

5. Provide vendors and construction contractors with documentation describing the relevant law and rules and, as requested, copies of same;

6. Provide to the Division any information which indicates that a construction contractor or goods and services vendor is not in compliance with equal employment opportunity requirements and fully cooperate in any Division investigation of such contractor or vendor's compliance with these requirements;

7. Provide the Division with such other information as it shall request and as shall be necessary to enable the Division to fulfill its mission;

8. Require construction contractors and vendors to certify that they are in compliance with equal employment opportunity and affirmative action in public contracting requirements by presenting mandatory evidence; and

9. Include in any public contract mandatory language requiring all parties to the contract and any subcontracts thereof to make a good faith effort to provide equal employment opportunity for minorities and women, and further providing that a failure to make good faith efforts to provide equal employment opportunity for minorities and women may result in fines/penalties, suspension/debarment, a determination to lower a construction contractor's aggregate rating or such other action as provided by law.

New Rule, R.2008 d.307, effective October 20, 2008.

See: 40 N.J.R. 3601(a), 40 N.J.R. 6222(a).

Former N.J.A.C. 17:27-3.2, Designation of public agency compliance officers, recodified to N.J.A.C. 17:27-3.3.

Amended by R.2010 d.053, effective April 5, 2010.

See: 41 N.J.R. 3041(a), 42 N.J.R. 723(a).

In (a)2, deleted "establishment and" preceding "implementation"; in (a)3, substituted "bid" for "bids"; in (a)4, inserted "and bid specification"; in (a)6, substituted "contractor or vendor's" for "entity's"; in (a)8, substituted "construction contractors and vendors" for "parties to contracts awarded by the public agency"; inserted "by presenting mandatory evidence" and inserted "and" at the end; in (a)9, substituted "mandatory language" for "a provision" and a period for "; and"; and deleted (a)10.

17:27-3.3 Designation of public agency compliance officers

(a) Each public agency shall annually designate an officer or employee, who may be an existing officer or employee, to serve as its public agency compliance officer and shall notify the Division of the designation by January 10 of each year. Such notice to the Division is required even if the designation from the previous year has not changed. The public agency shall also notify the Division of any changes in the designated public agency compliance officer that may have occurred during the calendar year.

(b) The public agency compliance officer shall perform the duties prescribed in these rules; shall be responsible for ensuring the agency's compliance with these rules; and shall perform any other liaison and assistance functions as may be requested by the Division.

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

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

Substantially amended.

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

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

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

Recodified from N.J.A.C. 17:27-3.2 by R.2008 d.307, effective October 20, 2008.

See: 40 N.J.R. 3601(a), 40 N.J.R. 6222(a).

Former N.J.A.C. 17:27-3.3, Advertisement for bids and/or solicitation for proposals, recodified to N.J.A.C. 17:27-3.4.

Amended by R.2010 d.053, effective April 5, 2010.

See: 41 N.J.R. 3041(a), 42 N.J.R. 723(a).

Inserted designations (a) and (b); and in (a), inserted the second and third sentences.

17:27-3.4 Advertisement for bids and/or solicitation for proposals

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

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

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

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

Recodified from N.J.A.C. 17:27-3.3 by R.2008 d.307, effective October 20, 2008.

See: 40 N.J.R. 3601(a), 40 N.J.R. 6222(a).

Former N.J.A.C. 17:27-3.4, Mandatory language for goods and services bid specifications and contracts, recodified to N.J.A.C. 17:27-3.5.

17:27-3.5 Mandatory language for goods and services bid specifications and contracts (Exhibit A)

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

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

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

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

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

2. During the performance of this contract, the contractor agrees as follows:

i. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that all employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the public agency compliance officer setting forth provisions of this nondiscrimination clause;

ii. The contractor or subcontractor, where applicable, will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;

iii. The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment; and

iv. The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time.

N.J.A.C. 17:27-3.5, Mandatory language for construction bid specifications and contracts, recodified to N.J.A.C. 17:27-3.6. Amended by R.2010 d.053, effective April 5, 2010. See: 41 N.J.R. 3041(a), 42 N.J.R. 723(a).

Section was "Mandatory language for goods and services bid specifications and contracts". In (a)1iii, inserted "electronically" and "through the Division's website,"; and rewrote (a)2iii.

Case Notes

Joint venture's bid and contract set aside due to failure of city to comply with requirement that bids be advertised for at least 10 days prior to date fixed for bid receipt, and joint venture's failure to comply with affirmative action bidding requirements. *Impac Inc. v. City of Paterson*, 178 N.J.Super. 195, 428 A.2d 553 (App.Div.1981), certification denied 87 N.J. 414, 434 A.2d 1089 (1981).

17:27-3.6 Mandatory language for construction bid specifications and contracts (Exhibit B)

(a) A public agency shall include in all bid specifications and contracts for construction the language required by N.J.A.C. 17:27-3.8(a). Also, all bid specifications and contracts for construction that are not subject to a Federally approved or sanctioned affirmative action program shall include the following additional language:

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

2. During the performance of this contract, the contractor agrees as follows:

i. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that all employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the public agency compliance officer setting forth provisions of this nondiscrimination clause;

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

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

Substantially amended.

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

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

Rewrote the section. Former N.J.A.C. 17:27-3.4, Mandatory contract language and additional mandatory bid specification language, repealed. Recodified from N.J.A.C. 17:27-3.4 and amended by R.2008 d.307, effective October 20, 2008.

See: 40 N.J.R. 3601(a), 40 N.J.R. 6222(a).

In the introductory paragraph of (a), updated the N.J.A.C. reference; rewrote (a)2i; and in (a)2ii, inserted a comma following "applicable" and inserted "gender identity or expression, disability, nationality". Former