means a contract, or subcontractable portion of a contract when that portion is so allocated, specifically designated by a contracting agency as exclusively available for award to either an eligible minority or female business.

“State contracting agency” means any board, commission, committee, authority or agency of the State which possesses the legal authority to award and make construction contracts and includes the following except where expressly inconsistent with statutory authority:

1. DEPARTMENTS:
 - Agriculture
 - Banking
 - Personnel
 - Commerce, Energy and Economic Development
 - Community Affairs
 - Corrections
 - Military and Veterans Affairs
 - Education
 - Environmental Protection
 - Health
 - Higher Education
 - Human Services
 - Insurance
 - Labor
 - Law and Public Safety
 - 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
 - Commission of Science and Technology and all other departments, colleges, authorities and commissions as may be established in the future.

“Subcontractor” means a third party that is engaged by a contractor to perform all or part of the work or to provide supplies, materials or equipment included in a construction-related contract with a State contracting agency.

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

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.

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

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

Amended by R.1995 d.225, effective May 1, 1995.

See: 27 N.J.R. 54(a), 27 N.J.R. 1814(a).

SUBCHAPTER 2. ELIGIBILITY REQUIREMENTS FOR MINORITY AND FEMALE BUSINESSES

12A:10A-2.1 Standards of eligibility for minority businesses and female businesses

(a) A business may be eligible for designation as a minority business, a female business, or both.

(b) In order to be eligible as a minority or female business, a business must satisfy all of the following criteria:

1. The principal place of business must be in the State;
2. At least 51 percent of the ownership of the business must be by minority or female persons; and
3. Control over the daily and long-term operations of the business must be exercised by one or more of the minority or female owners.

(c) Eligibility is formalized by the Department of Commerce's certification and/or registration and approval processes.

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

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

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

(a) Applicants shall accurately and honestly supply all information required by the Department of Commerce.

(b) When a business has been approved as an eligible female business or minority business on the basis of false information knowingly supplied by the business and the business has been awarded a contract or subcontract on a State construction contract, the Commissioner of the Department of Commerce, after notice and opportunity for a contested case hearing pursuant to N.J.S.A. 52:14B-10 and N.J.A.C. 17:27, 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. In addition, 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 Department of Commerce as a minority business and/or female business shall immediately apprise the Department 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.310, effective January 3, 1995.
See: 25 N.J.R. 4461(b), 27 N.J.R. 135(a).

12A:10A-2.3 Right to hearing upon denial of contract

A bidder or contractor that is denied any contract or the right to bid on any contract because of a determination that it failed to make a good faith effort to solicit and award subcontracts to eligible minority and female businesses shall be entitled to an administrative hearing as provided by N.J.A.C. 17:12-3.1 through 3.6.

New Rule, R.1995 d.225, effective May 1, 1995.
See: 27 N.J.R. 54(a), 27 N.J.R. 1814(a).

SUBCHAPTER 3. CERTIFICATION AND REGISTRATION

12A:10A-3.1 Certification and registration procedures for minority businesses and female businesses

(a) Certification procedures established by the Department of Commerce are as set forth in N.J.A.C. 12A:11. Businesses awarded contracts or subcontracts based on their eligibility as registered minority or female businesses must file an application for certification with the Department of Commerce no later than 60 calendar days after the award of the contract. In accordance with N.J.S.A. 52:27H-21.18, small businesses are not required to be certified.

(b) Registration procedures established by the Department of Commerce are as follows:

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

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

2. When an application for registration as a female or minority business is approved by the Department of Commerce, the Department will issue the newly registered business an approval notice and add it to the Department's female or minority vendors list.

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

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

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

Amended by R.1995 d.225, effective May 1, 1995.

See: 27 N.J.R. 54(a), 27 N.J.R. 1814(a).

Amended by R.1997 d.52, effective February 3, 1997.

See: 28 N.J.R. 1184(b), 29 N.J.R. 447(a).

In (a), deleted reference to December 1, 1995 as an alternative filing deadline.

12A:10A-3.2 Time for application to register as a minority business or female business

(a) A business may apply to the Department of Commerce at any time to be registered as a minority business or female business and to be placed on the appropriate vendors list.

(b) If a business is to be considered as a minority or female business contractor or subcontractor on a specific contract for purposes of these rules, it must apply to the Department of Commerce for purposes of registration no later than one day prior to the deadline for bids being received and opened by the State contracting agency.

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.

Administrative Correction to (c).

See: 21 N.J.R. 3674(b).

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

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

12A:10A-3.3 Procedures for challenging a business registered as a minority business or female business

(a) The qualification under these rules of a business on a vendors list as a minority business or female 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 Department of Commerce, setting forth the factual basis for the challenge. The Department 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 Department shall also provide a copy of the challenge to the contracting agency.

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

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

1. The Department 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 Department may use its own resources to ascertain the validity of a challenge and the status of a business.