

NEW JERSEY DEPARTMENT OF THE TREASURY

STATE CONSTRUCTION CONTRACTS FOR SMALL BUSINESSES

Proposed Readoption with Amendments: N.J.A.C. 17:14

Authorized By: R. David Rousseau, State Treasurer

Authority: N.J.S.A. 52:27H-21.7 et seq., 52:32-17 et seq., 52:18A-30(d) , 52:34-6 et seq., 52:34-12, 52:34-13, P.L. 2008, c. 27, Executive Order No. 71 (2003) and Executive Order No. 34 (2006).

Calendar Reference: see Summary below for explanation of exception to calendar requirement

Proposal Number: PRN 2008-_____.

Submit written comments by _____ to:

Nina Moseley
Senior Director
Division of Minority and Women Business Development
Department of the Treasury
PO Box 026
Trenton, New Jersey 08625-0026

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1c, N.J.A.C. 17:14 regulations pertaining to State Construction Contracts for Small Businesses are scheduled to expire on September 4, 2008. Pursuant to N.J.S.A. 52:14B-5.1c, submission of this notice of proposed readoption with amendments to the Office of Administrative Law extends that expiration date by 180 days to March 2, 2009.

N.J.A.C. 17:14 was jointly promulgated by the New Jersey Commerce Commission and the Department of the Treasury. The objective of N.J.A.C. 17:14 was the implementation of N.J.S.A. 52:32-17 et. seq. (the Set-Aside Act) and Executive Order No. 84, which established a small business set-aside program that, among other things, requires, State agencies with contracting authority to make a good faith effort to award a certain percent of State contracting and subcontracting dollars to eligible small businesses. Executive Order No. 71 modified certain set-aside requirements. P.L. 2008, c.27 abolished the New Jersey Commerce Commission and transferred the functions, powers and duties of the Division of Development for Small Businesses and Women's and Minority Businesses to the Department of the Treasury, to be administered within that Department as the State Treasurer so determines. The State Treasurer has determined to allocate such functions, powers and duties and the authority for this chapter to the Division of Minority and Women Business Development in the Department of the Treasury (Division). The Division has reviewed these rules, including the following amendments, and it has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated.

The proposed amendments are technical and substantive in nature. They are technical in that they replace references to the New Jersey Commerce and Economic Growth Commission and the Chief Executive Officer and Secretary with references to the Division and the Director of the Division. The amendments are substantive in that they augment and more clearly delineate the eligibility requirements, more clearly delineate the procedures for registrations and establish denial or revocation procedures. The Division is allowing a 60-day comment period for this notice of proposal; therefore, the proposal falls under the N.J.A.C. 1:30-3.3(a) exception to the requirement for calendar notice.

Chapter 14, State Construction Contracts for Small Businesses, was adopted pursuant to N.J.S.A. 52:31-17 et seq. and was last amended in 2003. The purpose of the Set-Aside Act and these rules is to set forth the manner in which the Division administers the registration of small businesses which is a requirement for eligibility to participate in the State set-aside program for award of construction contracts to small businesses. A further objective of the rules is to update the references to the State entities implementing the Act, pursuant to P.L. 2008, c. 27.

Following is a summary of the provisions of each section of the chapter proposed for readoption:

Section One: 17:14-1.1 Purpose and scope, 17:14-1.2 Definitions.

Subsection 1.1 sets forth the scope of the Division's role in the New Jersey Department of the Treasury.. N.J.A.C. 17:14 – 1.1 references P.L. 2008, c.27 which authorized the transfer of the functions, powers, and duties of the Division of Development for Small Businesses and Women's and Minority Businesses to the Division of Minority and Women Business Development in the Department of the Treasury and the transfer of the functions, powers and duties of the Division to the Department of the Treasury.

Subsection 1.2 sets forth the definitions of words and a term used in the rules and amends certain terms to conform to current requirements and making technical changes. The term "Director" is defined as well as the Division of Minority and Women Business Development in accord with statutory changes. The term "Set-Aside Act" is added to clarify references to the New Jersey Set-Aside Act for Small Businesses, Female Businesses, and Minority Businesses, P.L. 1983, c.482; N.J.S.A. 52:32-17 et. seq. The term "Registration" is modified to reference the Division that replaced the Commerce Commission. The term "Secretary" is deleted.

A new definition is added for "Premier Business Services" which refers to online business services provided via the State's business website at www.newjerseybusiness.gov., where the tax filing and payment services for which a business must register as part of its small business applications are located. The term "Small Business Database" is added and means the State database that lists small businesses and is available for use by State contracting agencies and others in confirming eligibility for set-aside contracts and in reporting progress toward established contract award goals. The term "Vendor Registration Form" is defined to mean the form that a business completes when applying to the Division to register as a small business under this chapter. The definition of state contracting agency is modified to delete the list of enumerated agencies and substitute the list now maintained online at www.newjerseybusiness.gov.

Amendments are also proposed to the definition of "Small Business" and "Goal." The definition of the term "Goal" is modified to clarify that the percentage of contracting dollars that the State contracting agency must make a good faith effort to award to small businesses required by Executive Order No. 71. The term "Small Business" is modified to incorporate references to the applicable federal revenue standards established at 13 CFR 121.201 as adjusted periodically and the satisfaction of additional eligibility standards under this chapter.

Section 2: 17:14-2.1 Standards of Eligibility for Small Businesses; 17:14-2.2 Obligation to provide information and penalties for failure to provide complete and accurate information; 17:14-3.1 Registration procedures for small businesses.

Subsection 2.1 is proposed for readoption and sets forth the standards for eligibility for small businesses and the various categories of small business which are

based on gross revenue.. The amendments clarify that a corporation formed as a limited liability company may qualify and modifies gross revenue requirements to incorporate by reference the federal revenue standards contained in the Code of Federal Regulations.

Subsection 2.2 is proposed for readoption with amendments that further clarify that the registration of a small business that knowingly provides false information may be subject to revocation.

Subsection 2.3 is amended to establish clearer registration procedures for small businesses seeking to register with the State which includes on line registration, issuance of registration certificates, annual verification and sets related fees.

Section 3: 17:14-3.2 and 3.3 Time for Application to Register as a Small Business and Procedures for challenging a business registered as a small business; 17:14-3.4 Interim Registration Period; Denial and Revocation.

Subsection 3.2 is proposed for readoption with technical changes and clarifies that the Director may appoint a designee to conduct hearings when needed.

Subsection 3.3 deletes provisions for Interim Registration replaces the subsection with a new section that provides procedures for denial or revocation of registration. This subsection sets forth the notice and appeal procedures.

Section 4: 17:14-4.1 Set-aside contracting program goals and procedures.

This subsection is readopted with amendments that reflect the provisions of the Set-Aside Act and Executive Order 71 and incorporating the references to the requirements for percentages of contract awards to eligible small business according to the three applicable registration categories that are set forth in this subsection. The remaining subsections are readopted without change or with minor technical changes.

Section 5: 17:12-5.1 Planning, 17:12-5.2 Reporting Requirements, 17:14-5.3 Annual Review.

The changes to subsection 5 are technical to provide consistency with the technical and substantive changes to foregoing sections and in accord with the requirements of the Set Aside-Act and applicable Executive Orders.

Social Impact

The readoption with amendments of N.J.A.C.17:14 will provide for the continued implementation of the New Jersey Set-Aside Act for Small Businesses, Female Businesses, and Minority Businesses, P.L. 1983, c. 482, N.J.S.A. 52:32-17, et seq., as the functions of the Commerce Commission under that Act have been transferred to the Department of the Treasury, pursuant to P.L. 2008, c. 27. Under the Act, the

Legislature declared that “the existence of a strong and healthy free enterprise system is directly related to the well-being and competitive strength of small business, female business and minority business concerns and to the opportunity for small business, female business and minority business to have free entry into business to grow and to expand” and found that “the State must ensure that a fair proportion of the State’s total purchases and contracts for construction, property and services is placed with small business, female and minority business concerns.” The readoption of these rules with amendments will continue to facilitate the achievement of this objective by defining the scope of services authorized in the Act.

These rules are expected to have a continuing positive social impact on the affected businesses and on the State as a whole because they will increase opportunities for small business to compete for contracts with the State.

Economic Impact

The readoption of these rules will impact the State’s economy by offering continued assistance and opportunity for growth of small businesses which contribute to the overall economic growth of the State. 96.6 percent of New Jersey companies employ fewer than 100 workers and 37 percent of New Jersey workers are employed by these small businesses. The continuation of these services is vital to the growth and stability of New Jersey’s economy.

Federal Standards Statement

There are no Federal standards or requirements applicable to the rules proposed for readoption with amendment. As a result, an explanation or analysis of the proposed amendments of these rules pursuant to Executive Order No. 27(1994) is not required.

Jobs Impact

The readoption of these rules with amendments will result in continued participation of every agency and department of the State of New Jersey that is authorized to award construction contracts. The Act and these rules will result in the creation and retention of jobs from the award of construction contracts to small businesses, which will then allow these businesses to grow and expand their employment.

Agriculture Industry Impact

It is anticipated that the readoption of these rules will have no impact on the agriculture industry.

Regulatory Flexibility Statement

The rules proposed for readoption with amendments specify procedures to

establish eligibility for state programs that give small businesses increased opportunities to enter construction contracts with the state. The impact on small businesses will continue to be positive. The regulations governing reporting, recordkeeping and registration of small businesses have been modified to reflect on line registration which will reduce paperwork burdens and promote regulatory efficiency. The compliance requirements of the rules benefit small business by establishing eligibility to participate in the State's set-aside programs designed to benefit small businesses. It is anticipated that the amendments will facilitate the application process for small businesses so that eligibility is determined faster. The benefits of this program to the public and to small business outweigh the costs.

Smart Growth Impact

Any impact with respect to the achievement of smart growth and the implementation of the State Development and Redevelopment Plan would be a result of the participation of small businesses in projects within designated smart growth areas.

Smart Growth Development Impact

The impact of the rules proposed for readoption with amendments on the availability of affordable housing or housing production within Planning areas 1 or 2, or within designated centers, under the State Development and Redevelopment Act would be a result of the participation of small businesses, women and minority businesses in housing production within these areas.

Housing Affordability Impact

The impact of the rules proposed for readoption with amendments on the change of average costs associated with housing would be a result of the participation of small businesses, women and minority businesses in housing production .

CHAPTER 14: STATE CONSTRUCTION CONTRACTS FOR SMALL BUSINESSES

SUBCHAPTER 1. PURPOSE, SCOPE AND DEFINITIONS

17:14-1.1 Purpose and Scope

(a) The rules in this chapter are [jointly] promulgated by the [Commerce and Economic Growth Commission (hereinafter, "Commerce Commission") and the] Department of the Treasury to implement N.J.S.A. 52:32-17 et seq., **P.L. 2008, c. 27,** and Executive Order No. [84] **71 (McGreevey)** dated [March 5, 1993,] **October 2, 2003**₁ to establish a set-aside program that, in part, requires State agencies with contracting authority to make a good faith effort to award [15 percent of] public construction contracts [and subcontracts] to [eligible] small businesses. **Executive**

Order No. 71 requires at least 25 percent of the total dollar value of State contracts to be set aside for eligible small businesses. This percentage goal is an overall program goal for each State contracting agency. State contracting agencies are expected to apply their business judgment when establishing set-aside goals for individual contracts. **The rules in this chapter, which expire September 4, 2008, were jointly promulgated by the New Jersey Commerce Commission and the Department of the Treasury. Pursuant to P.L. 2008, c. 27, effective July 1, 2008, the New Jersey Commerce Commission was abolished and its responsibilities under this chapter were transferred to the Department of the Treasury. Therefore, after July 1, 2008, this chapter must be promulgated by one department, the Department of the Treasury.**

(b) (No change.)

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

(d)
[Set-Aside and Certification Office
Commerce and Economic Growth Commission
20 West State Street, PO Box 820
Trenton, New Jersey 08625-0820]

Department of the Treasury
Division of Minority and Women Business Development
33 West State St. , 1st Floor
PO Box 026
Trenton, NJ 08625-0026

17:14-1.2 Definitions

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

“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 **or** demolition **of or** repair or other changes or improvements of any kinds whatsoever [of] **to** any public structure or facility or highway. The term also includes contracts to consultant services, [the] supervision, inspection and other functions incidental to actual construction.

“Consultant” means any architect, engineer, construction manager, or other provider of technical and professional services in support of [a] **the** design or construction or highway project

...

“Delegated Purchasing Authority” means the authority of a State agency,

pursuant to N.J.S.A. 52:34-7, to award contracts on its own pursuant to authority delegated to it by the Director, Division of Property Management and Construction (DPMC) [as established in N.J. S.A. 52:34-7].

“Director” means the head of the Division of Minority and Women Business Development in the Department of the Treasury.

“Division of Minority and Women Business Development” or “Division” means the Division within the Department of the Treasury that administers the registration of small business enterprises, the certification of the minority and women businesses, and provides other services to small, minority and women businesses, pursuant to E.O. 34 (Corzine), P.L. 2008, c. 27 § 18 and the Set-Aside Act.

...

"Goal" means the statutorily determined percentage of contract[s]ing awarded by each State contracting agency to [eligible] small businesses in order to comply with the small business provisions of the Set-Aside Act. **It further means the percentage of State contracting dollars that the State contracting agency makes a good faith effort to award to small businesses under Executive Order No. 71.**

"Premier Business Services" means online business services provided via the State's business website at www.newjerseybusiness.gov, which include tax filing and payment services, for which a business must register as part of its small business application.

"Registration" means the process by which any business can have its eligibility for participation in the [Commerce Commission's] **Division's** small business programs determined.

...

["Secretary" means the Chief Executive Officer and Secretary of the Commerce Commission or his or her designee.]

“Set-Aside Act” means the New Jersey Set-Aside Act for Small Businesses, Female Businesses, and Minority Businesses, P.L. 1983, c. 482; N.J.S.A. 52:32-17 et seq.

"Set-aside contract" means a contract specifically designated by a contracting agency as exclusively available for award to [an eligible] a small business.

"Small business" means a business which has its principal place of business in the State[.]; is independently owned and operated[.]; has no more than 100 full-time employees[, and]; has gross revenues that do not exceed [either \$1 million or the applicable annual revenue standards set forth in 13 CFR 121.201, whichever is higher] **the applicable federal revenue standards referenced at N.J.A.C. 17:14-2.1; and satisfies any additional eligibility standards under this chapter.**

“Small business database” means the State database that lists small businesses and is available for use by State contracting agencies and others in confirming

eligibility for set-aside contracts and subcontracts and in reporting progress toward established contract award goals.

"State contracting agency" **or "contracting agency"** means any board, commission, committee, authority, **college, university, division or department** 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]. **A list of State contracting agencies shall be maintained on the State's business website at www.newjerseybusiness.gov, and updated as necessary to reflect the addition or elimination of State contracting agencies.**

[1. DEPARTMENTS:

Agriculture

Banking and Insurance Personnel

Community Affairs

Corrections

Military and Veterans Affairs

Education

Environmental Protection

Health and Senior Services

Higher Education

Human Services

Labor

Law and Public Safety

State

Transportation

Treasury

2. COLLEGES:

New Jersey City University

Kean University

Montclair State University

New Jersey Institute of Technology

Ramapo College of New Jersey

Richard Stockton College of New Jersey
Rowan University
Rutgers the State University of New Jersey
The College of New Jersey
Thomas A. Edison State College
University of Medicine and Dentistry of New Jersey
William Paterson University 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
Commerce and Economic Growth Commission
County and Municipal Government Study Commission
Election Law Enforcement Commission
Executive Commission on Ethical Standards

New Jersey Meadowlands 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.

5. MULTI-STATE AGENCIES:

Delaware River Basin Commission

Port Authority of New York and New Jersey

Delaware River Joint Toll Bridge Commission

Delaware River Port Authority

Delaware River and Bay Authority

Atlantic Interstate Low-Level Radioactive Waste Compact

Delaware Valley Regional Planning Commission

Interstate Environmental Commission

Palisades Interstate Park Commission

Waterfront Commission of New York Harbor]

“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.

...

“Vendor Registration Form” means the form available online that a business completes when applying to the Division to register as a small business under this chapter.

...

SUBCHAPTER 2. ELIGIBILITY REQUIREMENTS FOR SMALL BUSINESSES

17:14-2.1 Standards of eligibility for small businesses

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

1. - 2. (No change.)

3. The business must be a sole proprietorship, partnership, **limited liability company**, or corporation with 100 or fewer employees in full-time positions, not including:

i.-ii. (No change.)

4. The business must have gross revenues that do not exceed [\$1 million or the applicable annual revenue standards set forth in 13 CFR 121.201, whichever is higher] **the applicable revenue standards set forth at (d) below.**

i.- iii. (No change.)

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

(c) Eligibility is formalized by the [Commerce Commission's] **Division's** registration and approval process.

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

1. Small businesses whose gross revenues do not exceed \$ [1]**three** million; [or]

2. **Small businesses whose gross revenues do not exceed 50 percent of the applicable annual revenue standards set forth in federal regulation at 13 CFR 121.201 (see [www.sba.gov/tools/resourcelibrary/laws and regulations/index.html](http://www.sba.gov/tools/resourcelibrary/laws_and_regulations/index.html)) and as may be adjusted periodically; or**

[2]. 3. Small businesses whose gross revenues do not exceed the applicable annual revenue standards set forth in **federal regulation at** 13 CFR 121.201, **as may be adjusted periodically.**

(e) Small businesses registered in the category [in] (d)1 above will be eligible to participate in set-aside contracts and subcontracting programs available to businesses registered in the categories [in] (d)1, **(d)2** and [2] 3 above. Small businesses registered **only** in the category [in] (d)2 above will be eligible to participate in set-aside contracts and subcontracting programs available to businesses registered in the [category in] **categories (d)2 and (d)3** above [only]. **Small businesses registered in the category (d)3 above will be eligible to participate in set-aside contracts and subcontracting programs available to businesses registered only in category (d)3 above.**

17:14-2.2 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 [Commerce Commission] **Division.**

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

1. (No change.)

2. Assess the business a penalty in the amount of not more than 10 percent of the amount of the contract or subcontract involved; [and]

3. Order the business ineligible to transact any business with a State contracting agency for a period of not less than three months and not more than 24 months[.]; **and**

4. Revoke the registration of the business as an eligible small business and remove the business from the small business database.

(c) Any business approved by the [Commerce Commission] **Division** as a small business shall immediately apprise the [Commerce Commission] **Division** 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]**to the small business database**, under these rules and may subject the business to adverse action by contracting agencies and/or the Attorney General.

(e) When a business has been registered as a small business on the basis of false information knowingly supplied by the business, but the business has not been awarded a State contract or a subcontract thereto, the Division, after notice and opportunity for a contested case hearing pursuant to N.J.S.A. 52:14B-10 and N.J.A.C. 1:1, shall revoke the registration of the business as an eligible small business and notify the Office of the Attorney General and State contracting agencies.

SUBCHAPTER 3. REGISTRATION

17:14-3.1 Registration procedures for small businesses

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

1. Any business which seeks to register as a small business must apply to the Commerce Commission and pay a \$ 100.00 annual registration fee and a \$ 75.00 certification application fee. The \$ 75.00 certification application fee is pursuant to the period indicated in N.J.A.C. 12A:11-1.11. For these purposes, the Commerce Commission shall prepare a Vendor Registration Form. This form shall be available from the Commerce Commission and the State contracting agencies.

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

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

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

5. If an applicant knowingly supplies incomplete or inaccurate information, the applicant shall be disqualified under these rules and may be subject to other penalties described in N.J.A.C. 17:14-2.2 (12A:10-2.2).

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

A business seeking to register as a small business shall comply with the following registration procedures:

1. The business shall register at www.newjerseybusiness.gov for Premier Business Services; and

2. The business shall apply to the Division by completing the Vendor Registration Form, available online at www.newjerseybusiness.gov.

i. As part of its application to the Division, a business shall document its principal place of business, independent status, number of employees, and gross revenue. This documentation shall include appropriate forms or reports otherwise submitted to or issued by State and Federal agencies, such as employee reports filed with the New Jersey Department of Labor and Workforce Development or certificates of incorporation issued by the New Jersey Department of State.

ii. If an applicant knowingly supplies incomplete or inaccurate information, the application shall be denied under these rules, the business shall be disqualified from inclusion in the small business database, and the business may be subject to adverse action of contracting agencies, the Attorney General or other enforcement agencies.

iii. As part of its application, the business shall pay a non-refundable \$100 application fee for a three-year registration.

(b) When an application for registration as a small business has been completed, the Division shall determine whether to approve it and notify the business of its decision. If approved, the Division will issue the business a registration certification and add the business to the small business database.

(c) The small business database shall be used by State contracting agencies in confirming eligibility for set-aside contracts and subcontracts and in reporting progress toward established contract award goals.

(d) Every three years, no later than 20 days prior to expiration of the small business's registration, and not earlier than 60 days prior to the expiration of such registration, a business interested in remaining registered as a small business shall comply with the registration procedures pursuant to (a) above.

(e) Annually the business must submit, prior to the anniversary of the registration notice, an annual verification statement in which it shall attest that there is no change in the ownership, revenue eligibility or control of that business.

1.If the business fails to submit the annual verification statement by the anniversary date, the registration will lapse and the business will be removed from the small business database. If the business seeks to be registered, it will have to reapply and pay the \$100 application fee.

2. If the business submits the annual verification statement by the anniversary date, but either the verification statement or other information received by the Division indicate that the business is no longer eligible for registration as a small business, the Division shall revoke the registration pursuant to this chapter and, following revocation, the business shall be removed from the small business database. The business may appeal the revocation pursuant to the procedures at N.J.A.C. 17:14-3.4.

17:14-3.2 Time for application to register as a small business

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

(b) If a business is to be eligible to bid on a specific set-aside contract or participate in the subcontracting target programs for purposes of these rules, it must be registered as a small business by the [Commerce Commission] **Division** on the date the bid or [bid] proposal is [received and opened by]**due at** the State contracting agency.

17:14-3.3 Procedures for challenging a business registered as a small business

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

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

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

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

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

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

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

4. At the discretion of the [Secretary's] **Director's** designee, participants at the hearing may be permitted to file written exceptions to the [hearing officer's] **designee's** report no later than [two] **five** working days [from the issuance of the report] **after the date on which the report is made available to the business**.

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

6. (No change.)

17: 14-3.4 [Interim registration period

(a) A business registered as a small business or certified as a minority or female business by the Commerce Commission, as of July 8, 2003, shall be granted an interim registration by the Commerce Commission in one of the categories set forth in N.J.A.C. 12A:10A-2.1(d) (17:14-2.1(d)), if its gross revenues, as determined by information retrieved from a third party database, do not exceed the applicable annual revenue standards set forth in 13 CFR 121.201.

(b) A business shall retain its interim registration until it has submitted a Vendor Registration Form to the Commerce Commission and has been granted or denied approval as an eligible small business, or until December 31, 2003, whichever is earlier.

(c) During the interim registration period, a business shall be eligible to participate in all set-aside contracts and subcontracting programs available to businesses registered in its category.]

Procedures for denial or revocation of registration as a small business

(a) If the Division either denies an application for small business registration or revokes a registration as a small business, the Division will so notify the business. The denial or revocation is effective as of the date of the Division's notice to the business of its denial or revocation determination.

(b) When a business has been denied registration or had its registration revoked, the business has the right to an appeal. The appeal procedures in this section govern denials and revocations, except for revocations on the basis of false information knowingly supplied by the business. Revocation based on false information knowingly supplied by the business is addressed by the procedures at N.J.A.C. 17:14-2.2.

(c) Within ten days after receipt of the denial or revocation notification, the business that received the notification may request, in writing to the Division, an appeal hearing. The appeal may concern only the qualification of a business under these rules as a small business. When the Division receives an appeal, it shall conduct a hearing on the matter as follows.

1. The [Commission] Division shall notify the business of the time and place of the hearing and of the right of the business to appear and be represented by counsel at the hearing.

2. The appeal request shall include all information available to the appealing business relevant to the appeal.

3. The burden of proof lies with the business.

4. The hearing will be conducted by a designee of the Director. The designee shall issue a written report to the Director within seven days of the close of the hearing.

5. At the discretion of the Director's designee, the business may be permitted to file written exceptions to the designee's report, no later than five working days after the date on which the report is made available to the business.

6. Thereafter, the Director shall issue a decision on the appeal and notify the applicant by certified letter.

SUBCHAPTER 4. SET-ASIDE **CONTRACTING** PROGRAM

17:14-4.1 Set-aside **contracting** program goals and procedures

(a) Each State contracting agency, consistent with its contracting authority, shall establish and administer a set-aside program which provides for at least [15] **25** percent of the dollar value of its contracts to be awarded to eligible small businesses, as follows: at least five percent shall be awarded to small businesses registered in the category of businesses whose gross revenues do not exceed \$ [1] **3** million; [and] at least an additional [10] **five** percent shall be awarded to small businesses registered in the category of businesses whose gross revenues do not exceed **50 percent** of the applicable [annual] revenue standards set forth in 13 CFR 121.201[.] **at least an additional five percent shall be awarded to small businesses registered in the category of businesses whose gross revenues do not exceed the applicable federal revenue standards set forth in 13 CFR 121.201; and at least an additional ten percent shall be awarded to small businesses registered in any of the above categories.**

1. (No change.)

2. The State contracting agencies shall designate specific contracts for each of the [two] **three** small business set-aside categories.

(b) (No change.)

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

1. (No change.)

2. Invitations for bids shall be confined to either small businesses whose gross revenues do not exceed \$[1] **3** million, **small businesses whose gross revenues do not exceed 50 percent of the applicable revenues standards set forth in federal regulation at 13 CFR 121.201;** or small businesses whose gross revenues do not exceed the applicable annual revenue standards set forth in 13 CFR 121.201, and bids from other bidders shall be rejected.

3.-4. (No change.)

17:14-4.2. Subcontracting target program and procedures

(a) – (b) (No change.)

(c) The State contracting agency shall set separate subcontracting target levels for the participation of small business subcontractor for each construction contract awarded pursuant to this program. The subcontracting target levels shall be set according to the following procedures:

1. (No change.)

2. For each subcontractable element, the State contracting agency shall review the appropriate vendor list of the [Commerce Commission] **Division** to determine the number of eligible small businesses in each of the categories set forth in N.J.A.C. [12A:10A-2.1,(] 17:14-2.1 [)] that may reasonably be expected to participate in the project, giving consideration to the geographic location of the project and estimated dollar value of the subcontract.

3. -5. (No change.)

(d)-(f) (No change.)

(g) A bidder's proposal [failing] **that fails** to identify contracts for small businesses

with a combined cost estimate meeting the target shall include documentation of the bidder's good faith efforts to meet the subcontracting targets. Documentation must include a record of the bidder's attempts to contract with eligible businesses and the reasons for failure to meeting the subcontracting targets.

(h) The State contracting agency shall review this documentation in order to determine whether the bidder made reasonable efforts to solicit and award **sub**contracts to

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

(j) (No change.)

17:14-4.3 Good faith efforts of bidders; requirements

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

1. (No change.)

2. The bidder shall request a listing of small businesses from the [Commerce Commission] **Division** if none are known to the bidder;

3.-6. (No change.)

SUBCHAPTER 5. PLANNING, REPORTING AND REVIEW

17:14-5.1 Planning

(a) Within 60 calendar days of the finalization of the State budget for each State contracting agency, that agency shall submit to the [Secretary] **Division**, a plan for the coming fiscal year to comply with the programs established by these rules. The [Commerce Commission] **Division** will assist any State contracting agency in the development of its plan, upon request. This plan shall include the following:

1. -2. (No change.)

3. Identification of those contracts which the State contracting agency intends to include in its [nonremedial] target programs.

(b) The [Commerce Commission] **Division** shall review the plan to determine whether it is reasonably designed to achieve the State contracting agency's goal of awarding five percent of its total contracting dollars to small businesses registered in the category of businesses whose gross revenues do not exceed \$ [1]**3** million [and]; an additional [10] **five** percent to small businesses registered in the category of businesses whose gross revenues do not exceed **50 percent of** the applicable [annual] revenue standards set forth in 13 CFR 121.201; **at least an additional five percent to small**

businesses registered in the category of businesses whose gross revenues do not exceed the applicable annual revenue standards set forth in 13 CFR 121.201; and at least an additional ten percent to small businesses registered in any of the above categories.

17:14-5.2 Reporting requirements

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

1. The total number and dollar value of all contracts advertised and awarded, delineating which of these contracts and the percentages that were advertised and awarded as small business set-aside contract in each of the [two] **three** categories of small businesses set forth in N.J.A.C. [12A:10A] **17-14-4.1**;

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

2. the total number and dollar value of all contracts advertised and awarded subject to the subcontracting target programs, setting forth the number and dollar value of subcontracts awarded to each of the [two] **three** categories of small businesses, respectively; and

3. (No change.)

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

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

17:14-5.3 Annual review

The [Secretary and the] Treasurer of the State of New Jersey shall undertake an annual review of the operation **of the small business programs governed by this chapter** and report to the Governor on the need for continuation or modification of the small business programs contained in this chapter. This report shall be based upon the reports submitted

to the [Commerce Commission] **Division and the State Treasurer** and any other information deemed appropriate. The report will include performance data on compliance and deficiencies for each contracting agency and be publicly distributed as deemed appropriate.