

Adopted August 4, 2017

CHAPTER 27. EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION RULES

SUBCHAPTER 1. INTRODUCTION AND POLICY

§ 17:27-1.1 Policy

(a) It has long been the policy of the State of New Jersey to promote equal employment opportunity by prohibiting discrimination in employment and requiring affirmative action in the performance of contracts funded by the State. That policy was reinforced and expanded by an act of the Legislature, signed into law by the Governor, June 23, 1975. The statute, N.J.S.A. 10:5-31 et seq., (P.L. 1975, c. 127) provides that no public works contracts can be awarded nor any moneys paid until the prospective contractor has agreed to contract performance which complies with an approved affirmative action program. The law applies to each political subdivision and agency of the State and encompasses contracts for goods and services including professional services, and construction contracts.

(b) These rules establish the affirmative action employment practices necessary for public agencies, contractors, subcontractors, and business firms to comply with the equal employment opportunity standards of N.J.S.A. 10:5-31 et seq. To assure effective implementation of the equal employment opportunity and affirmative action requirements of N.J.S.A. 10:5-31 et seq., these rules prescribe procedures designed to minimize administrative paperwork, delays and unproductive red-tape.

SUBCHAPTER 2. DEFINITIONS

§ 17:27-2.1 Definitions

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

"Advanced trainee" means a minority worker or woman worker who is classified by the public agency compliance officer, designated by a public agency that has received delegated authority from the Division or Department, a contractor, subcontractor, union, the State training and employment service, apprentice program, referral agency, or other party acceptable to the Division or Department as having experience and skills used in a particular craft or occupation, but lacking the skills to be qualified as a journey worker.

"Affirmative action," whether used separately or in combination with other words or phrases (including, but not limited to, "program," "equal employment opportunity" and "EEO/AA"), means good faith steps taken to ensure equal opportunity employment for women and minority workers but does not include employment quotas, except where otherwise permitted and appropriate under applicable law.

"Affirmative action plan" means an outline of the steps a contractor or vendor will implement to achieve equal employment opportunity and affirmative action and/or to correct its equal employment and affirmative action program deficiencies.

"Affirmative action program" means a program that complies with the provisions of N.J.A.C. 17:27-4 or 6.

"Certificate of employee information report" means the certificate issued by the Division upon the initial receipt of a properly completed employee information report, Form AA302, from a vendor, including professional services contractors.

"Construction contract" means any contract entered into by a public agency for the construction, alteration, repair, or demolition of any building or other public work. Excluded from this definition are contractual agreements between public agencies.

"Construction contractor" means any party that enters into or offers to enter into a construction contract with a public agency.

"Construction project" means the construction, alteration, repair, or demolition of the specific building or other public work that is the subject of a construction contract.

"Contractor" means any party that enters into or offers to enter into a construction or goods and services contract with a public agency. The term also includes consultants, non-profits and providers of professional services.

"Department" means the Department of Labor and Workforce Development, Construction Contract Compliance Unit. The Department is responsible for monitoring the EEO/AA compliance of construction contractors.

"Director" means the State official in charge of the Division.

"Division" means the Division of Purchase and Property established in the State of New Jersey, Department of the Treasury. The Division is responsible for monitoring the EEO/AA compliance of goods and services (including professional services) vendors and public agencies, respectively.

"Employee information report" means Form AA302, which requires a breakdown of the vendor's workforce.

"Exhibit A" means the mandatory EEO/AA language that must be included in all contracts for goods and services (including professional services) awarded by a public agency in the State of New Jersey. See N.J.A.C. 17:27-3.5 and 3.7.

"Exhibit B" means the mandatory EEO/AA language that must be included in all construction contracts awarded by a public agency in the State of New Jersey. See N.J.A.C. 17:27-3.6 and 3.8.

"Goods and services contract" means any contract entered into by a public agency for the acquisition of materials, equipment, supplies, or services, including a contract for professional services. Excluded from this definition are contractual agreements between public agencies.

"Initial Project Workforce Report" means Form AA201, which requires a projected breakdown of the number of all workers per trade and of minorities and women on a construction project.

"Journey worker" means a worker who has been certified by the public agency compliance officer designated by a public agency who has received delegated authority from the Department, a contractor, subcontractor, union, the State training and employment service, apprentice program, referral agency, or other party acceptable to the Department as having mastered a craft or trade.

"Minority worker" means a worker who is Black, Hispanic, Asian or American Indian defined as follows:

1. Black, not of Hispanic Origin means persons having origins in any of the black racial groups of Africa.
2. Hispanic means persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
3. Asian or Pacific Islander means persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes Hawaii, Pakistan, Korea, China, Japan, Vietnam, Cambodia and the Philippine Islands and Samoa.
4. American Indian or Alaskan Native means persons having origins in any of the original people of North America and who maintain cultural identification through tribal affiliation or community recognition.

"Program Monitoring Unit" means the Construction Unit, Procurement Unit, or Public Agency Unit, within the Division or Department, which are responsible for monitoring the equal employment opportunity/affirmative action compliance of construction contractors, goods and services, and professional service vendors and public agencies, respectively.

"Public agency" means any State, county, municipality, school districts, or other political subdivisions of the State, or any agency of, or authority created by, any of the foregoing.

"Public agency compliance officer" means the officer or employee, who may be an existing officer or employee, designated by the public agency awarding a contract in accordance with N.J.A.C. 17:27-3.2 and N.J.S.A. 10:5-36(f).

"Public agency contract" means any construction contract or goods and services contract, including a professional services contract. Included in this definition are contracts qualifying for other exemption from formal bidding requirements. Excluded from this definition are contractual agreements between public agencies.

"Public works contract" means any contract to be performed for or on behalf of the State or any county or municipality or other political subdivision of the State, or any agency or authority created by any of the foregoing, for the construction, alteration, repair, or demolition of any building or public work or for the acquisition of materials, equipment, supplies, or goods and services, including professional services, with respect to which discrimination in the hiring of persons for the performance of work thereunder, or under any subcontract thereunder, by reason of race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, or sex is prohibited under N.J.S.A. 10:2-1.

"Subcontractor" means a third party that is engaged by a contractor to perform, pursuant to a subcontract, all or part of the work included in a public agency contract.

"Total workforce" means a contractor, vendor, or goods and services subcontractor's full complement of employees, including anyone on the company's payroll regardless of full-time, part-time, or temporary status.

"Trainee" means a minority or woman worker who is not eligible for an apprentice program and who is certified by the public agency compliance officer designated by a public agency who has received delegated authority from the Department, a contractor, subcontractor, union, the State training and employment service, apprentice program, referral agency, or other party acceptable to the Department as having no previous experience and skills used in a particular craft or occupation, but has demonstrated an interest in acquiring same and has agreed to enter into an on-site or off-site training program approved by a contractor, subcontractor, public agency compliance officer, or the Department.

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

"Vendor" means any party, including a provider of professional services that enters into or offers to enter into a goods and services contract with a public agency.

SUBCHAPTER 3. GENERAL REQUIREMENTS FOR PUBLIC AGENCIES AWARDING CONTRACTS

§ 17:27-3.1 Awarding of public agency contracts

No public agency shall award a contract or pay money to any contractor or subcontractor which has not agreed and guaranteed to afford equal employment opportunity in performance of the contract in accordance with an affirmative action program and, except with respect to affectional or sexual orientation, approved under the terms established in these rules.

§ 17:27-3.2 Public agency requirements; generally

(a) Public agencies shall comply with the following requirements in order to ensure equal employment opportunity in public contracting:

1. Comply with any rules promulgated by the Division and Department with respect to their obligations to assist with equal employment opportunity and affirmative action compliance and enforcement efforts;
2. Cooperate fully with the Division and Department in the implementation of guidelines for determining whether a construction contractor or vendor has failed to provide equal employment opportunity in the hiring of minorities and women on public contracts;
3. Include mandatory equal employment opportunity and affirmative action language in its advertisements, bid specifications and contracts;
4. Include in each contract and bid specification the State's intent to carry out its responsibilities requiring equal employment opportunity and affirmative action by vendors and construction contractors, the vendor and contractor's obligations under the law and related regulations, and the consequences of the failure to do so;
5. Provide vendors and construction contractors with documentation describing the relevant law and rules and, as requested, copies of same;

6. Provide to the Division or Department any information that indicates that a construction contractor or goods and services vendor is not in compliance with equal employment opportunity requirements and fully cooperate in any Division or Department investigation of such contractor or vendor's compliance with these requirements;

7. Provide the Division or Department with such other information as it shall request and as shall be necessary to enable the Division or Department to fulfill its mission;

8. Require construction contractors and vendors to certify that they are in compliance with equal employment opportunity and affirmative action in public contracting requirements by presenting mandatory evidence; and

9. Include in any public contract mandatory language requiring all parties to the contract and any subcontracts thereof to make a good faith effort to provide equal employment opportunity for minorities and women, and further providing that a failure to make good faith efforts to provide equal employment opportunity for minorities and women may result in fines/penalties, suspension/debarment, a determination to lower a construction contractor's aggregate rating or such other action as provided by law.

§ 17:27-3.3 Designation of public agency compliance officers

(a) Each public agency shall annually designate an officer or employee, who may be an existing officer or employee, to serve as its public agency compliance officer and shall notify the Division of the designation by January 10 of each year. Such notice to the Division is required even if the designation from the previous year has not changed. The public agency shall also notify the Division of any changes in the designated public agency compliance officer that may have occurred during the calendar year.

(b) The public agency compliance officer shall perform the duties prescribed in these rules; shall be responsible for ensuring the agency's compliance with these rules; and shall perform any other liaison and assistance functions as may be requested by the Division.

§ 17:27-3.4 Advertisement for bids and/or solicitation for proposals

Public agencies shall include in any advertisement for the receipt of bids, solicitation, and/or requests for proposals for a public contract, the following language: Bidders are required to comply with the requirements of N.J.S.A 10:5-31 et seq.

§ 17:27-3.5 Mandatory language for goods and services bid specifications and contracts (Exhibit A)

(a) A public agency shall include in all bid specifications and contracts for goods and services the language required by N.J.A.C. 17:27-3.7(a). Also, bid specifications and contracts for goods and services, that are not subject to a federal-ly approved or sanctioned affirmative action program, shall include the following additional language:

1. Each contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

i. Appropriate evidence that the contractor is operating under an existing federally approved or sanctioned affirmative action program;

ii. A certificate of employee information report approval, issued in accordance with N.J.A.C. 17:27-4; or

iii. An employee information report (Form AA302) electronically provided by the Division and distributed to the public agency, through the Division's website, to be completed by the contractor, in accordance with N.J.A.C. 17:27-4.

2. During the performance of this contract, the contractor agrees as follows:

i. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that all employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to, the fol-

lowing: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the public agency compliance officer setting forth provisions of this nondiscrimination clause;

ii. The contractor or subcontractor, where applicable, will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;

iii. The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment; and

iv. The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time.

§ 17:27-3.6 Mandatory language for construction bid specifications and contracts (Exhibit B)

(a) A public agency shall include in all bid specifications and contracts for construction the language required by N.J.A.C. 17:27-3.8(a). Also, all bid specifications and contracts for construction that are not subject to a Federally approved or sanctioned affirmative action program shall include the following additional language:

1. After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Department an initial project workforce report (Form AA201) electronically provided to the public agency by the Department, through its website, for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7.

2. During the performance of this contract, the contractor agrees as follows:

i. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that all employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, or sex. Such equal employment opportunity shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the public agency compliance officer setting forth provisions of this nondiscrimination clause;

ii. The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, or sex;

iii. The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment;

iv. The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time. However, if a subcontractor has a total workforce of four or fewer employees or if a contractor or subcontractor is performing under an existing Federally approved or sanctioned affirmative action program, the contract shall contain only the mandatory language required in (a) above, except for the language contained in the first sentence of this subparagraph.

(b) The public agency shall also include in all construction contracts and bid specifications, the language required by N.J.A.C. 17:27-3.8, unless the exemption provided under N.J.A.C. 17:27-7.1 is applicable.

§ 17:27-3.7 Mandatory bid specification and contract language for good faith efforts toward achieving equal employment opportunities in goods and services contracts (Exhibit A)

(a) Public agencies shall include in all bid specifications and contracts for goods and services, including contracts for professional services, the following mandatory language for equal employment opportunities:

1. The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

2. The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

3. The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

4. In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

§ 17:27-3.8 Mandatory bid specification and contract language for good faith efforts toward achieving equal employment opportunities in construction contracts (Exhibit B)

(a) Public agencies shall include in contracts and bid specifications the following mandatory language for equal employment opportunities:

1. When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the targeted employment goal prescribed by N.J.A.C. 17:27-7.2; provided, however, that the Department may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by (a)1 and 2 below, as long as the Department is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Department that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the targeted employment goal established in accordance with N.J.A.C. 17:27-7.2. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

i. If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31 et seq. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to afford equal employment opportunities to minority and women workers directly, consistent with this chapter. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the procedures prescribed under (a)2 below; and the contractor or subcontractor further agrees to take said action immediately if it determines that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.

2. If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (a)1 above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions:

i. To notify the public agency compliance officer, the Department, and minority and women referral organizations listed by the Department pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;

ii. To notify any minority and women workers who have been listed with it as awaiting available vacancies;

iii. Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;

iv. To leave standing requests for additional referral of minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State training and employment service and other approved referral sources in the area;

v. If it is necessary to lay off any of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and non-discrimination standards set forth in this chapter, as well as with applicable Federal and State court decisions;

vi. To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:

(1) The contractor or subcontractor shall interview the referred minority or women worker.

(2) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall in good faith determine the qualifications of such individuals. The contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience as recognized by a union, apprentice program, or a referral agency, provided the referral agency is acceptable to the Department. If necessary, the contractor or subcontractor shall consider the recruitment and hiring or scheduling of minority and women workers who qualify as trainees pursuant to these rules. All of these requirements, however, are limited by the provisions of (a)3 below.

(3) The name of any interested woman or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in (a)2vi(2) above, whenever vacancies occur. At the request of the Department, the contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.

(4) If, for any reason, a contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Department.

vii. To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Department and submitted promptly to the Division upon request.

3. The contractor or subcontractor agrees that nothing contained in (a)2 above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (a)2 above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey workers ratio specified in the applicable collective bargaining agreement, or in the absence of a collec-

tive bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (a)2 above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

4. After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Department an initial project workforce report (Form AA201) electronically provided to the public agency by the Department, through its website, for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7. The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of the contract to the Division and to the public agency compliance officer. The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on-the-job and/or off-the-job programs for outreach and training of minorities and women.

§ 17:27-3.9 Emergency purchases

A public agency may award a contract without affirmative action evidence in an emergency situation. In such a situation, the public agency shall document that an actual emergency exists, which affects the public health, safety or welfare and requires the public agency to immediately award a contract for construction or the delivery of goods and services, including professional services, and that to delay the award of the contract would endanger public health, safety, welfare or property. The contractor shall be required to comply with the affirmative action rules prior to payment.

§ 17:27-3.10 State-approved public agency affirmative action construction programs; delegated authority

(a) Notwithstanding any other provisions of this subchapter, a public agency may establish its own affirmative action program for construction contracts and submit said program to the Department for designation as a State-approved affirmative action construction program resulting in the delegation of authority to monitor its own construction projects for Equal Employment Opportunity/Affirmative Action compliance. Any public agency program so designated shall exclusively establish the State affirmative action procedures and requirements which implement N.J.S.A. 10:5-31 et seq., as applied to construction contracts and subcontracts involving said public agency.

(b) The Department may designate a public agency's affirmative action construction program as State-approved only if the program requires the public agency's construction contracts to conform to the mandatory contract language requirements of N.J.A.C. 17:27-3.6(b). Said program requires the public agency's advertisement and solicitation of construction contract bids to contain the following language: "Bidders are required to comply with requirements of N.J.S.A. 10:5-31 et seq.," and said program establishes targeted employment goal, which is not lower than the targeted goal established by N.J.A.C. 17:27-7.2.

(c) A public agency that seeks to have its program designated as a State-approved program shall submit to the Department a complete description of its program, copies of the relevant forms and administrative and regulatory documents, and any other information requested by the Department. Within 60 business days of receiving all necessary information, the Department shall either designate a public agency affirmative action program as State-approved for an initial period of one year or reject said program in accordance with the Division's Standard Operating Procedures. Approval shall be conditioned upon the execution of a Memorandum of Understanding between the Department and the public agency. If an affirmative action program submitted by a public agency is disapproved, the Department shall state, in writing, reasons for the disapproval and allow the public agency to seek reconsideration by making a request, in writing, to the Department and correcting any defects as stated in the Department's written response.

(d) Any change that a public agency intends to make in a State-approved program shall first be submitted in writing to the Department for approval. The Department shall approve all changes to a State-approved program in writing. Any changes to a State-approved program made without the written approval of the Department shall terminate the State approval.

(e) Within 60 business days prior to the expiration of State approval of a public agency's affirmative action program, the public agency may request renewal of the State's approval for a two-year period, in accordance with the procedures for obtaining initial approval set forth in (d) above. The Department shall evaluate the public agency's compliance with the State-approved program in determining whether the approved designation should be renewed.

(f) The Department may review the operation of any State-approved program, and where appropriate, may issue a written notice of termination. Any such termination shall become effective 60 business days after the written notice of termination and opportunity to cure is issued.

(g) Any construction contractor or subcontractor that submits appropriate evidence, in accordance with N.J.A.C. 17:27-3.6(a)2iv, that it is operating under an existing Federally approved or sanctioned affirmative action program to a public agency, including a public agency that is operating under its own State-approved affirmative action construction program, shall be deemed to have satisfied the affirmative action requirements of N.J.S.A. 10:5-31 et seq. The determination of the Department as to what constitutes such appropriate evidence shall be binding on the contractor or subcontractor.

SUBCHAPTER 4. AFFIRMATIVE ACTION PROGRAM FOR VENDORS AND GOODS AND SERVICES SUBCONTRACTORS

§ 17:27-4.1 Goods and services contracts, including professional services contracts, subject to affirmative action program requirements

All vendors shall satisfy the affirmative action program requirements of these rules by submitting the evidence identified in N.J.A.C. 17:27-4.2.

§ 17:27-4.2 Elements of affirmative action program for vendors

(a) Affirmative action evidence for vendors shall consist of the following elements:

1. Provisions in the goods and services contract, including professional services contracts, containing the language required by N.J.A.C. 17:27-3.5(a) and 3.7; and
2. An employee information report AA302, submitted in accordance with N.J.A.C. 17:27-4.3, or a certificate of employee information report issued in accordance with N.J.A.C. 17:27-4.5; or
 - i. Any existing federally approved or sanctioned affirmative action program.

§ 17:27-4.3 Procedure for establishing an approved affirmative action program by contract

(a) Upon awarding a goods and services contract, including a professional services contract, the public agency shall submit to the vendor for signing a contract which contains the contract language required by N.J.A.C. 17:27-3.5(a) and 3.7, subject to the following:

1. As a condition to entering into a valid and binding contract, said vendor shall submit to the public agency either appropriate evidence that:
 - i. The vendor is operating under an existing federally approved or sanctioned affirmative action program;
 - ii. The vendor has a certificate of employee information report issued in accordance with this subchapter; or
 - iii. The vendor has an employee information report AA302, electronically provided by the Division to the public agency, through the Division's website, for distribution to and completion by the vendor in accordance with this chapter.
2. If the vendor submits appropriate evidence of an existing Federally approved or sanctioned affirmative action program, the contract shall not include the mandatory language required by N.J.A.C. 17:27-3.5(a)2 and by 3.7.
3. A vendor shall not be eligible to submit an employee information report unless the vendor certifies on the AA302 form that he or she has never before applied for a certificate of employee information report in accordance with rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time; and agrees to submit immediately to the Division a copy of the employee information report.

(b) If a vendor, including a professional services contractor, refuses to sign a contract because it contains the contract language required by N.J.A.C. 17:27-3.5(a), when it is submitted for signing by the public agency and/or if the vendor has failed to satisfy the condition for entering into a contract required by (a)1 above, the public agency shall

rescind the award, and these requirements shall apply to any other vendor which the public agency selects in accordance with applicable contracting laws and procedures.

§ 17:27-4.4 Affirmative action program requirement for goods and services subcontractors

A vendor, including a professional services contractor, shall not enter into a subcontract with a subcontractor, unless the subcontractor has submitted to said vendor one of the three documents which is also required from vendors in accordance with all provisions of N.J.A.C. 17:27-4.3.

§ 17:27-4.5 Exemptions to Affirmative Action requirements for goods and services subcontractors

All subcontractors for goods and services contracts, including professional services contracts, with four or fewer employees shall be exempt from the requirements of this subchapter.

§ 17:27-4.6 Procedures for the issuance and renewal of a certificate of employee information report

(a) A vendor that has submitted an employee information report to a public agency pursuant to N.J.A.C. 17:27-4.3, and any subcontractor that has submitted an employee information report pursuant to N.J.A.C. 17:27-4.4, shall immediately provide a copy of said report to the Division with a fee of \$ 150.00 payable to the Treasurer, State of New Jersey.

(b) The Division shall approve or reject an employee information report (Form AA302) within 40 business days of its submission; provided, however, that such a rejection, if it is independent of a noncompliance determination pursuant to N.J.A.C. 17:27-10, shall in no way affect the validity of a contract for which said employee information report was presented to satisfy the condition required by N.J.A.C. 17:27-4.3. Failure of the Division to so act within 40 business days shall constitute approval of the employee information report. If an employee information report submitted by a vendor or subcontractor is rejected, a vendor or subcontractor may submit a corrected employee information report (Form AA302) to the Division. Upon approval of an employee information report submitted by a vendor or subcontractor who, prior to its submission, had never received a certificate of employee information report, the Division shall issue to said vendor or subcontractor a certificate of employee information report which shall be valid for three years from the date issued by the Division if the vendor has 50 or more employees and for seven years from the date issued by the Division if the vendor or subcontractor has less than 50 employees.

(c) Additional procedures are as follows:

1. As early as 90 business days prior to the expiration of a certificate of employee information report, a vendor, including a professional services contractor, may submit an application for renewal of the certificate of employee information report with a fee in the amount of \$ 150.00 payable to the Treasurer, State of New Jersey to the Division. Said renewal application must be submitted within 10 business days of the certificate's expiring otherwise it will be treated as an initial application for a certificate of employee information report.

2. The Division shall make the renewal application form available to vendors, including a professional services contractor, in the form specified by the Division.

3. In accordance with the form specified by the Division, the vendor, including a professional services contractor, shall submit, along with its application for renewal and required fee, an updated employee information report which shall contain current employee data, the employee data contained in the prior employee information report approved by the Division, the targeted employment goals which the vendor has been making good faith efforts to meet during the period covered by the certificate or employee information report approval for which renewal is requested, any additional information requested by the Division and, if necessary, an explanation of why the hiring and other personnel procedures employed by the vendor have failed to produce good faith efforts to reach the targeted employment goals established pursuant to N.J.A.C. 17:27-5.2; and an explanation of changes in hiring and personnel practices, if any, which the vendor plans to implement expeditiously to increase minority and women employment opportunities in pursuit of the targeted employment goals. Notwithstanding the content and scope of the procedures which a vendor reports in an employee information report that he or she will implement in pursuit of the targeted employment goals, said vendor is obligated to make good faith efforts to implement and comply with any hiring procedures and personnel practices required by this chapter including, but not limited to, procedures required by the Division pursuant to this chapter.

4. The Division shall approve or reject an application for renewal of a certificate of employee information report within 60 business days of its submission, and the failure of the Division to so act within 60 business days shall constitute approval of the renewal application. If a renewal application submitted by a vendor is rejected, the Division shall state in writing reasons for the rejection and allow the vendor to seek reconsideration by making a request in writing to the Division. The Division, in its sole discretion, may agree to meet with the vendor. A vendor whose application has been rejected may resubmit a renewal application accompanied by a revised, current employee information report pursuant to the same procedures and conditions applicable to the original submission; provided, however, that any such resubmission shall serve to terminate any reconsideration by the Division of a rejection of a renewal application, which reconsideration has been commenced by the Division on the basis of a vendor's response to its rejection of a renewal application. The Division shall have 60 business days from submission of the revised renewal to approve or reject the revised application. Upon approval of a renewal application, the Division shall issue to the vendor a certificate of employee information report which shall be valid for either three years from the date it is issued by the Division for 50 or more employees or seven years from the date it is issued by the Division for less than 50 employees. Any rejection of a renewal application, if it is independent of a noncompliance determination, pursuant to N.J.A.C. 17:27-10, shall in no way affect the validity of an existing contract which has already been signed in accordance with N.J.A.C. 17:27-4.3.

(d) There shall be a \$ 75.00 fee for duplicate or replacement certificate of employee information report.

(e) Where necessary to manage an exceptionally difficult administrative schedule, the Division may issue a temporary certificate of employee information report, valid for a time period less than the time period authorized in (b) and (c) above, but at the time the temporary certificate expires, the Division shall either issue a certificate of employee information report that is valid for the appropriate time period as authorized by (b) and (c) above, or reject said application; provided, however, that any rejection of a renewal application, if it is independent of a noncompliance determination, pursuant to N.J.A.C. 17:27-10, shall in no way affect the validity of an existing contract which has already been signed, in accordance with N.J.A.C. 17:27-4.3.

§ 17:27-4.7 Public agency authority to set time periods

A public agency may require a vendor, including a professional services contractor, to seek immediate renewal of its certificate of information report if the vendor will be preparing a bid or proposal within 90 business days of the expiration of its certificate or to seek such renewal at the time its certificate is within 90 business days of expiration, except that a public agency may not require a vendor to seek immediate renewal if there is a reasonable probability that said vendor's current certificate will be valid at the time when the public agency expects to award said contract.

SUBCHAPTER 5. TARGETED MINORITY AND WOMEN EMPLOYMENT GOALS FOR DETERMINING GOOD FAITH EQUAL EMPLOYMENT OPPORTUNITY EFFORTS BY VENDORS AND GOODS AND SERVICES SUBCONTRACTORS

§ 17:27-5.1 Exemptions

The requirements of this subchapter shall not apply to any vendor or subcontractor, including professional services contractors and subcontractors, performing under an existing Federally approved or sanctioned affirmative action program which is exempted from the affirmative action plan requirements under N.J.A.C. 17:27-4.3(a), or to any subcontractor which is exempted under N.J.A.C. 17:27-4.5.

§ 17:27-5.2 Establishment of targeted goals

(a) The Division shall individually establish the targeted minority and women employment goals for the determination of good faith equal employment opportunity efforts by each vendor or subcontractor, including professional services contractors and subcontractors. The Division shall analyze the types of jobs offered by each vendor or subcontractor and compare that analysis to the number of qualified minorities and women available by county in occupational classes as reported by the New Jersey Department of Labor and Workforce Development, Division of Planning and Research in its report, EEO Tabulation-Detailed Occupations by Race/Hispanic Groups.

(b) When a vendor, including a professional services contractor, and/or subcontractor submits an employee information report, as required by *N.J.A.C. 17:27-4.3*, the Division may schedule an orientation and profile visit upon the issuance of a certificate of employee information report to obtain detailed information on which of the occupation classes comprise each of the equal employment opportunity (EEO) categories, identified on the Employee Information Report, AA302 form, in the vendor's or subcontractor's workforce. The Division shall compare that information to the availability data for the county in which the vendor's or subcontractor's offices, plants or distribution centers are located to establish the targeted employment goals based upon the occupational mix within the vendor's or subcontractor's workforce. When a vendor or subcontractor has offices, plants or distribution centers located in more than one county, the Division shall establish targeted goals for each county.

(c) The Division shall establish overall goals for vendors and subcontractors based upon the average of the individually established targeted goals to determine good faith equal employment opportunity efforts by vendors and subcontractors for the EEO categories, identified on the Employee Information Report, AA302 form, in which the vendors or subcontractors have employees.

(d) A vendor and subcontractor submitting an application for renewal of a certificate of employee information report, pursuant to *N.J.A.C. 17:27-4.6(c)*, shall include information detailing the occupational classes that comprise each EEO category, identified on the Employee Information Report, AA302 form, within their workforce to provide the Division with information to establish the targeted goals prior to the compliance review.

(e) In cases in which a public agency, contractor, subcontractor, or affected minority or woman worker submits in writing a request to the Division for a determination of what targeted goals should apply to determine the good faith equal employment opportunity efforts of vendors or subcontractors, the Division shall determine the proper targeted goals. Any such employment goal determination by the Division shall be binding on the vendor or subcontractor.

§ 17:27-5.3 Designation of approved minority referral agencies

The Division shall compile and maintain a listing of approved minority and women referral agencies for each county or multi-county area of the State.

§ 17:27-5.4 Vendor and subcontractor compliance obligations

(a) A vendor or subcontractor shall be deemed to be in compliance with the employment goals pursuant to this subchapter, if the vendor or subcontractor is employing minority and women workers in the percentages established as targeted goals pursuant to this subchapter, and achievement of said employment percentages shall constitute compliance for purposes of this chapter, regardless of any other percentages established by a public agency; or if the vendor or subcontractor has acted and continues to act in good faith, including the use of the procedures required by the mandatory language prescribed by *N.J.A.C. 17:27-3.7*, to achieve the targeted minority and women employment goal percentages established in accordance with this subchapter.

(b) The vendor or subcontractor agrees to provide documentation that it has made good faith efforts to meet equal employment opportunity requirements, whenever the Division, Department, or public agency, upon its own initiative or upon the complaint of any member of the public, determines that such information is needed to determine whether the vendor or subcontractor has failed to comply with the applicable equal employment opportunity requirements.

§ 17:27-5.5 Criteria for determining good faith efforts of vendors and goods and services subcontractors

(a) In addition to the vendor's or subcontractor's compliance with the requirements set forth in the mandatory language at *N.J.A.C. 17:27-3.5* or *3.6*, as applicable, the Division shall consider the following factors in its determination of whether a vendor or subcontractor has acted in good faith:

1. Whether the vendor or subcontractor has agreed to make a good faith effort to adhere to targeted minority and women employment goals;
2. Whether the vendor or subcontractor has met or documented that it has made a good faith effort to meet targeted employment goals;
3. Whether the vendor or subcontractor has adopted an Equal Employment Opportunity (EEO) Policy;

4. Whether the vendor or subcontractor has posted an EEO Policy on the job site bulletin board;
5. Whether the vendor or subcontractor has disseminated the EEO Policy to its workers through various means including company meetings, preconstruction job meetings, written notices, etc.;
6. Whether the vendor or subcontractor has posted Federal or State issued EEO posters on the job site bulletin board;
7. Whether the vendor or subcontractor has identified an EEO Officer and established job duties in writing for such position;
8. Whether the vendor or subcontractor has developed a basic complaint procedure;
9. Whether the vendor or subcontractor has knowledge of and has considered the general availability of minorities and women having requisite skills in the immediate labor area;
10. Whether the vendor or subcontractor has knowledge of and has considered the percentage of minorities and women in the total workforce in the immediate labor area;
11. Whether, when the opportunity has presented itself, the vendor or subcontractor has considered promoting minority and women employees within its organization;
12. Whether the vendor or subcontractor attempted to hire minorities and women based upon the anticipated expansion, contraction and turnover of its workforce;
13. Whether the vendor or subcontractor has the ability to consider undertaking training as a means of making all job classifications available to minorities and women and whether it has done so;
14. Whether the vendor or subcontractor has utilized the available recruitment resources to attract minorities and women with requisite skills, including, but not limited to, public and private training institutions, job placement services, referral agencies, newspapers, trade papers, faith-based organizations, and community-based organizations;
15. Whether the vendor or subcontractor has requested qualified minorities and women from a labor union with whom it has an exclusive hiring or referral arrangement;
16. Whether the vendor or subcontractor has actively recruited beyond the traditional sources to attract minority and women applicants;
17. Whether the vendor or subcontractor has reviewed all personnel actions to ensure actions are taken in compliance with the company's EEO policy; and
18. Whether the vendor or subcontractor has retained records of employment and personnel actions and payroll records for a three year-period from the date of the contract or project closing.

SUBCHAPTER 6. AFFIRMATIVE ACTION PROGRAM FOR CONSTRUCTION CONTRACTORS AND SUBCONTRACTORS

§ 17:27-6.1 Construction contracts subject to affirmative action program requirements

All construction contractors and subcontractors shall satisfy the affirmative action program requirements of this chapter, with the exception of construction subcontractors with a total workforce of four or fewer employees, by submitting the evidence identified in N.J.A.C. 17:27-6.2.

§ 17:27-6.2 Elements of an affirmative action program for construction contractors and subcontractors

(a) An affirmative action evidence for construction contractors and subcontractors shall consist of the following elements:

1. Provisions in the construction contract containing language required by N.J.A.C. 17:27-3.6 and 3.8; and
2. An initial project workforce report AA201 submitted in accordance with N.J.A.C. 17:27-7.5; or

- i. Any existing federally approved or sanctioned affirmative action program.

§ 17:27-6.3 Procedure for establishing an approved affirmative action program by contract

(a) Upon awarding a construction contract, the public agency shall submit to the contractor for signing a contract which contains the contract language required by N.J.A.C. 17:27-3.6(b), except that the language required by N.J.A.C. 17:27-3.6(b) shall not be included in a contract with a contractor which submits to the public agency, prior to or at the time the contract is submitted by the public agency for signing, appropriate evidence that the contractor is operating under an existing Federally approved or sanctioned affirmative action program.

(b) If a contractor refuses to sign said contract because it contains the contract language required by N.J.A.C. 17:27-3.6(a) and 3.8, when it is submitted for signing by the public agency, then the public agency shall rescind the award and these requirements shall apply to any other contractor which the public agency selects in accordance with applicable contracting laws and procedures.

§ 17:27-6.4 Affirmative action program requirement for construction subcontractors

A construction contractor operating under a construction contract shall not enter into a subcontract with a construction subcontractor, unless the subcontract contains the language required by N.J.A.C. 17:27-6.3; provided, however, that subcontractors with a total workforce of four or fewer employees shall be exempt from the requirements of this subchapter.

SUBCHAPTER 7. TARGETED MINORITY AND WOMEN EMPLOYMENT GOALS FOR DETERMINING GOOD FAITH EQUAL EMPLOYMENT OPPORTUNITY EFFORTS BY CONSTRUCTION CONTRACTORS AND SUBCONTRACTORS

§ 17:27-7.1 Exemption

The requirements of this subchapter shall not apply to any construction contractor or subcontractor performing under an existing Federally approved or sanctioned affirmative action program, or to any subcontractor which is exempted under *N.J.A.C. 17:27-6.1*, from the affirmative action program requirements of N.J.A.C. 17:27-6; or to any construction contractor or subcontractor bidding on or negotiating with a public agency operating under its own affirmative action program which has been designated as a State approved affirmative action construction program pursuant to N.J.A.C. 17:27-6.

§ 17:27-7.2 Establishment of targeted goals

(a) The Department shall individually establish the minority and women employment goals for each construction contractor and subcontractor for each trade on each contract. The Department shall review the trades to be utilized during the completion of the work as reported on the initial project workforce report and determine the employment goals based upon the number of qualified minorities and women available as reported by the New Jersey Department of Labor, Division of Planning and Research in its report: EEO Tabulations--Detailed Occupations by Race/Hispanic Groups.

(b) The contractor shall obtain the targeted employment goals from the State's website at www.state.nj.us/treasury/contract_compliance or request the employment goals from the Department after submitting the initial project workforce report to the Department.

(c) When it is notified of a preconstruction or initial job meeting, the Department has the discretion to attend the meeting for the purpose of informing the construction contractor of its responsibilities, the targeted employment goals and the good faith criteria used in determining compliance with this chapter. If the Department determines not to attend the preconstruction or initial job meeting, a representative of the Department shall discuss the contractor's responsibilities, the targeted employment goals, and the good faith criteria used in determining compliance with this chapter during the first site monitoring visit. The Department shall evaluate compliance with the targeted employment goals and good faith requirements by reviewing the utilization of minorities and women as reported in the work hours per trade and the good faith efforts of each construction contractor. The Department shall calculate the work hours per trade based upon

information in the monthly project workforce report submitted pursuant to N.J.A.C. 17:27-7.5 and verified by periodic site visits.

(d) Public agencies, contractors, subcontractors, or affected minority or women workers may submit written requests to the Department for a determination of what employment goals should apply for a particular contract. The determination made by the Department in such cases shall be binding on public agencies, contractors, subcontractors, or minority or women workers who submit the requests.

§ 17:27-7.3 Contractor and subcontractor compliance obligations

(a) A construction contractor or subcontractor shall be deemed to be in compliance with the targeted employment goals pursuant to this subchapter, if the contractor or subcontractor is employing minority and women workers in the percentages established as employment goals pursuant to this subchapter, and achievement of said employment percentages shall constitute compliance for purposes of this chapter, regardless of any other percentages established by a public agency; or if the contractor or subcontractor has acted and continues to act in good faith, including the use of the procedures required by the mandatory language prescribed by N.J.A.C. 17:27-3.7, to achieve the targeted minority and women employment goal percentages established in accordance with this subchapter.

(b) The contractor or subcontractor agrees to provide documentation that it has made good faith efforts to meet equal employment opportunity requirements whenever the Department or public agency, upon its own initiative or upon the complaint of any member of the public, determines that such information is needed to determine whether the contractor or subcontractor has failed to comply with the applicable equal employment opportunity requirements.

§ 17:27-7.4 Criteria for determining good faith efforts of construction contractors and subcontractors

(a) In addition to the contractor or subcontractor's compliance with the requirements set forth in the mandatory language at N.J.A.C. 17:27-3.8, the Department shall consider the following factors in its determination of whether a contractor or subcontractor has acted in good faith.

1. Whether the contractor or subcontractor has agreed to make a good faith effort to adhere to minority and women targeted employment goals;
2. Whether the contractor or subcontractor has met or documented that it has made a good faith effort to meet targeted employment goals;
3. Whether the contractor or subcontractor has adopted an Equal Employment Opportunity (EEO) Policy;
4. Whether the contractor or subcontractor has posted an EEO Policy on the job site bulletin board;
5. Whether the contractor or subcontractor has disseminated the EEO Policy to its workers through various means including company meetings, preconstruction job meetings, written notices, etc.;
6. Whether the contractor or subcontractor has posted Federal or State issued EEO posters on the job site bulletin board;
7. Whether the contractor or subcontractor has identified an EEO Officer and established job duties in writing for such position;
8. Whether the contractor or subcontractor has developed a basic complaint procedure;
9. Whether the contractor or subcontractor has knowledge of and has considered the general availability of minorities and women having requisite skills in the immediate labor area;
10. Whether the contractor or subcontractor has knowledge of and has considered the percentage of minorities and women in the total workforce in the immediate labor area;
11. Whether, when the opportunity has presented itself, the contractor or subcontractor has considered promoting minority and women employees within its organization;
12. Whether the contractor or subcontractor attempted to hire minorities and women based upon the anticipated expansion, contraction and turnover of its workforce;

13. Whether the contractor or subcontractor has the ability to consider undertaking training as a means of making all job classifications available to minorities and women and whether it has done so;

14. Whether the contractor or subcontractor has utilized the available recruitment resources to attract minorities and women with requisite skills, including but not limited to public and private training institutions, job placement services, referral agencies, newspapers, trade papers, faith-based organizations, and community-based organizations;

15. Whether the contractor or subcontractor has requested qualified minorities and women from a labor union with whom it has an exclusive hiring or referral arrangement;

16. Whether the contractor or subcontractor has actively recruited beyond the traditional sources to attract minority and women applicants;

17. Whether the contractor or subcontractor has reviewed all personnel actions to ensure actions are taken in compliance with the company's EEO policy; and

18. Whether the contractor or subcontractor has retained records of employment and personnel actions and payroll records for a three year period from the date of the contract or project closing.

§ 17:27-7.5 Construction project workforce reporting and compliance procedures

The Department shall electronically provide to the public agency that has awarded a construction contract initial project workforce reports (Form AA201), through its website, to be distributed to the contractor. Each initial project workforce report shall identify the estimated employment requirements, by trade or craft, of the construction contractors and subcontractors for the duration of the construction contract. The Department shall provide construction contractors and subcontractors monthly project workforce reports that must be submitted to the public agency and the Department by the seventh business day of each month. The Department, the public agency compliance officer, construction contractors and subcontractors shall use these project workforce reports in accordance with N.J.A.C. 17:27-3.8, to monitor compliance with the requirements of this subchapter, and the Department and the public agency compliance officer also may use these reports to engage in other related enforcement, compliance and reporting procedures as provided for in N.J.A.C. 17:27-9 and 10.

Subchapter 8. (RESERVED)

SUBCHAPTER 9. MONITORING PUBLIC AGENCY CONTRACTS

§ 17:27-9.1 Designation of principal officer

If a contractor or subcontractor is operating under an affirmative action program prescribed by N.J.A.C. 17:27-4.2(a) or 6.2(a), said contractor or subcontractor shall designate a principal officer of its firm who shall meet, when necessary, with its staff, subcontractors, union representatives, the public agency compliance officer, the Department, and the Division to ensure compliance with these rules and its affirmative action program.

§ 17:27-9.2 Department's on-site visits and attendance at job meetings

(a) An official of the Division or Department shall be allowed to conduct on-site visits and/or to attend all project and/or job meetings and, at reasonable times and in a reasonable manner, to enter the contractor's or subcontractor's business facility or facilities or construction project site for the purpose of determining, in accordance with the Division's or Department's standard operating procedures, whether the contractor or subcontractor is complying with the affirmative action program.

(b) An official of the Division or Department, with reasonable advance notice, shall be allowed to enter the public agency's business facility or facilities for the purpose of determining, in accordance with the Division's or Department's standard operating procedures, whether the public agency is complying with the affirmative action rules.

SUBCHAPTER 10. COMPLIANCE PROCEDURES AND SANCTIONS, APPLICABLE TO PUBLIC WORKS CONTRACTS

§ 17:27-10.1 Scope

(a) The provisions of this subchapter shall apply to contractors and subcontractors who are awarded public contracts and to public agencies that award public contracts.

(b) The Division, Department, and those public agencies to which it has delegated authority in accordance with N.J.A.C. 17:27-3.10 have the authority to issue sanctions pursuant to this subchapter.

§ 17:27-10.2 Alert notices for contractors and/or subcontractors

The Division, Department, or public agency compliance officer designated by a public agency who has received authority from the Division or Department, on its own initiative or in response to an allegation from a public agency compliance officer, or in response to a written complaint or allegation from an interested party, shall investigate any complaint or allegation of a violation of this chapter or of an approved affirmative action program. If the Division, Department, or public agency compliance officer designated by a public agency, who has received authority from the Division or the Department, determines that there is a substantial probability that a violation is occurring, it may issue a written alert notice to a contractor or subcontractor and provide a copy to the public agency. The alert notice shall explain in sufficient detail the facts of the alleged violation.

§ 17:27-10.3 Correction of alleged violations; violation notice for contractors and/or subcontractors

If the alleged violation explained in the alert notice has not been corrected to the satisfaction of the Division, Department, or public agency compliance officer designated by a public agency who has received authority from the Division or Department issuing the notice, within three business days after it is received by the contractor or subcontractor, said Division, Department, or public agency compliance officer designated by a public agency who has received authority from the Division or Department shall issue a violation notice to said contractor or subcontractor. Said violation notice shall explain in sufficient detail the facts of the continuing violation.

§ 17:27-10.4 Advisement notices for public agencies

The Division or Department, acting on its own initiative or in response to a written complaint or allegation from an interested party, shall investigate any written complaint or allegation of a violation of this chapter by a public agency. If the Division or Department determines that there is a substantial probability that a violation is occurring, it may issue an advisement letter to a public agency. The advisement letter shall explain in sufficient detail the facts of the alleged violation.

§ 17:27-10.5 Correction of alleged public agency violations; show cause letter

If the public agency does not correct or sufficiently address to the satisfaction of the Division or Department the alleged public agency violation explained in the letter of advisement within 30 days of the agency's receipt of the letter of advisement, the Division or Department may conduct a further review or issue a show cause letter to said public agency. Said show cause letter shall explain in sufficient detail the facts of the continuing violation.

§ 17:27-10.6 Contractor, vendor and public agency violations; remedial actions

(a) The following circumstances shall constitute some of the indicia of a party's failure to meet the requirements of this chapter or of an affirmative action program, which may form the basis for a finding of a violation by the Division or Department. These indicia are a representative sampling of indicia, but are not intended to constitute the only indicia that may be considered by the Division or Department in its determination as to whether a violation has occurred:

1. For construction contractors:

- i. Failure to submit Affirmative Action Form 201 (Initial Project Workforce Report);
- ii. Failure to submit Affirmative Action Form 202 (Monthly Project Workforce Report);
- iii. Failure to submit documentation of good faith efforts to provide equal employment opportunity in the hiring of minorities and women in each trade such as that noted at N.J.A.C. 17:27-7.4;
- iv. Failure to provide additional requested information to determine compliance;
- v. Failure to respond to an Alert or Violation Notice; or
- vi. Failure to attend an investigatory conference.

2. For goods and services and professional services vendors:

- i. Failure to submit affirmative action evidence (that is, Form 302 (Employee Information Report), Certificate of Employee Information Report or Letter of Federal Approval) to public agency;
- ii. Failure to submit Affirmative Action Form 302 (Employee Information Report) to the Division for issuance of a Certificate of Employee Information Report;
- iii. Failure to submit documentation of good faith efforts to provide equal employment opportunity in the hiring of minorities and women;
- iv. Failure to submit Affirmative Action Plan; or
- v. Alteration or forgery of Certificate of Employee Information Report.

3. For public agencies:

- i. Failure of a State agency to pay one-half of one percent of the total cost of the construction project that is the subject of one or more construction contracts and equal to or greater than \$ 1,000,000, to the Department of Labor and Workforce Development for the outreach and training of minorities and women in the construction trades in accordance with the notice required pursuant to N.J.A.C. 17:27-12.1;
- ii. Failure to include mandatory language in advertisements, bid specifications or contracts;
- iii. Failure to obtain affirmative action evidence from vendor/contractor;
- iv. Failure to submit the Public Agency Compliance Officer (PACO) Letter or to notify the Division of changes in PACO designation;
- v. Failure to cooperate fully with the Division in the establishment and implementation of guidelines for determining whether a contractor or vendor has failed to provide equal employment opportunity in the hiring of minorities and women on public contracts; or
- vi. Failure to provide the Division with such other information as it shall request and as shall be necessary to enable the Division to fulfill its mission.

(b) If the Division determines that a contractor, subcontractor or public agency is in violation of this chapter or in violation of its affirmative action program, the Division may enforce the obligations of N.J.S.A. 10:5-31 et seq., as implemented by this chapter, and the requirements of the affirmative action program by ordering or taking part in any or all of the remedial actions in (b)1 through 4 below. A public agency acting under delegated authority may also enforce the obligations of N.J.S.A. 10:5-31 et seq., as implemented by this chapter and the requirement of the affirmative action plan by ordering these remedial actions except with regards to other public agencies.

1. Subject the contractor or subcontractor or public agency to a fine of up to \$ 1,000 for each violation for each day during which the violation continues, as delineated in N.J.A.C. 17:27-10.7, with said fine to be collected in a summary manner pursuant to the Penalties Enforcement Law of 1999, N.J.S.A. 2A:58-10 et seq.;

2. Refer the record of violation to the contracting agency for corrective action as provided by statute, regulation or contract, including, but not limited to, suspension, debarment, withholding payment and termination of a contract;

3. Refer the record of violation determination proceeding to the Attorney General or his or her designee for evaluation for action consistent with the "Law Against Discrimination"; and/or

4. The Director of the Division, as the designee of the Treasurer, may enforce in a court of law the provisions of N.J.S.A. 10:5-31, et seq., or join in or assist any enforcement proceeding initiated by any aggrieved person under said Act. A public agency acting under delegated authority also has said enforcement authority except with respect to other public agencies.

§ 17:27-10.7 Fines and penalties

(a) When the Division or Department finds that a construction contractor, vendor or public agency has violated the Act or its implementing rules, the Treasurer is authorized to assess and collect fines in the amounts and time frames that follow:

1. First Violation - \$ 250.00 per day for each violation during which the violation continues.
2. Second Violation - not more than \$ 500.00 per day for each violation for each day during which the violation continues.
3. Third and Subsequent Violations - not less than \$ 500.00 per day for each violation but not more than \$ 1,000 per day for each violation.

(b) All fines and penalties shall be paid within 30 business days of the date of the final order. Failure to pay such penalties and fines shall result in a judgment being obtained in a court of competent jurisdiction.

(c) All fines shall be made payable to the Treasurer, State of New Jersey. All payments shall be made by certified check or money order, or payable in a form suitable to the Treasurer.

(d) In assessing a fine or penalty pursuant to this chapter, the Division or Department shall consider the following factors:

1. The size of vendor/construction contractor's business or the population of the public agency;
2. The past history of compliance;
3. The frequency of violation for a third or subsequent violation;
4. The seriousness of the violation;
5. Indicia of good faith efforts to comply with equal employment opportunity requirements and/or affirmative action program;
6. The level of cooperation of the entity in exchanging information regarding its efforts to correct deficiencies that resulted in violation;
7. Indicia of any intentional or misleading conduct; and
8. Any other factors which the Division or Department deems to be appropriate in determining the penalty assessed, with all such factors to be explicitly articulated by the Division or Department in its assessment of such penalty.

(e) No fine or penalty shall be levied pursuant to this subchapter unless the Division or Department provides the alleged violator with notification by certified mail which includes the amount of the penalty following the opportunity for an investigatory conference and the hearing process set forth in N.J.A.C. 17:27-10.8.

§ 17:27-10.8 Investigatory conference; hearings

(a) When issuing a notice of violation or show cause order, the program monitoring unit or public agency compliance officer designated by a public agency who has received authority from the Division or Department shall provide written notice to the alleged violator that it shall submit within 10 business days of receipt of such notice a written response statement explaining why it is not in violation of this chapter or the affirmative action plan or provide a detailed explanation of how it will correct any such violation and the date by which it will do so.

(b) If the program monitoring unit or public agency compliance officer designated by a public agency who has received authority from the Division or Department determines that the contractor or subcontractor has not adequately explained why it is not in violation or if the program monitoring unit or public agency compliance officer designated by a public agency who has received authority from the Division or Department determines that the violation is continuing to occur, then it shall conduct an investigatory conference to determine whether there is a violation, if corrective

measures must be taken and/or whether it would recommend to the Division that financial penalties should be imposed in accordance with N.J.S.A. 10:5-35 and 36. Such investigatory conference shall be conducted within 30 business days of the contractor's and/or subcontractor's submission of its written statement. The program monitoring unit may conduct interviews and request from appropriate parties the submission of additional information as is considered necessary to determine whether the alleged violation has occurred. As soon as practical after conclusion of the investigatory conference, the program monitoring unit shall issue an initial determination to the alleged violator.

(c) If the alleged violator intends to appeal the initial determination, it must submit a written appeal to the Division or Department within 10 days of receipt of the initial determination from the program monitoring unit. Any such appeal must identify the specific bases for seeking review, including all reasons that support the alleged violator's position.

(d) The Division or Department may disregard any appeal that is filed after the 10-day period. The Division or Department shall resolve an appeal of the program monitoring unit's initial determination by written decision on the basis of the Division's or Department's review of the written record (including any timely submission from the alleged violator) and information obtained by the Division or Department including, but not limited to, the violation notice, field monitoring reports, affirmative action data, pertinent standard operating procedures, administrative rules, statutes, case law and any associated information/documentation the Division or Department deems appropriate. Such review of the written record shall, in and of itself, constitute an informal hearing.

(e) At the discretion of the Division or Department, the alleged violator or any other relevant party may be called upon to make an oral presentation, which may include an opportunity to submit additional documentation relevant to the issues set forth in the violation notice or show cause order. Oral presentations as convened under these rules are fact-findings for the benefit of the Division or Department. At such oral presentations, the program monitoring unit, shall be represented by pertinent members of the Division or Department and by the Office of the Attorney General, if required. The Division or Department has the discretion to limit attendance at an oral presentation to those parties likely to be affected by the outcome of the appeal.

(f) The Division or Department, may perform a review of the written record or conduct an oral presentation directly. In the case of a review or oral presentation being handled by a hearing officer designee from outside the Division or Department, the determination of such designee shall be in the form of a report, which shall be advisory in nature and not binding on the Division or Department. All parties shall receive a copy of the hearing officer's report and shall have 10 business days to provide written comments or exceptions to the Division or Department. Subsequent to the 10-business-day period for comments or exceptions, the Division or Department shall issue an initial written decision on the matter. In the case of a review or oral presentation being handled by a designee from within the Division or Department, the determination shall be issued by the Division or Department, or the Division's or Department's designee.

(g) An appeal of the Division's or Department's determination may be made to the Office of Administrative Law in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

§ 17:27-10.9 Final determination against construction contractor; aggregate rating for State contract awards

Upon rendering a final determination against a construction contractor, the Department shall notify the Division of Property Management and Construction of such determination and the Division of Property Management and Construction shall consider such adverse finding as a factor in determining the contractor's aggregate rating for the award of State construction contracts.

§ 17:27-10.10 Requested meetings

A meeting with, or technical assistance provided by an official of the Division or Department may be requested by a contractor and/or subcontractor or public agency at any time, whether or not a violation has been alleged.

SUBCHAPTER 11. REPORT FOR PUBLIC WORKS CONTRACTORS, SUBCONTRACTORS AND PUBLIC AGENCIES

§ 17:27-11.1 General provisions

The contractor and its subcontractors shall furnish such reports and other documents to the Division or the Department as may be requested by the Division or the Department from time to time in order to carry out the purposes of these rules, and public agencies shall furnish such information as may be requested by the Division or the Department for conducting a compliance investigation pursuant to N.J.A.C. 17:27-10.

SUBCHAPTER 12. TRAINING AND OUTREACH

§ 17:27-12.1 Financing minority and women worker outreach and training programs

(a) Annual funding for on-the-job and/or off-the-job outreach and training programs for minorities and women in the construction trades administered by the Department of Labor and Workforce Development shall be set forth in the Appropriations Act, by statute, and/or other means permitted by law, by no later than July 1st of each year. The Department shall notify all public agencies of the funding mechanism for these programs by no later than July 15th of each year.

(b) Public agencies that are required to allocate and release funds for outreach and training programs for minorities and women in the construction trades, in accordance with (a) above, shall notify the Department of the allocation and release of training funds to the Department of Labor and Workforce Development in writing and within 10 business days of the release.

§ 17:27-12.2 Assistance

The public agency compliance officer, in consultation with the Department, may assist contractors in the use of outreach, referral and training programs for minority and women workers.

§ 17:27-12.3 Use of established public and private agencies

Public works contractors and subcontractors shall make use of established public and private agencies, such as the New Jersey State Employment Service, WIB's (Workforce Investment Boards), Urban League, community action agencies, faith-based organizations, community based organizations, including, but not limited to, urban women centers, Hispanic resource centers and displaced homemaker centers, county vocational schools and Workforce Investment Act (WIA) One Stop Career Centers, in order to facilitate the recruitment, referral and training of women and minorities for all employment positions.

§ 17:27-12.4 Minority and women referral agencies

The Division and the Department shall designate approved minority and women referral, training and outreach agencies for each region. Contractors and subcontractors shall list, as is appropriate, employment opportunities with the minority and women referral agency or agencies designated for its region.

§ 17:27-12.5 Satisfaction of minority and women obligations

Contractors and subcontractors shall satisfy their minority and women worker outreach and training obligations by complying with the requirements of N.J.A.C. 17:27-5 and 12.