

SUBTITLE I. NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

CHAPTER 30

ADMINISTRATIVE RULES

Authority

N.J.S.A. 34:1B et seq., specifically 34:1B-5(k) and (l).

Source and Effective Date

R.1990 d.411, effective July 23, 1990.  
See: 22 N.J.R. 1537(a), 22 N.J.R. 2532(a).

Executive Order No. 66(1978) Expiration Date

Chapter 30, Administrative Rules, expires on July 23, 1995.

Chapter Historical Note

Chapter 30, Administrative Rules, became effective December 3, 1974 as R.1974 d.332. See: 6 N.J.R. 455(b), 7 N.J.R. 34(c). Amendments became effective February 7, 1975 as R.1975 d.26. See: 7 N.J.R. 34(b), 7 N.J.R. 122(c). Subchapters 3 and 4 became effective August 24, 1979 as R.1979 d.337. See: 11 N.J.R. 152(b), 11 N.J.R. 530(b). Subchapter 5 became effective June 4, 1981 as R.1981 d.167. See: 12 N.J.R. 356(a), 13 N.J.R. 378(d). Subchapter 2 was readopted effective July 9, 1981 as R.1981 d.245. See: 13 N.J.R. 248(c), 13 N.J.R. 465(e). Further amendments became effective December 7, 1981 as R.1981 d.457. See: 13 N.J.R. 625(b), 13 N.J.R. 898(a). Further amendments became effective July 5, 1983 as R.1983 d.262. See: 15 N.J.R. 429(a), 15 N.J.R. 1105(d). Subchapter 6 became effective July 2, 1984 as R.1984 d.263. See: 16 N.J.R. 704(a), 16 N.J.R. 1808(b). Subchapters 3 and 4 were readopted effective July 16, 1984 as R.1984 d.320. See: 16 N.J.R. 1344(a), 16 N.J.R. 2168(a). Further amendments became effective August 6, 1984 as R.1984 d.321. See: 16 N.J.R. 1064(a), 16 N.J.R. 2169(a). Further amendments became effective October 7, 1985 as R.1985 d.499. See: 17 N.J.R. 1872(b), 17 N.J.R. 2454(a). Subchapter 7 became effective October 7, 1985 as R.1985 d.500. See: 17 N.J.R. 1750(a), 17 N.J.R. 2454(b). Subchapter 2 was repealed and New Rules became effective August 4, 1986 as R.1986 d.311. See: 18 N.J.R. 1094(b), 18 N.J.R. 1614(a).

Pursuant to Executive Order No. 66(1978), Chapter 30 was readopted as R.1990 d.411. See: Source and Effective Date. As a part of R.1990 d.411, but effective August 20, 1990, Subchapter 4, Targeting of Authority Assistance, was repealed and new rules on the subject were adopted as Subchapter 5. Existing Subchapters 2, 3, 5 and 6 were recodified as Subchapters 6, 4, 2 and 3, respectively. Subchapter 7, Private Activity Bonds Real Location and Carry Forward, was repealed. See: 22 N.J.R. 1537(a), 22 N.J.R. 2532(a). See, also, section annotations.

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## SUBCHAPTER 1. GENERAL PROVISIONS

**19:30-1.1 Purpose and objectives**

(a) These rules are established to effectuate, and shall be applied so as to accomplish, the general purposes of "The New Jersey Economic Development Authority Act" (chapter 80, P.L. 1974; C.34:1B-1 et seq.), and the following specific objectives:

1. To foster and promote the economy of the State;
2. To increase opportunities for gainful employment and to improve living conditions;
3. To assist in the economic development or redevelopment of political subdivisions within the State;
4. To contribute to the prosperity, health and general welfare of the State and its inhabitants by making available financial and other assistance to induce manufacturing, industrial, commercial and other employment-promoting enterprises to locate, remain, or expand within the State; and
5. To protect and enhance the quality of the natural environment.

Amended by R.1990 d.411, effective August 20, 1990.

See: 22 N.J.R. 1537(a), 22 N.J.R. 2532(a).

Authority's general objectives clarified.

**19:30-1.2 Definitions**

The following words and terms, when used in this chapter and in N.J.A.C. 19:31, shall have the following meanings unless the context clearly indicates otherwise.

"Act" means the New Jersey Economic Development Authority Act (chapter 80, P.L. 1974), as amended and supplemented.

"Authority" means the staff of the New Jersey Economic Development Authority.

"Executive Director" means the Executive Director of the New Jersey Economic Development Authority.

Words or terms which are defined in the Act are used in this chapter and in N.J.A.C. 19:31 as defined in the Act.

Amended by R.1990 d.411, effective August 20, 1990.

See: 22 N.J.R. 1537(a), 22 N.J.R. 2532(a).

Definition of authority clarified; definitions apply also.

**19:30-1.3 Organization**

(a) The governing body of the New Jersey Economic Development Authority, in but not of the Department of Commerce and Economic Development, consists of the Commissioner of Commerce and Economic Development, the Commissioner of Environmental Protection, the Commissioner of Labor, the Commissioner of Community Affairs, the State Treasurer, and four members and three alternate members appointed by the Governor with the advice and consent of the State Senate (collectively referred to as Members). The Authority is chaired by the Commissioner of Commerce and Economic Development.

(b) The Authority maintains the following functional divisions to administer its programs:

1. The Division of Project Development issues tax-exempt bonds:

- i. To manufacturing firms to meet capital financing needs;
- ii. For certain exempt activities as defined in the United States Internal Revenue Code;
- iii. To benefit certain nonprofit organizations; and
- iv. To refund eligible projects.

2. The Division of Project Development also issues taxable bonds for projects not eligible for tax-exempt bonds;

3. The Division of Finance guarantees loans and makes direct loans for fixed-asset financing and for working capital;

4. The Division of Real Estate Development develops modern business parks and commercial facilities to provide improved, affordable building space for businesses and other users in urban centers and other areas in need of economic expansion or diversity; and

5. The Trade Adjustment Assistance Center operates a Federally funded program of consulting services for manufacturers whose employment and either sales or production have declined due to foreign competition.

New Rule R.1990 d.411, effective August 20, 1990.

See: 22 N.J.R. 1537(a), 22 N.J.R. 2532(a).

**19:30-1.4 Public information**

The public may obtain general information concerning Authority programs by contacting the Public Affairs Office, New Jersey Economic Development Authority, 200 S. Warren St., CN 990, Trenton, N.J. 08625.

New Rule R.1990 d.411, effective August 20, 1990.

See: 22 N.J.R. 1537(a), 22 N.J.R. 2532(a).

**19:30-1.5 Nonpublic information**

(a) The following shall not be deemed to be public records subject to inspection, examination and available for copying pursuant to N.J.S.A. 47:1A-1 et seq.:

1. All confidential reports, executive memoranda and evaluations submitted to the Authority, the members, or to any other state agency or instrumentality;
2. All personnel records except those deemed public as required by an Executive Order;
3. All records concerning applications for employment with the Authority;
4. All records concerning personal, financial or proprietary information submitted by applicants for Authority assistance;

5. All records concerning personal, financial or proprietary information submitted by individuals, corporations, partnerships and other entities doing or seeking to do business with the Authority;

6. All reports, correspondence and other documents or data provided or discussed at the Executive Session of the meetings held by the Members, except that any action taken or other information required to be disclosed to the public pursuant to N.J.S.A. 10:4-6 et seq. shall not be deemed to be nonpublic records within the scope of this section; and

7. Any other reports, correspondence or other documents or data where the Authority finds that nondisclosure is necessary for the protection of the public interest.

New Rule R.1990 d.411, effective August 20, 1990.  
See: 22 N.J.R. 1537(a), 22 N.J.R. 2532(a).

#### 19:30-1.6 Petitions for rules

Pursuant to N.J.S.A. 52:14B-4(f), interested persons may petition the Authority for the promulgation, amendment or repeal of any rule by the Authority.

New Rule R.1990 d.411, effective August 20, 1990.  
See: 22 N.J.R. 1537(a), 22 N.J.R. 2532(a).

#### 19:30-1.7 Procedure for petitioner

(a) Any person who wishes to petition the Authority to promulgate, amend or repeal a rule must submit to the Executive Director, in writing and signed by the petitioner, the following information:

1. The full name and address of the petitioner;
2. The substance or nature of the rulemaking which is requested;
3. The reasons for the request and the petitioner's interest in the matter, including any relevant organization, affiliation, or economic interest; and
4. The statutory authority under which the Authority may take the requested action.

(b) The petitioner shall send the petition to the following address:

Executive Director  
New Jersey Economic Development Authority  
200 S. Warren St., CN 990  
Trenton, N.J. 08625

(c) Any materials submitted to the Authority not in substantial compliance with (a) and (b) above shall not be deemed to be a valid petition for rulemaking requiring further action pursuant to N.J.S.A. 52:14B-4(f).

New Rule R.1990 d.411, effective August 20, 1990.  
See: 22 N.J.R. 1537(a), 22 N.J.R. 2532(a).

#### 19:30-1.8 Procedure of the Authority

(a) Upon receipt of a petition in compliance with N.J.A.C. 19:30-1.6, the Authority shall file a notice of petition with the Office of Administrative Law for publication in the New Jersey Register, to include:

1. The date the petition was received by the Authority;
2. The name and address of the petitioner;
3. The substance or nature of the rulemaking which is requested; and
4. The problem or purpose behind the request.

(b) Within 30 days of receiving the petition, the Authority shall mail to the petitioner and file with the Office of Administrative Law for publication in the New Jersey Register a notice of action on the petition which will include:

1. The name of the petitioner;
2. Certification by the Executive Director that the petition was considered pursuant to law;
3. The substance or nature of the Authority action; and
4. A brief statement of reasons for the Authority action.

(c) Authority action on a petition may include:

1. Denying the petition;
2. Filing a notice of proposed rule or a notice of pre-proposal for a rule with the Office of Administrative Law; or
3. Referring the matter for further deliberations, the nature of which will be specified and which will conclude upon a specified date. The results of these further deliberations will be mailed to the petitioner and submitted to the Office of Administrative Law for publication in the New Jersey Register.

New Rule R.1990 d.411, effective August 20, 1990.  
See: 22 N.J.R. 1537(a), 22 N.J.R. 2532(a).

### SUBCHAPTER 2. DISQUALIFICATION/DEBARMENT/ CONFLICT OF INTEREST

#### 19:30-2.1 Definitions

(a) For the purposes of this subchapter, the following words and terms shall have the following meanings.

"Affiliates" means persons having an overt or covert relationship such that any one of them directly or indirectly controls or has the power to control another.

"Authority project contracting" means any arrangement giving rise to an obligation to perform any service in connection with the construction of a project financed with, and paid for in whole or in part with Authority assistance, including the service of architects, engineers and professional planners.

"Debarment" means an exclusion from contracting with the Authority and exclusion from Authority project contracting on the basis of a lack of responsibility evidenced by an offense or inadequacy of performance for a reasonable period of time commensurate with the seriousness of the offense.

"Disqualification" means an exclusion from receiving Authority financial assistance or from being a tenant in an Authority-financed project.

Amended by R.1990 d.411, effective August 20, 1990.

See: 22 N.J.R. 1537(a), 22 N.J.R. 2532(a).

Section recodified from 5.1.

Inadequacy of performance replaced failure as basis for debarment; definition for disqualification added.

#### **19:30-2.2 Causes for disqualification/debarment of persons**

(a) The Authority may decline to give financial assistance, or approval as a tenant in an Authority-financed project, to any person, or may debar a person from Authority project contracting for any one of the following causes:

1. Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance or such contract or subcontract;

2. Violation of the Federal Organized Crime Control Act of 1970, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice, or any other offense indicating a lack of business integrity or honesty;

3. Violation of the Federal or State antitrust statutes, or of the Federal Anti-Kickback Act (18 U.S.C. 874, 40 U.S.C. 276b, c);

4. Violation of any law governing the conduct of elections of the Federal Government, State of New Jersey or of its political subdivision;

5. Violation of the "Law Against Discrimination" (P.L. 1945, c.169, N.J.S.A. 10:5-1 et seq., as supplemented by P.L. 1975, c.127), or of the act banning discrimination in public works employment (N.J.S.A. 10:2-1 et seq.) or of the act prohibiting discrimination by industries engaged in defense work in the employment of persons therein (c.114, L.1942, N.J.S.A. 10:1-10 et seq.);

6. Violation of any laws governing hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages, or child labor;

7. Violation of any law governing the conduct of occupations or professions of regulated industries;

8. Violation of any law which may bear upon a lack of responsibility or moral integrity;

9. Any other cause of such serious and compelling nature as may be determined by the Authority to warrant disqualification for assistance or debarment from contracting with the Authority or from Authority project contracting;

10. Debarment by any department, agency, or instrumentality of the State or Federal government;

11. Violation of any of the following prohibitions on vendor activities representing a conflict of interest, or failure to report a solicitation as set forth in (a)11ii below:

i. No person shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any Authority officer or employee or special Authority officer or employee, as defined by N.J.S.A. 52:13D-13b and e, with which such person transacts or offers or proposes to transact business, or to any member of the immediate family as defined by N.J.S.A. 52:13D-13i, of any such officer or employee, or partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.

ii. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any Authority officer or employee or special Authority officer or employee from any person shall be reported in writing by the person to the Attorney General and the Executive Commission on Ethical Standards.

iii. No person may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such person to, any Authority officer or employee or special Authority officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to the Authority, or with any person, firm or entity with which he or she is employed or associated or in which he or she has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this subsection shall be reported in writing to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the Authority officer or employee or special Authority officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

iv. No person shall influence, or attempt to influence or cause to be influenced, any Authority officer or employee or special Authority officer or employee in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of the officer or employee.

v. No person shall cause or influence, or attempt to cause or influence, any Authority officer or employee or special Authority officer or employee to use, or attempt to use, his or her official position to secure unwarranted privileges or advantages for the person or any other person.

(b) The provisions in (a)11 above shall not be construed to prohibit an Authority officer or employee or special Authority officer or employee from receiving gifts from or contracting with persons under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate.

Amended by R.1989 d.207, effective April 17, 1989.  
See: 21 N.J.R. 129(a), 21 N.J.R. 1022(a).

(a)11 and (b) added, prohibitions on vendor activities representing conflicts of interest.

Amended by R.1990 d.411, effective August 20, 1990.  
See: 22 N.J.R. 1537(a), 22 N.J.R. 2532(a).

Section recodified from 5.2.

Tenancy or other disqualification/debarment may be denied based on any cause in (a), including failure to report solicitation.

### **19:30-2.3 Conditions affecting the disqualification/debarment of a person(s)**

(a) The following conditions shall apply concerning disqualification/debarment:

1. The existence of any of the causes set forth in N.J.A.C. 19:30-2.2(a) shall not necessarily require that a person be disqualified/debarred. In each instance, the decision to disqualify/debar shall be made within the discretion of the Authority unless otherwise required by law, and shall be rendered in the best interests of the Authority.

2. All mitigating factors shall be considered in determining the seriousness of the offense or inadequacy of performance, and in deciding whether disqualification/debarment is warranted.

3. The existence of a cause set forth in N.J.A.C. 19:30-2.2(a)1 through 8 shall be established upon the rendering of a final judgment or conviction including a guilty plea or a plea of nolo contendere by a court of competent jurisdiction or by an administrative agency empowered to render such judgment. In the event an appeal taken from such judgment or conviction results in reversal thereof, the disqualification/debarment shall be removed upon the request of the disqualified/debarred person unless other cause for disqualification/debarment exists.

4. The existence of a cause set forth in N.J.A.C. 19:30-2.2(a)9 and 11 shall be established by evidence which the Authority determines to be clear and convincing in nature.

5. Debarment for the cause set forth in N.J.A.C. 19:30-2.2(a)10 shall be proper, provided that one of the causes set forth in N.J.A.C. 19:30-2.2(a)1 through 8 was the basis for debarment by the original debarring agency. Such debarment may be based entirely on the record of facts obtained by the original debarring agency, or upon a combination of such facts and additional facts.

Amended by R.1990 d.411, effective August 20, 1990.

See: 22 N.J.R. 1537(a), 22 N.J.R. 2532(a).

Disqualification provisions added. Section recodified from 5.3.

### **19:30-2.4 Procedures; period of disqualification/debarment**

(a) When the Authority seeks to disqualify/debar a person or his affiliates, the person or persons shall be furnished with a written notice stating that:

1. Disqualification/debarment is being considered;
2. The reasons for the proposed disqualification/debarment; and
3. An opportunity for a hearing will be afforded to such person or persons if the hearing is requested in writing and the request is received by the Authority within seven days from the date of personal delivery or the date of receipt of the mailing of such disqualification/debarment notice.

(b) All such hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act (N.J.S.A. 54:14B-1 et seq.). Where any Federal or State department, agency or instrumentality has already imposed debarment upon a party, the Authority may also impose a similar debarment without affording an opportunity for a hearing, provided the Authority furnishes notice of the proposed similar debarment to that party, and affords that party an opportunity to present information in his behalf to explain why the proposed similar debarment should not be imposed in whole or in part.

(c) Disqualification/debarment shall be a reasonable, definitely stated period of time which as a general rule shall not exceed five years. Disqualification/debarment for an additional period shall be permitted provided that notice thereof is furnished and the party is afforded an opportunity to present information in his behalf to explain why the additional period of disqualification/debarment should not be imposed.

(d) Except as otherwise provided by law, a disqualification/debarment may be removed or the period thereof may be reduced in the discretion of the Authority, upon the submission of a good faith application under oath, supported by documentary evidence, setting forth substantial



and appropriate grounds for the granting of relief, such as newly discovered material evidence, reversal of a conviction or judgment, actual change of ownership, management or control, or the elimination of the cause or causes for which the disqualification/debarment was imposed.

(e) A disqualification/debarment may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case by case basis after giving due regard to all relevant facts and circumstances.

(f) The offense or inadequacy of performance of an individual may be imputed to a person with whom he is affiliated, where such conduct was accomplished within the course of his official duty or was effected by him with the knowledge or approval of such person.

Amended by R.1990 d.411, effective August 20, 1990.

See: 22 N.J.R. 1537(a), 22 N.J.R. 2532(a).

Disqualification and hearing request provisions added; debarment may extend to affiliates. Section recodified from 5.4.

#### 19:30-2.5 Notice to Attorney General and Treasurer

Insofar as practicable, prior notice of any proposed debarment shall be given to the Attorney General and the State Treasurer. The Authority shall supply to the State Treasurer a list of all persons having been debarred in accordance with the procedures prescribed herein.

Recodified by R.1990 d.411, effective August 20, 1990.

See: 22 N.J.R. 1537(a), 22 N.J.R. 2532(a).

Section recodified from 5.5.

#### 19:30-2.6 Authority discretion

Nothing contained in this subchapter is intended to limit the discretion of the Authority or the members in determining eligibility for financial assistance or eligibility of tenants, or in refraining from contracting with any person. The purpose of this subchapter is to provide notice of certain offenses or failures which may result in disqualification for assistance or debarment. Project applicants, tenants, and contractors must meet any other applicable standards and policies.

Amended by R.1990 d.411, effective August 20, 1990.

See: 22 N.J.R. 1537(a), 22 N.J.R. 2532(a).

Authority includes staff members; eligibility for tenancy included. Section recodified from 5.6.

#### 19:30-2.7 Executive Director to implement regulation

The Executive Director is authorized to take all necessary action to implement and administer these provisions of this subchapter.

Recodified by R.1990 d.411, effective August 20, 1990.

See: 22 N.J.R. 1537(a), 22 N.J.R. 2532(a).

Recodified from 5.7.

### SUBCHAPTER 3. AFFIRMATIVE ACTION IN AUTHORITY-FINANCED CONSTRUCTION PROJECTS

#### 19:30-3.1 Definitions

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

“Construction contract” means any contract, subcontract, or agreement, whether written or oral, for construction, reconstruction, demolition, alteration, repair work, maintenance work, or construction related to installation of equipment, undertaken in connection with a project receiving Authority assistance and paid for in whole or in part with funds received through Authority assistance.

“Contractor” means any party who enters into a construction contract with the project owner/applicant, or any party to whom funds will be disbursed for payment of construction work, including any subcontractor of the Contractor.

“Minority worker” means any worker as defined by the New Jersey Department of the Treasury rule set forth in N.J.A.C. 17:27-2.1.

“Project owner/applicant” means the entity which or individual who has applied for, or is the recipient of, Authority financial assistance.

Amended by R.1990 d.411, effective August 20, 1990.

See: 22 N.J.R. 1537(a), 22 N.J.R. 2532(a).

Definition for construction contract amended; minority worker added. Section recodified from 6.1.

#### 19:30-3.2 Application of affirmative action regulations

(a) Every contractor involved in a construction contract is required to undertake a program designed to employ minority workers and female workers in accordance with the hiring goals to be established by the Affirmative Action Office, New Jersey Department of the Treasury (see N.J.A.C. 17:27-7.3).

(b) The project owner/applicant shall be responsible for the performance of its contractors under this subchapter.

Amended by R.1990 d.411, effective August 20, 1990.

See: 22 N.J.R. 1537(a), 22 N.J.R. 2532(a).

References to female workers and the requirements of N.J.A.C. 17:27-7.3 added. Section recodified from 6.2.

#### 19:30-3.3 Compliance

(a) A contractor will be considered in compliance with this subchapter only if the contractor has made every effort to meet the minority hiring goals and female hiring goals for each trade or craft employed on the project. The goals are expressed as percentages of the total hours worked on the project in each trade. The Authority will publish these goals as part of its Affirmative Action program. At a minimum, the contractor must take the following steps in this effort:

1. Notify the Authority and at least two minority referral organizations of the contractor's labor needs, and request referrals of minority workers and female workers. The contractor shall leave standing requests for referrals of minority workers and female workers with the local unions, the State Employment Service, New Jersey Bureau of Apprenticeship and Training, and at least two referral sources designated from time to time by the Authority until such time as the contractor has met its hiring goals;

2. Give notice of employment opportunities to all minority workers and female workers who have been listed with the contractor as awaiting available vacancies;

3. Employ qualified minority workers and female workers who have been listed with the contractor as candidates for available vacancies; and

4. Keep complete and accurate records of all requests for worker referrals and hours worked.

Amended by R.1990 d.411, effective August 20, 1990.

See: 22 N.J.R. 1537(a), 22 N.J.R. 2532(a).

References to female workers added. Section recodified from 6.3.

#### 19:30-3.4 Monitoring by the Authority

(a) The Authority will maintain an Office of Affirmative Action, the staff of which will review contractor performance for compliance with this subchapter. Each contractor will be required to submit to the Office of Affirmative Action, on a weekly basis, certified payroll records identifying the name, address, Social Security number, race, hourly wage rate, gross earnings of, and number of hours worked in each craft or trade by, minority, female, and other workers. The office of Affirmative Action will make field inspections of project sites, and may perform audits of records relating to construction activities on the project.

(b) The project owner/applicant and the contractor shall identify an officer or employee who will coordinate the Affirmative Action program and act as liaison with the Authority's Office of Affirmative Action.

(c) Each project owner/applicant and contractor shall resolve any questions regarding this subchapter with the Authority's Office of Affirmative Action prior to the execution of any construction contracts in connection with a project receiving Authority assistance.

(d) The Authority may prioritize its monitoring of construction contracts based on available staff, cost, nature, timing and extent of the work to be performed under the contract, the number of workers needed to perform the contract, and any other relevant factors.

Amended by R.1990 d.411, effective August 20, 1990.

See: 22 N.J.R. 1537(a), 22 N.J.R. 2532(a).

Monitoring may be prioritized by Authority. Section recodified from 6.4.

#### 19:30-3.5 Contract provisions

(a) Every construction contract must require that:

1. Ten percent of each disbursement for the construction of the project will be retained by the project owner/applicant, agent or trustee until the Authority's Office of Affirmative Action gives written notice that the amount may be released.

2. The contractor will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, or religion.

3. The contractor must make every effort to employ minority workers and female workers at a level consistent with the applicable hiring goals.

4. The contractor must submit employment reports to the Authority on a weekly basis.

5. The contractor must submit such certificates to the Authority as are required by the application for financial assistance.

6. The addendum to construction contract which is provided by the Authority with its application for financial assistance must be made a part of all construction contracts and must be signed by the contractor.

7. The contractor shall comply with any rules promulgated by the New Jersey Department of Treasury pursuant to P.L. 1975, c.127 as amended and supplemented from time to time.

Amended by R.1990 d.411, effective August 20, 1990.

See: 22 N.J.R. 1537(a), 22 N.J.R. 2532(a).

Reference to female workers and Treasury rules added. Section recodified from 6.5.

#### 19:30-3.6 Failure to comply

(a) In the event the Authority determines that a contractor is not in compliance with this subchapter, the Authority will notify the contractor, the project owner/applicant, the construction lender, and the agent or trustee, in writing, of the steps the contractor should take to be considered in compliance.

(b) If the contractor fails to comply or otherwise respond after receipt of the notice in (a) above, the Authority may take action against the contractor or project owner/applicant including:

1. Direct the project owner/applicant, agent or trustee to withhold 10 percent of any disbursements to that contractor of bond proceeds or construction funds obtained with Authority assistance;

2. Institute debarment proceedings to preclude a contractor from contracting on Authority projects (see N.J.A.C. 19:30-2); and

3. Refer reported violations to the Attorney General for enforcement action under the "Law Against Discrimination".

Amended by R.1990 d.411, effective August 20, 1990.

See: 22 N.J.R. 1537(a), 22 N.J.R. 2532(a).

Reference to subchapter 2 added. Section recodified from 6.6.

### 19:30-3.7 Executive Director to enforce regulation

The Executive Director may require applicants for Authority assistance and recipients of Authority assistance to make such additional representations to the Authority and to enter into such covenants and agreements with the Authority as are necessary to carry out the purposes of this subchapter. The Executive Director shall take such steps as are necessary to ensure compliance with this subchapter.

Amended by R.1990 d.411, effective August 20, 1990.

See: 22 N.J.R. 1537(a), 22 N.J.R. 2532(a).

Text allowing exemptions deleted at (b). Section recodified from 6.7.

## SUBCHAPTER 4. PAYMENT OF PREVAILING WAGES IN AUTHORITY PROJECTS

### 19:30-4.1 Definitions

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

"Construction contract" means any contract, subcontract, or agreement, whether written or oral, for construction, reconstruction, demolition, alteration, repair work, maintenance work, or construction related to installation of equipment, undertaken in connection with a project receiving Authority assistance and paid for in whole or in part with funds received through Authority assistance.

"Prevailing wage rate" means the prevailing wage rate established by the Commissioner of the New Jersey Department of Labor from time to time in accordance with the provisions of N.J.S.A. 34:11-56.30 for the locality in which the Project is located.

Amended by R.1990 d.411, effective August 20, 1990.

See: 22 N.J.R. 1537(a), 22 N.J.R. 2532(a).

Definitions of Authority and Executive Director deleted; construction contract includes installation of equipment and any agreement, whether oral or written. Section recodified from 3.1.

### 19:30-4.2 Payments of prevailing wages in projects receiving assistance

Recipients of assistance from the Authority for Projects, as defined in N.J.S.A. 34:1B-3, as a condition for receipt of such assistance, shall in all construction contracts in the amount of \$2,000 or more, require that wages paid to workers employed in the performance of the construction contracts be not less than the prevailing wage rate for such work.

Amended by R.1990 d.411, effective August 20, 1990.

See: 22 N.J.R. 1537(a), 22 N.J.R. 2532(a).

Stylistic changes. Section recodified from 3.2.

### 19:30-4.3 Assurances required

(a) Recipients of assistance for construction contracts shall deliver a certificate to the Authority (or designated agent for the Authority), upon completion of the project, signed by an authorized representative of the recipient, representing and confirming that:

1. It has complied and has caused its contractors and subcontractors to comply with the requirements of N.J.A.C. 19:30-4.2 and attaching true copies of all such construction contracts with contractors and subcontractors; or

2. It has not entered into any construction contracts subject to the provisions of N.J.A.C. 19:30-4.2.

Amended by R.1990 d.411, effective August 20, 1990.

See: 22 N.J.R. 1537(a), 22 N.J.R. 2532(a).

Correction of citation. Section recodified from 3.3.

### 19:30-4.4 Contract provisions required

(a) Each recipient of assistance from the Authority shall in all construction contracts in the amount of \$2,000 or more require that:

1. Contractors and subcontractors permit the Authority, or its designated agent, complete access to payroll records and other records for purposes of determining compliance with the provisions of this subchapter.

2. Contractors and subcontractors keep accurate records showing the name, craft or trade, and actual hourly rate of wages paid to each worker employed in connection with the performance of the contract and to preserve such records for two years from the completion date of the project.

Amended by R.1990 d.411, effective August 20, 1990.

See: 22 N.J.R. 1537(a), 22 N.J.R. 2532(a).

Stylistic change. Section recodified from 3.4.

### 19:30-4.5 Violation

A violation of the provisions of this subchapter shall be deemed a violation of N.J.S.A. 34:11-56.25 et seq.

Repeal and New Rule R.1990 d.411, effective August 20, 1990.

See: 22 N.J.R. 1537(a), 22 N.J.R. 2532(a).

Section 3.5, Executive Director to enforce compliance, was repealed and recodified from 4.5.

### 19:30-4.6 (Reserved)

Repealed by R.1990 d.411, effective August 20, 1990.

See: 22 N.J.R. 1537(a), 22 N.J.R. 2532(a).

Section was 3.6, Effective date.



## SUBCHAPTER 5. TARGETING OF AUTHORITY ASSISTANCE

### 19:30-5.1 Priority consideration for projects in economically distressed localities

(a) Subject to Federal tax law compliance and certain other legal restraints, all projects located anywhere in the State of New Jersey may qualify for assistance from the Authority if they meet certain economic needs. Nevertheless, the Authority recognizes the special needs of certain municipalities and accordingly affords them priority consideration in offering its assistance. Such municipalities are eligible locations for a period of one year or longer.

(b) Qualification under this subchapter is not tantamount to project approval. Projects must also meet eligibility standards set forth in N.J.A.C. 19:31.

### 19:30-5.2 Municipalities eligible for priority consideration

(a) Municipalities meeting either of the following criteria are considered eligible locations:

1. Eligibility under P.L. 1987, c.439, which designates certain municipalities as "New Jersey Urban Aid Municipalities" based on a formula including, but not limited to:

- i. Population exceeds 15,000;
- ii. At least one publicly financed dwelling unit for low income families;
- iii. The number of children receiving "Aid to Families of Dependent Children" exceeds 250;
- iv. The municipality's equalized tax rate exceeds the State equalized tax rate; and
- v. The municipality's equalized valuation of real property per capita is less than the State equalized valuation per capita.

2. Eligibility under the Authority's formula, which requires that three of the four following standards are met:

- i. Unemployment rate above the State average;
- ii. Per capita income lower than the State average;
- iii. Ratables per capita less than the State average;
- iv. A total number of unemployed persons of 1,000 or more.

(b) A municipality shall remain on the list of eligible locations for a period of one year after the municipality ceases to meet the criteria in (a)1 and 2 above.

### 19:30-5.3 Special eligibility list

The Executive Director shall, from time to time, establish a list of municipalities and activities by Standard Industrial Classification Number, eligible for Authority assistance, notwithstanding the requirements of N.J.A.C. 19:30-5.2 and 19:31, based on the Authority's objectives as indicated in N.J.A.C. 19:30-1.1.

## SUBCHAPTER 6. FEES

### 19:30-6.1 Application fee

A non-refundable fee of \$500.00 shall accompany every application for Authority assistance, except for an application under the Urban Centers Small Loan Program for which the fee is \$250.00, and except for an application under the Trade Adjustment Assistance Center program for which there is no application fee. The non-refundable application fee of \$500.00 for a guarantee of a bond issued by the Authority is in addition to the bond application fee.

Amended by R.1987 d.318, effective August 3, 1987.

See: 19 N.J.R. 922(a), 19 N.J.R. 1456(b).

Changed non-refundable fee of \$250.00 to \$500.00. Added text "except for an ..."

Amended by R.1990 d.411, effective August 20, 1990.

See: 22 N.J.R. 1537(a), 22 N.J.R. 2532(a).

Exception for Trade Adjustment Assistance Center added. Section recodified from 2.1.

### 19:30-6.2 Commitment fees

(a) A non-refundable commitment fee of \$500.00 is charged with the acceptance by an applicant of a loan guarantee commitment from the Authority.

(b) A non-refundable commitment fee of \$300.00 is charged with the acceptance by an applicant of a direct loan commitment under the Urban Centers Small Loan Program.

(c) A non-refundable commitment fee of \$500.00, or one-half of one percent of the loan amount, whichever is greater, is charged with the acceptance by an applicant of any direct loan commitment other than as described in (b) above.

Recodified by R.1990 d.411, effective August 20, 1990.

See: 22 N.J.R. 1537(a), 22 N.J.R. 2532(a).

Section was 2.2.

### 19:30-6.3 Closing fees

(a) For Authority-issued bonds, the fee, to be paid at closing, is one-half of one percent of the amount of the bond issue up to and including \$10,000,000 and one-quarter of one percent of the amount in excess of \$10,000,000.

(b) For guaranteed Authority-issued bonds or conventional loans, the guarantee fee, to be paid at closing, is one-half of one percent of the initial amount of the guaranteed portion of the loan multiplied by the number of years the guarantee is to be in effect. This fee is in addition to the fee described in (a) above if the Authority's guarantee relates to repayment of a bond issued by the Authority.

(c) For direct loans from the Authority, other than loans under the Urban Centers Small Loan Program, the fee, to be paid at closing, is \$500.00, or one-half of one percent of the loan amount whichever is greater.

Amended by R.1987 d.318, effective August 3, 1987.

See: 19 N.J.R. 922(a), 19 N.J.R. 1456(b).

Raised "one-tenth" to "one-quarter".

Recodified by R.1990 d.411, effective August 20, 1990.

See: 22 N.J.R. 1537(a), 22 N.J.R. 2532(a).

Section was 2.3.

#### 19:30-6.4 Post-closing fees

(a) The fees in this section are due and payable upon closing of the bond amendment, approval of change of ownership, or signing of modification consent, waiver, etc.

1. For refunding bonds issued to refinance or change the terms of outstanding Authority bonds, an amount equal to one-half of the closing fee (see N.J.A.C. 19:30-6.3(a)) shall be charged.

2. For combination refunding and new money bonds, an amount equal to one-half of the closing fee (see N.J.A.C. 19:30-6.3(a)) shall be charged on the refunding portion and the closing fee (see N.J.A.C. 19:30-6.3(a)) shall be charged on the new money portion.

3. For change of ownership of 50 percent or more of the project property or ownership interest in the borrower to an unrelated entity, or to a related entity not previously approved by the Authority for the project, a \$1,500 fee shall be charged.

4. For change of ownership of the project property or ownership interest in the borrower to a previously Authority-approved related entity, or for the transfer of less than 50 percent of the project property or ownership interest in the borrower to an unrelated entity (excluding a limited partner, or a shareholder holding or about to hold an ownership interest in the borrower of 10 percent or less), a \$750.00 fee shall be charged.

5. For changing project location or description, or changing loan document provisions on bond-financed projects, a \$750.00 fee shall be charged.

6. For executing a document or granting a consent or waiver related to an Authority-assisted project, a fee of \$100.00 shall be charged.

7. For executing (up to ten bonds) or authorizing issuance of substitute bonds, a fee of \$25.00 per project, per occurrence shall be charged.

8. For modifying or restructuring payment terms for a loan or loan guarantee project, a fee of \$500.00 shall be charged.

(b) When a transaction does not by its terms fall into one of the above categories, the Authority in its discretion shall determine the appropriate category based on the substance of the transaction. The categorization of the transaction on U.S. Department of the Treasury, Internal Revenue Service Form 8038 will be a significant factor in the determination of the fee.

Amended by R.1987 d.318, effective August 3, 1987.

See: 19 N.J.R. 922(a), 19 N.J.R. 1456(b).

Substantially amended.

Amended by R.1990 d.411, effective August 20, 1990.

See: 22 N.J.R. 1537(a), 22 N.J.R. 2532(a).

Definitions for refunding bond, related and unrelated entities clarified; examples added at (a)5; scope broadened; limitation on execution of bonds. Section was recodified from 2.4.

Amended by R.1993 d.217, effective May 17, 1993.

See: 25 N.J.R. 916(a), 25 N.J.R. 1998(a).

Added new (a)8.

#### 19:30-6.5 Sign fee

Applicants requesting financial assistance from the Authority, where part of the project consists of construction or renovation, will be sent a sign, upon granting of approval by the members, which is to be erected at the project site indicating that the financing was made available through the Authority. That applicant will be charged \$75.00 for the sign which is payable upon receipt of the sign.

Amended by R.1990 d.411, effective August 20, 1990.

See: 22 N.J.R. 1537(a), 22 N.J.R. 2532(a).

Fee for sign increased from \$50.00 to \$75.00. Section was 2.5.

#### 19:30-6.6 (Reserved)

New Rule, R.1987 d.318, effective August 3, 1987.

See: 19 N.J.R. 922(a), 19 N.J.R. 1456(a).

Repealed by R.1990 d.411, effective August 20, 1990.

See: 22 N.J.R. 1537(a), 22 N.J.R. 2532(a).

Section recodified from 2.6.

### SUBCHAPTER 7. DISABILITY DISCRIMINATION COMPLAINT PROCEDURE

#### Source and Effective Date

R.1994 d.111, effective March 7, 1994.

See: 25 N.J.R. 4864(b), 26 N.J.R. 1248(a).

#### 19:30-7.1 Definitions

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

"ADA" means the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.

"Authority" means the New Jersey Economic Development Authority.

"Designated decision maker" means the Executive Director of the Authority or his or her designee.

### 19:30-7.2 Purpose

(a) These rules are adopted by the Authority in satisfaction of the requirements of the ADA and regulations promulgated pursuant thereto, 28 C.F.R. 35.107.

(b) The purpose of these rules is to establish a designated coordinator whose duties shall include assuring that the agency complies with and carries out its responsibilities under the ADA. Those duties shall also include the investigation of any complaint filed with the Authority pursuant to N.J.A.C. 19:30-7.

### 19:30-7.3 Required ADA Notice

In addition to any other advice, assistance or accommodation provided, a copy of the following notice shall be given to anyone who inquires regarding the Authority's compliance with the ADA or the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the Authority.

#### AUTHORITY NOTICE OF ADA PROCEDURE

The Authority has adopted an internal complaint procedure providing for prompt and equitable resolution of complaints alleging any action prohibited by the U.S. Department of Justice regulations implementing Title II of the Americans with Disabilities Act. Title II states, in part, that "no otherwise qualified disabled individual shall, solely by reason of such disability, be excluded from participation in, be denied the benefits of or be subjected to discrimination" in programs or activities sponsored by a public entity.

Rules describing and governing the internal complaint procedure can be found in the New Jersey Administrative Code, N.J.A.C. 19:30-7. As those rules indicate, complaints should be addressed to the Authority's designated ADA Coordinator, who has been designated to coordinate ADA compliance efforts, at the following address:

ADA Coordinator  
New Jersey Economic Development Authority  
200 South Warren Street  
CN 990  
Trenton, New Jersey 08625

1. A complaint may be filed in writing or orally, but should contain the name and address of the person filing it, and briefly describe the alleged violation. A form for this purpose is available from the designated ADA coordinator.

2. A complaint should be filed promptly within 20 days after the complainant becomes aware of the alleged violation. (Processing of allegations of discrimination

which occurred before this grievance procedure was in place will be considered on a case-by-case basis).

3. An investigation, as may be appropriate, will follow the filing of a complaint. The investigation will be conducted by the Authority's designated ADA Coordinator. The rules contemplate informal but thorough investigations, affording all interested persons and their representatives, if any, an opportunity to submit evidence relevant to a complaint.

4. In most cases a written determination as to the validity of the complaint and a description of the resolution, if any, will be issued by the Designated Decision Maker and a copy forwarded to the complainant no later than 45 days after its filing.

5. The ADA coordinator will maintain the files and records of the Authority relating to the complaints filed.

6. The right of a person to a prompt and equitable resolution of the complaint filed hereunder will not be impaired by the person's pursuit of other remedies such as the filing of an ADA complaint with the responsible Federal department or agency or the New Jersey Division on Civil Rights. Use of this complaint procedure is not a prerequisite to the pursuit of other remedies.

7. The rules will be construed to protect the substantive rights of interested persons, to meet appropriate due process standards and to assure that the agency complies with the ADA and implementing Federal rules.

### 19:30-7.4 Designated ADA coordinator

(a) The designated coordinator of ADA compliance and complaint investigation for the Authority is:

ADA Coordinator  
New Jersey Economic Development Authority  
200 South Warren Street  
CN 990  
Trenton, NJ 08625  
(609) 292-1800

(b) All inquiries regarding the Authority's compliance with the ADA and the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the Authority should be directed to the designated coordinator identified in (a) above.

(c) All complaints alleging that the agency has failed to comply with or has acted in a way that is prohibited by the ADA should be directed to the designated ADA coordinator identified in this section, in accordance with the procedures set forth in N.J.A.C. 19:30-7.5.

### 19:30-7.5 Complaint procedure

A complaint alleging that the Authority has failed to comply with the ADA or has acted in a way that is

prohibited by the ADA shall be submitted either in writing or orally to the designated ADA coordinator identified in N.J.A.C. 19:30-7.4(a).

#### 19:30-7.6 Complaint contents

(a) A complaint submitted pursuant to this subchapter may be submitted in or on the form set forth at N.J.A.C. 19:30-7.7.

(b) A complaint submitted pursuant to this subchapter shall include the following information:

1. The name of the complainant, and/or alternate contact person designated by the complainant to receive communication or provide information for the complainant;
2. The address and telephone number of the complainant or alternate contact person; and
3. A description of manner in which the ADA has not been complied with or has been violated, including times and locations of events and names of witnesses if appropriate.

#### 19:30-7.7 Complaint form

The following form may be utilized for the submission of a complaint pursuant to this subchapter:

##### Americans with Disabilities Act Complaint Form

Date: \_\_\_\_\_

Name of complainant: \_\_\_\_\_

Address of complainant: \_\_\_\_\_

Telephone number of complainant: \_\_\_\_\_

Disability of complainant: \_\_\_\_\_

Name, address and telephone number of alternate contact person (if applicable): \_\_\_\_\_

Incident or barrier: \_\_\_\_\_

Please describe the particular way in which you believe you have been denied the benefits of any service, program or activity or have otherwise been subject to discrimination. Please specify dates, times and places of incidents, and names and/or positions of Authority employees involved, if any, as well as names, addresses and telephone numbers of any witnesses to any such incident.

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Proposed access or accommodation:

If you wish to describe the way in which you feel access may be had to the benefits described above, or what accommodation could be provided to allow access.

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A copy of the above form may be obtained by contacting the designated ADA coordinator identified at N.J.A.C. 19:30-7.4(a).

#### 19:30-7.8 Investigation

(a) Upon receipt of a complaint submitted pursuant to this subchapter, the designated ADA coordinator will notify the complainant of the receipt of the complaint and the initiation of an investigation into the matter. The designated ADA coordinator will also indicate a date by which it is expected that the investigation will be completed, which date shall not be later than 45 days from the date of receipt of the complaint, unless a later date is agreed to by the complainant.

(b) Upon completion of the investigation, the designated ADA coordinator shall prepare a report for review by the Designated Decision Maker for the Authority. The Designated Decision Maker shall render a written decision within 45 days of receipt of the complaint, unless a later date is agreed to by the complainant, which decision shall be transmitted to the complainant and/or the alternate contact person if so designated by the complainant.