

CHAPTER 10

GOODS AND SERVICES CONTRACTS FOR SMALL BUSINESSES, MINORITY BUSINESSES AND FEMALE BUSINESSES

Authority

N.J.S.A. 52:18A-30(d), 52:25, 52:34-6 et seq., 52:32-17 et seq., 52:27H-6(f), 52:34-12, 10:5-36(k) and (o), 52:34-13, and Executive Order No. 84(1993).

Source and Effective Date

R.1995 d.224, effective March 30, 1995.
See: 27 N.J.R. 52(a), 27 N.J.R. 1811(b).

Executive Order No. 66(1978) Expiration Date

Chapter 10, Goods and Services Contracts for Small Businesses, Minority Businesses and Female Businesses, expires on March 30, 1998.

Chapter Historical Note

Chapter 10, Small Business Set-Aside, was adopted jointly with the Department of the Treasury pursuant to N.J.S.A. 52:32-17 and was filed as R.1984 d.421, effective October 1, 1984. See: 16 N.J.R. 1958(a), 16 N.J.R. 2683(a). Chapter 10 was repealed and new rules concerning "Contracts for Small Businesses, Female Businesses and Minority Businesses" were adopted jointly with Treasury as R.1987 d.143, effective March 16, 1987. See: 18 N.J.R. 2306(a), 19 N.J.R. 457(b). Pursuant to N.J.S.A. 52:14B-4(c), Chapter 10 was readopted as Emergency R.1989 d.481, effective August 14, 1989 (expired October 13, 1989), and new rules concerning "Minority and Female Subcontractor Participation in State Construction Contracts" were adopted as Subchapter 2. 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" by R.1994 d.309, effective January 3, 1995. See: 25 N.J.R. 4889(a), 27 N.J.R. 129(a). 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". Subchapters 3, 4 and 5 were adopted as R.1994 d.309, effective January 3, 1995. See: 25 N.J.R. 4889(a), 27 N.J.R. 129(a).

Pursuant to gubernatorial waiver, the Executive Order No. 66 (1978) expiration date of Chapter 10 was extended from October 13, 1994 to March 31, 1995. See: 26 N.J.R. 4411(a). Pursuant to Executive Order No. 66 (1978), Chapter 10 was readopted as R.1995 d.224. See: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. PURPOSE, SCOPE AND DEFINITIONS

- 12A:10-1.1 Purpose and scope
- 12A:10-1.2 Definitions
- 12A:10-1.3 through 12A:10-1.16 (Reserved)

SUBCHAPTER 2. SET-ASIDE ELIGIBILITY REQUIREMENTS FOR SMALL BUSINESSES, MINORITY BUSINESSES AND FEMALE BUSINESSES

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

- 12A:10-2.2 Obligation to provide information and penalties for failure to provide complete and accurate information
- 12A:10-2.3 Right to hearing upon denial of contract
- 12A:10-2.4 through 12A:10-2.12 (Reserved)

SUBCHAPTER 3. CERTIFICATION AND REGISTRATION

- 12A:10-3.1 Certification and registration procedures for small businesses, minority businesses and female businesses
- 12A:10-3.2 Time for application to register as a small business, minority business or female business
- 12A:10-3.3 Procedures for challenging a business registered as a small business, minority business or female business

SUBCHAPTER 4. SET-ASIDE CONTRACTING AND SUBCONTRACTING PROGRAM

- 12A:10-4.1 Set-aside program goals and procedures
- 12A:10-4.2 Good faith efforts of bidders; requirements
- 12A:10-4.3 Exemptions from set-aside program

SUBCHAPTER 5. PLANNING, REPORTING AND REVIEW

- 12A:10-5.1 Planning
- 12A:10-5.2 Reporting requirements
- 12A:10-5.3 Annual review

SUBCHAPTER 1. PURPOSE, SCOPE AND DEFINITIONS

12A:10-1.1 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 15 percent of State contracts to eligible small businesses, seven percent of State contracts to eligible minority businesses and three percent of State contracts to eligible female 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 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, minority business and/or female business should be addressed to:

Department of Commerce and Economic Development

Set-Aside and Certification Office

20 West State Street

CN 835

Trenton, New Jersey 08625-0835

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).

12A:10-1.2 Definitions

(a) The words and terms 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.

"Certification" means the process whereby a minority-owned business or female-owned business is authenticated for participation in State programs requiring such 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.

"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.

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

"Line item contract" means an award in which a specific one-time purchase of goods or services is established.

"Minority business" means a business which has its principal place of business located in the State, is independently owned and operated and at least 51 percent of which is 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.

"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 small, minority and female set-aside contracts determined.

"Request for Proposals" or "RFP" means the document issued by a State contracting agency to initiate an advertising bidding and contract award process. The RFP establishes the contract's basic terms and conditions, the product and/or service specifications, and the bidding requirements which may include a set-aside provision that restricts bidding eligibility to businesses qualified as small business, minority business or female business.