

system shall conform to the guidelines and specifications pursuant to N.J.A.C. 6A:27-7.13.

Social Impact

The proposed new rules at N.J.A.C. 13:20-50B.50 and 51.16 will have a beneficial social impact in that the Commission’s inspection will ensure that the sensor system is installed and meets the standards at N.J.A.C. 6A:27-7.13, School Bus Sensor System. Abigail’s Law will improve safety for children in that all school buses will be equipped with sensors to alert a bus driver when a child walks in front of or behind of the bus.

Economic Impact

There is no economic impact on the Commission, which is charged with the administration of the rules contained in N.J.A.C. 13:20, for which the Commission collects statutorily-mandated school bus inspection fees.

The cost of the school bus sensors is not addressed in this rulemaking, other than to note that the Office of Legislative Services’ (OLS) analysis of Abigail’s Law noted that it would lead to an indeterminate expenditure increase for school districts and for school bus manufacturers, in that the cost of the school bus sensors would be factored into the final purchase price for the new school buses. The BOE considered that in its rulemaking process for N.J.A.C. 6A:27-7.13, School Bus Sensor System.

Federal Standards Statement

49 CFR Part 571, provides manufacturing standards for all school buses subject to inspection. The proposed new rules at N.J.A.C. 13:20-50B.50 and 51.16 require that, as of the time of manufacture, all school buses subject to inspection will meet the Federal manufacturing standards currently in effect or that will be promulgated in the future.

Jobs Impact

The Commission does not anticipate that any jobs will be generated or lost as a result of the proposed new rules.

Agriculture Industry Impact

The proposed new rules will have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The proposed new rules do not contain any new reporting or recordkeeping requirements, and, therefore, do not have any impact on any small businesses, as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules do not require small businesses to engage additional professional services, nor do the rules necessitate any capital or annual expenditures for compliance. The Commission has given careful consideration to these matters and has determined that the proposed new rules aid the Commission’s inspection process for the BOE’s specifications and guidelines for school bus sensors in the BOE rule at N.J.A.C. 6A:27-7.13. Businesses will be required to demonstrate compliance with the BOE’s sensor requirement at the time of inspection.

Housing Affordability Impact Analysis

It is not anticipated that the proposed new rules will have any impact on the affordability of housing because the scope of the new rules, inasmuch as they apply only to the Commission’s inspection process for BOE’s specifications and guidelines for school bus sensors, is minimal, and there is an extreme unlikelihood that it would evoke a change in the average costs associated with housing.

Smart Growth Development Impact Analysis

The proposed new rules will have no impact on smart growth development and will not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules pertain solely to the Commission’s inspection process for BOE’s specifications and guidelines for school bus sensors.

Full text of the proposed new rules follows (additions indicated in boldface **thus**):

SUBCHAPTER 50B. BODY STANDARDS FOR SCHOOL BUSES MANUFACTURED JANUARY 2006 AND THEREAFTER

13:20-50B.50 School bus sensor system

(a) Pursuant to N.J.A.C. 6A:27-7.13, each school bus shall be equipped with a properly designed and installed sensor to determine the presence of person(s) or object(s) located in, but not limited to, the front and back of the school bus.

(b) All equipment subject to inspection shall meet the standards for the applicable date of manufacture now or hereafter prescribed by Federal law or regulation at 49 CFR Part 571, New Jersey statute, or Motor Vehicle Commission or State Board of Education rule, including the school bus sensor system to detect the presence of person(s) or object(s) located in, but not limited to, the front and rear of the school bus, which sensor shall conform to the guidelines and specifications under N.J.A.C. 6A:27-7.13.

SUBCHAPTER 51. STANDARDS FOR TYPE S SCHOOL VEHICLES

13:20-51.16 School bus sensor system

(a) Pursuant to N.J.A.C. 6A:27-7.13, each school bus shall be equipped with a properly designed and installed sensor to determine the presence of person(s) or object(s) located in, but not limited to, the front and back of the school bus.

(b) All equipment subject to inspection shall meet the standards for the applicable date of manufacture now or hereafter prescribed by Federal law or regulation at 49 CFR Part 571, New Jersey statute, or Motor Vehicle Commission or State Board of Education rule, including the school bus sensor system to detect the presence of person(s) or object(s) located in, but not limited to, the front and rear of the school bus, which sensor shall conform to the guidelines and specifications under N.J.A.C. 6A:27-7.13.

TREASURY—GENERAL

(a)

DIVISION OF ADMINISTRATION

Disabled Veteran-Owned Business Set-Aside

Proposed New Rules: N.J.A.C. 17:14

Authorized By: Elizabeth Maher Muoio, State Treasurer.

Authority: N.J.S.A. 52:18A-30(d) and 52:32-31.1 et seq.

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

Proposal Number: PRN 2018-043.

Submit comments by July 20, 2018, to:

Nina Moseley, Manager, Small Business Set-Aside Monitoring
 Division of Administration
 PO Box 211
 50 West State Street, 8th Floor
 Trenton, NJ 08625-0211
 Attn: Disabled Veteran Owned Business Rule Proposal
 Fax: 609-943-4480
 E-mail: nina.moseley@treas.nj.gov

The agency proposal follows:

Summary

Pursuant to Public Law 2015, c. 116, this chapter outlines the basic procedures to register as a disabled veteran-owned business and become eligible to participate in disabled veteran-owned business set-aside contracting opportunities with State of New Jersey Executive Branch agencies.

A summary of each section follows.

N.J.A.C. 17:14-1.1 lists the purpose of the rules.

N.J.A.C. 17:14-1.2 defines general terms used throughout this chapter.

N.J.A.C. 17:14-2.1 outlines eligibility standards to be considered a disabled veteran-owned business.

N.J.A.C. 17:14-2.2 specifies the penalties that may be imposed for businesses providing incomplete or inaccurate information.

N.J.A.C. 17:14-3.1 details the registration procedures applicable to disabled veteran-owned businesses. The section also specifies the required registration fee, which is \$167.00 for a five-year certification.

N.J.A.C. 17:14-3.2 specifies the time for application to register as a disabled veteran-owned business.

N.J.A.C. 17:14-3.3 describes the formal procedure for challenging the designation, or lack thereof, as a disabled veteran-owned business.

N.J.A.C. 17:14-3.4 outlines the process for denial or revocation of a disabled veteran-owned business.

N.J.A.C. 17:14-4.1 outlines program goals and procedures for the disabled veteran-owned business set-aside, including the target allocation for both goods and services and design and construction contracts.

N.J.A.C. 17:14-4.2 describes target program and procedures for subcontracting. The section sets forth specific requirements unique to either goods and services or design and construction contracts.

N.J.A.C. 17:14-4.3 details the actions required by bidders to demonstrate good faith to solicit and award subcontracts to disabled veteran-owned businesses.

N.J.A.C. 17:14-4.4 outlines circumstances where agencies are exempt from disabled veteran-owned business set-aside requirements and would instead follow Federal requirements.

N.J.A.C. 17:14-5.1 provides planning and reporting requirements for both agencies and the Department of the Treasury (Department), in terms of data for planning and reporting progress toward set-aside goals. In addition to these data requirements, the State's government transparency site, www.yourmoney.gov, provides an opportunity to review State agency procurement data in great detail.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is exempted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3.

Social Impact

The disabled veteran-owned business rules have an important impact on society. The rules provide an opportunity for these businesses to participate in the public contracting process. When set-asides are appropriately utilized, they may allow these businesses to win contracts that they would otherwise not be able to bid on due to scale disadvantages. Veterans of the United States Armed Forces have been, and continue to be, vital to the business enterprises of this State. Providing additional assistance and support to veterans, especially disabled veterans, better equips them to form and expand business enterprises enables them to realize the American dream that they fought to protect.

Economic Impact

Encouraging and stimulating disabled veteran-owned businesses typically has a positive impact on the economy of the State as a whole. While there may be some negative economic impact from set-aside contracts to State agencies (for example, if bids are higher than they might be otherwise), the proposed rules allow for agencies to cancel the bid and withdraw the set-aside designation if the pricing is determined to be unreasonably high. Moreover, the overall positive impact on the economy of the State as a whole will generally outweigh any immediate negative economic impact to State contracting agencies.

In terms of the cost impacts on the private sector, the proposed new rules include a registration fee that is similar to other fees for other contractor registrations. Businesses will be required to invest a small amount of administrative resources to complete required forms and file annual renewals.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rules generally relate to the State of New Jersey and its disabled veteran-owned business registration process and set-aside process. In

circumstances where Federal law or regulation are required to be used for a specific procurement procedure, the proposed new rules would be superseded by Federal procedures, provided that the State contracting agency issues a written declaration that such Federal laws or regulations are in effect.

Jobs Impact

The proposed new rules are not expected to result in the creation or loss of jobs.

Agricultural Industry Impact

The proposed new rules will not have any particular or direct impact on the agricultural industry.

Regulatory Flexibility Analysis

The proposed new rules are designed to be used by disabled veteran-owned businesses, which are likely small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These businesses must utilize the forms and procedures set forth in the rules. Fees and administrative costs that will be incurred are discussed in the Economic Impact above. No professional services are necessary to comply with these rules. Reporting requirements include changes to the business that might affect eligibility, standard application information about the business, maintaining a valid registration as a disabled veteran-owned business, including information on changes in ownership, control, or eligibility, and recording good faith efforts to award subcontracts to disabled veteran-owned businesses. The Department considers the various requirements of the new rules in terms of reporting, recordkeeping, and compliance to be the minimum necessary for the maintenance of a registration and set-aside program. For that reason, and because the requirements imposed are not administratively burdensome, the Department has not provided any exceptions or lesser requirements for small businesses.

Housing Affordability Impact Analysis

The proposed new rules have no impact on any aspect of housing, including affordability of housing or the average costs of housing as the proposed new rules pertain to contracting and disabled veteran-owned businesses.

Smart Growth Developmental Impact Analysis

The proposed new rules will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan. The rules will not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules pertain to contracting and disabled veteran-owned businesses.

Full text of the proposed new rules follows:

CHAPTER 14

DISABLED VETERAN-OWNED BUSINESS REGISTRATION

SUBCHAPTER 1. GENERAL PROVISIONS

17:14-1.1 Purpose and scope

(a) The rules in this chapter are promulgated by the Department of the Treasury to implement N.J.S.A. 52:32-31.1 et seq. (P.L. 2015, c. 116), to establish a set-aside program that requires State agencies with contracting authority to set a goal to award three percent of State contracts and subcontracts to eligible disabled veteran-owned businesses.

(b) The rules in this chapter apply to both State contracts for goods and services awarded by any State contracting agency and to the award of State contracts for construction and construction-related services, unless unique rules for a specific contract type are specified.

(c) Applications and questions regarding eligibility as a disabled veteran-owned business should be addressed to:

Department of the Treasury
 Division of Revenue and Enterprise Services
 33 West State St., 5th Floor
 PO Box 026
 Trenton, NJ 08625-0026

(d) Questions concerning the award of contracts under this chapter should be directed to the State contracting agency issuing the particular solicitation or contract award.

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.

“Bidder” means any individual or business entity submitting a proposal, quotation, or other offer to do business with the State of New Jersey in response to an invitation for bids.

“Bidding threshold” means the dollar limit placed on all public contracting agencies pursuant to N.J.S.A. 52:34-7 or 52:25-23 to establish when public advertisement of bids is required.

“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 kind whatsoever to any State public structure or facility. The term also includes contracts for consultant services, supervision, inspection, and other functions incidental to actual construction.

“Consultant” means an architect, engineer, construction manager, or other provider of technical and professional services in support of the design or construction project.

“Contractor” means any party awarded a contract or agreement to provide goods and services or design and/or construction services to the State of New Jersey.

“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) or for design and construction contracts pursuant to the authority delegated by the Director, Division of Property Management and Construction (see N.J.S.A. 52:34-7).

“Director” means the head of the Division of Revenue and Enterprise Services in the Department of the Treasury.

“Disabled veteran-owned business” means a business that has its principal place of business in the State, is independently owned and operated, and meets the criteria set forth in N.J.A.C. 17:14-2.1.

“Disabled veteran business database” means the State database that lists disabled veteran-owned 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.

“Disabled veteran-owned business set-aside unit” or “Unit” means the section in the Department of the Treasury that provides oversight and direction for the disabled veteran-owned business set-aside program for the State of New Jersey.

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

“Division of Purchase and Property” means the division within the Department of the Treasury that provides centralized procurement of goods and services for Executive Branch State agencies pursuant to N.J.S.A. 52:27B-56.

“Division of Revenue and Enterprise Services” or “Division” means the division in the Department of the Treasury that administers the registration of disabled veteran-owned business enterprises.

“Goal” means the statutorily determined percentage of contracting dollars awarded by each State contracting agency to disabled veteran-owned businesses in order to comply with the statutory set-aside provisions. It includes the percentage of State contracting dollars that the State contracting agency makes a good faith effort to award to disabled veteran-owned businesses.

“Invitation for Bids” or “IFB” means the document issued by a State contracting agency to initiate an advertised bidding and contract award process, and includes Requests for Proposals (RFPs) and Requests for Quotations (RFQs). The IFB establishes the contract’s terms and conditions, the product and/or service specifications, and the bidding

eligibility to businesses approved as disabled veteran-owned business entities.

“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 disabled veteran-owned business application.

“Registration” means the process by which any disabled veteran-owned business can have its eligibility for participation in the Division’s disabled veteran-owned business programs determined.

“Request for Proposals” or “RFP” means the document issued by a State contracting agency to initiate an advertised bidding and contract award process.

“Set-Aside Act” means the New Jersey Set-Aside Act for Disabled Veteran’s Businesses, N.J.S.A. 52:32-31.1 et seq. (P.L. 2015, c. 116).

“Set-aside contract,” for the purposes of construing and applying the rules in this chapter only, means a contract, specifically designated by a contracting agency, in whole or in part, for award to a disabled veteran-owned business, either at a prime or subcontract level.

“State contracting agency” or “contracting agency” means any board, commission, committee, authority, division, department, college, or university of the State that possesses the legal authority to enter into or award contracts for goods and services or design and construction contracts.

“Subcontractor” means a third-party that is engaged by a contractor to perform all or part of the goods, services, or construction services included in a contract with the State.

“Target” means the numerical objectives that a State contracting agency establishes, on a contract-by-contract basis, in order to meet its disabled veteran-owned business goal.

“Term contract” means an award made by a State contracting agency in which a source of supply for a product or service is established for a specific period of time. A term contract is generally applied when a State contracting agency:

1. Establishes a fixed unit price, hourly rate, or discount for items or services to be purchased thereunder;
2. Provides for some estimated dollar volume or minimum quantities to be purchased; or
3. Provides for the rebidding of any single purchase that exceeds a specified maximum amount.

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

“Vendor Registration Form” means the form available on the State’s website, <https://www.njportal.com/DORE/SBERegistry/>, that a business completes when applying to the Division to register as a disabled veteran-owned business under this chapter.

“Veteran” means any citizen and resident of this State honorably discharged, or released under honorable circumstances, who served in any branch of the Armed Forces of the United States, or a Reserve component thereof, for at least 90 days and shall include disabled veterans.

SUBCHAPTER 2. STANDARDS OF ELIGIBILITY AND REQUIRED INFORMATION

17:14-2.1 Standards of eligibility for disabled veteran-owned businesses for goods and services and for State construction contracts

(a) In order to be eligible as a disabled veteran-owned business, a business must satisfy the following criteria:

1. The business must be independently owned and operated, as evidenced by its management being responsible for both its daily and long-term operation, and its management owning and controlling at least 51 percent interest in the business;

2. The business must be incorporated or registered to do business in the State and have its principal place of business in New Jersey, defined as such when either 51 percent or more of its employees work in New Jersey, as evidenced by the payment of New Jersey unemployment taxes, or 51 percent or more of its business activities take place in New Jersey, as evidenced by its payment of income or business taxes; and

3. The business owner must have Federal certification from the Department of Veteran's Affairs as having a service-connected disability.

17:14-2.2 Obligation to provide information; penalties for failure to provide complete and accurate information

(a) Applicants under this chapter shall accurately and honestly supply all information required by the Division.

(b) When a business has been approved as a disabled veteran-owned business on the basis of false information knowingly supplied by the business, and the business has been awarded a State contract, or a subcontract thereto, the Unit, after notice and opportunity for a contested case hearing pursuant to N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and N.J.A.C. 17:14, shall:

1. Assess the business any difference between the contract amount and what the State's cost would have been if the contract had not been awarded in accordance with the provisions of N.J.S.A. 52:32-31 et seq.;

2. Assess the business a penalty in the amount of 10 percent of the amount of the contract or subcontract involved;

3. Order the business ineligible to transact any business with a State contracting agency for a period of one year; and

4. Order the Division to revoke the registration of the business as a disabled veteran-owned business for a period of one year from the State's database.

(c) Any business approved by the Division as a disabled veteran-owned business shall immediately apprise the Division of any circumstances that might affect the eligibility of the business under this chapter.

(d) The failure of a business to report any such changed circumstances, or the intentional and/or knowing reporting of false information, shall disqualify the business for inclusion in the database under this chapter and the Division will revoke the registration of the business as a disabled veteran-owned business from the State's database for a period of one year.

(e) When a business has been registered as a disabled veteran-owned business on the basis of false information knowingly supplied by the business, but the business has not been awarded a State contract, the Unit, after notice and opportunity for a contested case hearing pursuant to N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and N.J.A.C. 17:14, shall order the Division to revoke the registration of the business as a disabled veteran-owned business from the State's database for a period of one year.

SUBCHAPTER 3. REGISTRATION PROCEDURES

17:14-3.1 Registration procedures for disabled veteran-owned businesses

(a) A business seeking to register as a disabled veteran-owned 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 its gross revenues. 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 Division.

ii. If an applicant knowingly supplies inaccurate or false information, the application shall be denied under this chapter, the business shall be disqualified from inclusion in the disabled veteran-owned business database, and the business may be subject to adverse action, including, but not limited to, debarment, suspension, or disqualification by contracting agencies, the Attorney General, or other enforcement agencies.

iii. As part of its application, the business shall pay a non-refundable application fee of \$167.00 for a five-year registration.

(b) When an application for registration as a disabled veteran-owned 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 disabled veteran-owned business database.

(c) The disabled veteran-owned business database shall be used by State contracting agencies to confirm eligibility of a business for set-aside contracts and subcontracts and in reporting progress toward established contract award goals.

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

(e) Annually, the business shall submit, prior to the anniversary of the registration notice, a verification statement, in which it shall attest that there has been no change in the ownership, revenue eligibility, or control of the business at the State's website, <https://www.njportal.com/DOR/SBERegistry/>.

1. If the business fails to submit the annual verification statement by the anniversary date of the registration notice, the registration will lapse and the business will be deemed revoked from the State's disabled veteran-owned business database. If the business seeks to be registered after revocation, it will have to reapply and pay the \$167.00 application fee.

2. If the business submits the annual verification statement by the anniversary date of the original registration notice, but either the verification statement or other information received by the Division indicates that the business is no longer eligible for registration as a disabled veteran-owned business, the Division shall revoke the registration pursuant to this chapter and following revocation, the business shall be deemed revoked from the State's disabled veteran-owned business database. The business may appeal this revocation pursuant to the procedures set forth at N.J.A.C. 17:14-3.4.

17:14-3.2 Time for application to register as a disabled veteran-owned business

(a) A business may apply to the Division at any time to be registered as a disabled veteran-owned business and to be placed on the disabled veteran-owned 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 this chapter, it must be validly registered as a disabled veteran-owned business by the Division on or before the date the bid or proposal is due at the State contracting agency.

17:14-3.3 Procedures for challenging a business registered as a disabled veteran-owned business

(a) The qualification under this chapter of a business as a disabled veteran-owned business may be challenged by any third-party.

1. A registration challenge shall be made in writing to the Unit, setting forth the factual basis for the challenge. The Unit 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 Unit shall also provide a copy of the challenge to the contracting agency.

2. A registration challenge to the Unit may concern only the qualification of the business under this chapter as a disabled veteran-owned business. Any challenge to a business's qualifications to perform a contract shall be referred to the appropriate State contracting agency.

(b) When the Unit receives a registration challenge, upon request of the business whose registration is at issue, the Unit Manager or a designee of the Director shall conduct a hearing on the matter as follows:

1. The Unit shall notify all interested parties (including, but not limited to, the challenging party, the business whose registrations is at issue, and any affected State contracting agency) 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 to establish that the business whose registration is at issue is not qualified and/or not properly registered as a disabled veteran-owned small business under this chapter. However, the Unit 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 Unit Manager or his or her designee. The Unit Manager will issue a written report within seven working days following the close of the hearing.

4. At the discretion of the Unit Manager or his or her designee, participants at the hearing may be permitted to file written exceptions to the report no later than five working days after the date on which the report is made available to the business.

5. If no exceptions are filed, or permitted to be filed, under (b)4 above, the decision shall be final. If exceptions are filed under (b)4 above, after reviewing the exceptions, the Unit Manager will issue a final decision on the challenge and notify the parties by letter.

6. A challenge to a business's eligibility shall not stay the contract award process.

17:14-3.4 Procedures for denial or revocation of registration as a disabled veteran-owned business

(a) If the Division either denies an application for a disabled veteran-owned business registration or revokes a registration as a disabled veteran-owned 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 has 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 or failure to submit the annual verification statement. 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 10 days from receipt of the denial or revocation notification, the business that received the notification may request, in writing to the Unit, an appeal hearing. The appeal may concern only the qualification of the business under this chapter as a disabled veteran-owned business. When the Division receives an appeal, it shall conduct a hearing on the matter as follows.

1. The Unit 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, including any relevant documents, available to the appealing business relevant to the appeal.

3. The burden of proof lies with the appealing business to show that the denial or revocation of the business registration was in error and that the appealing business meets all of the requisite qualifications under this chapter to be registered as a disabled veteran-owned business.

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

5. At the discretion of the Unit Manager or his or her designee, the business may be permitted to file written exceptions to the report no later than five working days after the date on which the report is made available to the business.

6. If no exceptions are filed, or permitted to be filed, under (c)5 above, the decision shall be final. If exceptions are filed under (c)5 above, after reviewing the exceptions, the Unit Manager shall issue a decision on the appeal and notify the business by fax (or other electronic means) and letter.

SUBCHAPTER 4. SET-ASIDE PROGRAM PROCEDURES

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

(a) Each State contracting agency, consistent with its contracting authority, shall establish and administer a set-aside program that provides, with regard to goods and services contracts, a goal toward at least three percent of the contracts awarded to eligible disabled veteran-owned businesses. With regard to design and construction contracts, the goal is to award three percent of the total contract value to either prime or subcontractors that qualify as disabled veteran-owned businesses.

1. Percentages shall be measured by the total number of all such set-aside contracts in comparison to the total number of all publicly advertised contracts awarded by the agency within a fiscal year.

2. The State contracting agencies shall designate specific contracts for set-aside.

(b) Each State contracting agency shall establish written procedures and maintain records as necessary to define, document, and report its good faith efforts to attain the established set-aside contracting goals, including contracts executed under its bidding threshold, as established by N.J.S.A. 52:34-7 et seq. The set-aside procedures shall include the following provisions:

1. The State contracting agency shall review its schedule of contracting opportunities and establish a method of determining which upcoming contracts will be offered as part of the agency's set-aside program.

i. A contract may be considered suitable for set-aside whenever the contracting agency can establish a reasonable expectation that bids may be obtained from at least three qualified eligible businesses capable of furnishing the specified products or services.

ii. The designation as a set-aside contract shall be made prior to public advertisement for bids.

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

1. Public advertisement of the set-aside contracting opportunity shall be consistent with the contracting agency's standard bidding procedures and may be supplemented by special notification efforts to maximize participation;

2. Invitations for bids, or a portion thereof, shall be specifically set aside for disabled veteran-owned businesses and bids from other bidders may be rejected;

3. The State contracting agency shall reject all bids and withdraw the designation as a set-aside contract when the agency determines that acceptance of the lowest responsive bid would result in the payment of an unreasonable price or in a contract that is otherwise unacceptable pursuant to that agency's contracting statutes and rules;

4. The State contracting agency shall notify all participating bidders of the bid cancellation, stating the reasons for the cancellation and the agency's intent to re-solicit bids on an unrestricted basis; and

5. The award of any contract designated as a set-aside contract shall be made in accordance with the agency's contracting statutes, rules, and procedures.

17:14-4.2 Subcontracting target program and procedures

(a) When deemed appropriate, any State contracting agency, consistent with its contracting authority, may establish and administer a subcontracting target program in lieu of, or as a supplement to, the set-aside program.

(b) Each State contracting agency shall maintain records regarding subcontracts awarded pursuant to this program. The procedures shall include the following provisions:

1. The State contracting agency shall review its schedule of contracting opportunities and establish a method of determining which upcoming contracts are suitable for the subcontracting target program.

i. Factors to be considered when making the determination that a particular contract is suitable for inclusion in this program include, but are not limited to: the minimum number of contractors assigned to a commodity code, the total dollar amount of the project and subcontracting opportunities on the project, and the number of available eligible businesses in geographical proximity to the project site.

ii. The designation of a particular RFP as a disabled veteran-owned business set-aside subcontracting opportunity shall be made prior to the public advertisement.

(c) For construction contracts, the State contracting agency shall review the project to determine whether the disabled veteran-owned business set-aside goals are appropriate or can be reasonably attained given the elements of the job. The State contracting agency may review the Division's list of classified contractors to determine the number of eligible businesses, as established at N.J.A.C. 17:14-2.1, that may reasonably be expected to participate in the project, giving consideration to the geographic location, required trades, and estimated dollar value of the project.

1. The disabled veteran-owned business enterprise goal for construction projects set-aside can be reached either at the prime or subcontractor level.

2. The public advertisement shall include a notice to prospective bidders disclosing the disabled veteran-owned business goal for the contract.

3. Bidders shall provide sufficient documentation of its good faith efforts to meet the set-aside goal either with its bid or within 10 days of a request by the State contracting agency or other State agency. Failure to comply may preclude award of a contract to a bidder.

(d) In the event that a goods and services RFP is designated as a disabled veteran-owned business set-aside subcontracting opportunity, the RFP shall contain a detailed notice to bidders advising of the following:

1. The bidding package includes a disabled veteran-owned business subcontractor utilization that must be completed and included as part of the bidder's proposal if the bidder intends to subcontract; and

2. The steps the bidder would need to take to either:

i. Meet the targets of the set-aside subcontracting requirement; or

ii. Document the bidder's good faith effort to meet the targets of the set-aside subcontracting requirement.

3. Bidders shall provide sufficient documentation of good faith efforts to meet the targets of the set-aside requirement either with a bid proposal or within seven days of the State contracting agency's request. Failure to comply shall preclude award of a contract to a bidder.

(e) Each bidder awarded a contract for a procurement that contains the set-aside subcontracting goal requirement shall fully cooperate in any studies or surveys that may be conducted by the State contracting agency to determine the extent of the bidder's compliance with this chapter.

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 disabled veteran-owned businesses, as established in the RFP:

1. The bidder shall attempt to locate qualified potential disabled veteran-owned business subcontractors;

2. The bidder shall request a listing of disabled veteran-owned businesses from the Division if none are known to the bidder;

3. The bidder shall keep a record of its efforts, including the names of businesses contacted and the means and results of such contacts;

4. The bidder shall provide all potential subcontractors with detailed information regarding the specifications; and

5. The bidder shall attempt, wherever possible, to negotiate prices with potential subcontractors submitting higher than acceptable price quotes.

(b) Bidders shall maintain adequate records to document their good faith efforts to solicit and award subcontracts to eligible disabled veteran-owned businesses, as established in the RFP, including those specific actions set forth in (a) above.

17:14-4.4 Exemptions from set-aside program

In those circumstances where Federal law, rules, or regulations permit or require a procurement procedure other than those prescribed in this chapter, the State contracting agency shall follow the Federal procedures notwithstanding the provisions of this chapter, provided that the State contracting agency issues a written declaration that such Federal laws, rules, or regulations are in effect.

SUBCHAPTER 5. PLANNING AND REPORTING

17:14-5.1 Planning and reporting

(a) All agencies shall attempt to develop a plan for the coming fiscal year to comply with the programs established by this chapter.

(b) Annually, within 60 calendar days of the end of each State fiscal year, the agency shall file with the Unit, a report containing the following information:

1. The total number of all contracts awarded to disabled veteran-owned businesses, including a separate listing of set-aside contracts, and the percentage of the procurements by the agency;

2. The types and sizes of businesses receiving set-aside awards and the nature of the purchases and contracts; and

3. The efforts made to publicize the program.

(c) The New Jersey Department of the Treasury shall receive and analyze agency reports and submit an annual report to the Governor and the Legislature showing progress made toward the objectives of N.J.S.A. 52:32-31.1 et seq. (P.L. 2015, c. 116), during the preceding fiscal year.