

**NEW JERSEY DEPARTMENT OF THE TREASURY**

**GOODS AND SERVICES CONTRACTS FOR SMALL BUSINESSES**

**Proposed Readoption with Amendments: N.J.A.C. 17:13**

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. 17:13, regulations pertaining to Goods and Services 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. 17:13 was jointly promulgated by the New Jersey Commerce Commission and the Department of the Treasury. The objective of N.J.A.C. 17:13 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 71 modified the set aside percentage 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 13, Goods and Services 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 contracts for goods and services 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: 17:13-1.1 Purpose and scope, 17:13-1.2 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. 17:13 – 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](http://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](http://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: 17:13-2.1 Standards of Eligibility for Small Businesses; 17:13-2.2 Obligation to provide information and penalties for failure to provide complete and accurate information; 17:13-3.1 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 businesses which are based on gross revenue. The amendments clarify that a corporation formed as a limited liability company may qualify and modifies the 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: 17:13-3.2 and 3.3 Time for Application to Register as a Small Business and Procedures for challenging a business registered as a small business; 17:13-3.4 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: 17:13-4.1 Set-aside program goals and procedures

This section is readopted with amendments that reflect the provisions of Executive Order 71 and incorporating the references to applicable federal revenue standards as previously discussed.

Section 5: 17:12-5.1 Planning, 17:12-5.2 Reporting Requirements, 17:13-5.3 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.17:13 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 or 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. However, the amendments do incorporate provisions of federal law related to identifying small businesses based on standards that define gross revenues bringing greater clarification and consistency between state and federal programs.

### **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 goods and services contracts. The Act and these rules will result in the creation and retention of jobs from the award of goods and services 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 contracts with the state for goods and services. 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 business so that eligibility is determined faster. The benefits of this program to the public and to small businesses 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 .

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12A:9.

**Full text** of the proposed recodification with amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

## **CHAPTER 13. GOODS AND SERVICES CONTRACTS FOR SMALL BUSINESSES**

### **SUBCHAPTER 1. PURPOSE, SCOPE AND DEFINITIONS**

#### **17:13-1.1 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, dated [March 5, 1993]**October 2, 2003**, 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] State 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 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:

[Commerce and Economic Growth Commission  
Set-Aside and Certification Office  
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. , 1<sup>st</sup> Floor**

**PO Box 026**

**Trenton, NJ 08625-0026**

Questions concerning the award of contracts under these rules should be directed to the State contracting agency issuing the particular contract.

17:13-1.2 Definitions

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

...  
**“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 dollars 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](http://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.**

"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 \$12 million **or the applicable federal revenue standards established at 13 CFR 121.201, as may be adjusted periodically (see [www.sba.gov/tools/resourcelibrary/laws and regulations/index.html](http://www.sba.gov/tools/resourcelibrary/laws and regulations/index.html)) whichever is higher; and satisfies any additional eligibility standards under this chapter.**

**"Small business database" means the State database that lists small business 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, division, department or agency of the State which possesses the legal authority to enter into or award contracts for goods and services [including, but not limited to, the following entities except where expressly inconsistent with New Jersey or Federal statutory law:]. **A list of State contracting agencies shall be maintained at [www.newjerseybusiness.gov](http://www.newjerseybusiness.gov), and updated as necessary to reflect the addition or elimination of 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

6. All other departments, colleges, authorities and commissions that are established or may be established in the future.]

...

**“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

17:13-2.1 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 \$12 million **or the applicable federal revenue standards established at 13 CFR 121.201, incorporated herein by reference, whichever is higher.**

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 three categories:

1.-2. (No change.)

3. Small businesses whose gross revenues do not exceed \$ 12 million **or the applicable federal revenue standards established at 13 CFR 121.201, whichever is higher.**

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

17:13-2.2 Obligation to provide information and penalties for failure to provide complete and accurate information

(a) Applicants under these rules shall accurately and honestly supply all information **required** by the [Commerce Commission] **Division.**

(b) When a business has been approved as a[n eligible] small 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 [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. 17:13-2.2, 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 a small business and remove the business from the State's 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] **in the small business database** under these rules and may subject the business to adverse action by contracting agencies, [and/or] the Attorney General **or other enforcement agencies**.

(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, 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. 17:13-2.2 shall revoke the registration of the business as a small business, remove the business from the State's small business database and notify the Office of the Attorney General and State contracting agencies.**

### SUBCHAPTER 3. REGISTRATION

#### 17:13-3.1 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. In addition to the \$ 100.00 registration fee, any business applying for certification must pay a \$ 75.00 application fee pursuant to the period indicated in NJ.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. 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. 17:13-2.2.

5. 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.

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) 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](http://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](http://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 New Jersey Department of State.**

**ii. If an applicant knowingly supplies inaccurate or false 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 by 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 the 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 State's 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 indicates 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 State's small business database. The business may appeal this revocation pursuant to the procedures set forth below at N.J.A.C. 17:13-3.4.**

#### 17:13-3.2 Time for application to register as a small business

(a) A business may apply to the [Commerce Commission] **Division** at any time to register 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.

#### 17:13-3.3 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] **as a small business** 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 the 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] **after** the [issuance of the report] **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.)

**17:13-3.4** [12A: 10-3.4 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 12A:10-2.1(d) (17:13-2.1(d)), if its gross revenues, as determined by information retrieved from a third party database, do not exceed \$ 12 million.

(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. 17:13-2.2.**

**(c) Within ten days from 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 the 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 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 business by certified letter.**

#### SUBCHAPTER 4. SET-ASIDE CONTRACTING AND SUBCONTRACTING PROGRAM

##### 17:13-4.1 Set-aside program goals and procedures

(a) Each State contracting agency, consistent with its contracting authority, shall establish and administer a set-aside program which provides for at least [15, or the established goal pursuant to the Set-Aside Act, N.J.S.A. 52:32-17 et seq., whichever is greater,] **25** percent of the dollar value of its contracts to be awarded to eligible small businesses, as follows: at least [five] **ten** percent shall be awarded to small businesses whose gross revenues [to]**do** not exceed \$ 500,000; at least an additional [five] **15** percent shall be awarded to **the additional categories of** small businesses whose gross revenues do not exceed [\$ 5 million; and at least an additional five percent shall be awarded to small businesses whose gross revenues do not exceed] \$ 12 million **or the applicable federal revenue standards established at 13 CFR 121.201, whichever is higher.**

1. - 2. (No change.)

(b) (No change.)

(c) When a State contracting 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, or a portion thereof, shall be specifically set aside for small businesses whose gross revenues do not exceed \$ 500,000 or small businesses whose gross revenues do not exceed \$ 5 million or small businesses whose gross revenues do not exceed \$ 12 million **or the applicable federal revenue standards established at 13 CFR 121.201, whichever is higher,** and bids from other bidders



shall be rejected.

3. - 5. (No change.)

#### 17:13-4.2 Subcontracting target program and procedures

(a) - (f) (No change.)

(g) The State contracting agency will consider the bidders' actions taken pursuant to N.J.A.C. 17:14-4.3 [12A:19A-4.3] in determining whether reasonable efforts were made by the bidder to solicit and award subcontracts to eligible small businesses.

(h) (No change.)

#### 17:13-4.3 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, as established in the RFP:

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. -5. (No change.)

(b) (No change.)

### SUBCHAPTER 5. PLANNING, REPORTING AND REVIEW

#### 17:13-5.1 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.

1. The plan shall include a list of all known procurements and reprocurements scheduled to bid during that fiscal year, including the following information:
  - i.-iv. (No change.)
  - v. The contracts that the agency intends to set aside in each of the three small business set-aside categories set forth at N.J.A.C. [12A:10] **17:13**-4.1;
  - vi.-vii. (No change.)
2. Each State contracting agency, with the exception of the Division of Purchase and Property, shall include a list of those products and services typically purchased under the bidding threshold, identifying those deemed appropriate for inclusion in the small business programs.
  - i. Each State department served by the Division of Purchase and Property shall provide the [Commerce Commission] **Division** with a list of those products and services typically purchased pursuant to its delegated purchasing authority, or with a list of those

products and services purchased during the preceding fiscal year under that authority.

3. (No change.)

4. Each state contracting agency shall quarterly update its small business program plans with a list of line item contracts not included in its initial procurement schedules, containing the same information required by N.J.A.C. [12A:10-5.1(a)(17:13-5.1(a))].

5. (No change.)

(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 **at least** [five] **ten** percent of its total contracting dollars to small businesses whose gross revenues do not exceed \$ 500,000, **and at least** an additional [five] **15** percent of its total contracting dollars to **the additional category of** small businesses whose gross revenues do not exceed [\$ 5 million, and an additional five percent of its total contracting dollars to small businesses whose gross revenues do not exceed] \$ 12 million **or the applicable federal revenue standards established at 13 CFR 121.201, whichever is higher.**

#### 17:13-5.2 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, a list of the bidders awarded contracts including the amount of the contract award, delineating which of these contracts and the percentages that were advertised and awarded as set-aside contracts in each of the three categories of small businesses set forth in N.J.A.C. [12A:10-4.1 (17:13-4.1)];

i. The State contracting agencies, in determining compliance with the set-aside goals for the 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 is 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.]

ii. (No change.)

2.-4. (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.**

#### 17:13-5.3 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 program[s] 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.