



NEW JERSEY ADMINISTRATIVE CODE
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*** THIS FILE INCLUDES ALL REGULATIONS ADOPTED AND PUBLISHED THROUGH THE ***
*** NEW JERSEY REGISTER, VOL. 42, NO. 23, DECEMBER 6, 2010 ***

TITLE 19. OTHER AGENCIES
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
CHAPTER 30. ADMINISTRATIVE RULES
SUBCHAPTER 3. AFFIRMATIVE ACTION IN AUTHORITY-FINANCED CONSTRUCTION PROJECTS

N.J.A.C. 19:30-3.1 (2010)

§ 19:30-3.1 Definitions

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

"Affirmative action" or "AA," 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 efforts taken to ensure equal opportunity employment for women and minority workers consistent with the New Jersey Department of Treasury Equal Employment Opportunity and Affirmative Action rules, set forth at *N.J.A.C. 17:27*, but does not include employment quotas, except where otherwise permitted and appropriate under applicable law.

"Authority" means the Internal Process Management unit in the New Jersey Economic Development Authority.

"Authority financial assistance" means any loan, loan guarantee, grant, incentive, tax exemption or other financial assistance that is approved, funded, authorized, administered or provided by the Authority to any entity and is provided before, during or after completion of a project, including but not limited to all Authority financial assistance received by the entity pursuant to the Business Employment Incentive Program Act, P.L. 1996, c. 26 (*N.J.S.A. 34:1B-124* et seq.), that enables the entity to engage in a construction contract, but this subchapter shall not be construed as requiring affirmative action for construction commencing more than two years after an entity has executed with the Authority a commitment letter regarding Authority financial assistance and the first payment or other provision of the assistance is received.

"AA Compliance Officer" means the officer or employee designated by the Authority to monitor affirmative action in Authority financed projects.

"Construction contract" means any contract, subcontract, or agreement, whether written or oral, for construction, reconstruction, demolition, alteration, repair work, maintenance work, or construction related to installation of equipment, undertaken in connection with Authority financial assistance or any of its projects, those projects which it undertakes pursuant to P.L. 2002, c. 43 or undertaken to fulfill any condition of receiving Authority financial assistance and paid for in whole or in part with funds received through Authority financial assistance, including the performance of any contract to construct, renovate or otherwise prepare a facility for operations which are necessary for the receipt of Authority financial assistance, unless specifically exempted by *N.J.A.C. 19:30-3.4*.

"Construction project" or "project" means a project that has received final approval from the Authority.

"Contractor" means any party who enters into a construction contract with the project owner/applicant, or any party to whom funds will be disbursed for payment of construction work, including any subcontractor of the Contractor.

"Entity" means "project owner/applicant" as defined below in this section and/or "landlord of the entity receiving Authority financial assistance" pursuant to *N.J.A.C. 19:30-3.4(b)*.

"Minority worker" means a worker who is Black, Hispanic, Asian, or American Indian as defined by the New Jersey Department of Treasury in *N.J.A.C. 17:27-2.1* 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, 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.

"Monitoring" means Authority review of reports and forms required under this chapter as well as periodic meetings and site visits conducted by the Authority.

"Prime contractor" means the general contractor or construction manager that is designated by the project owner/applicant to be the contractor that is primarily responsible for submitting the required report forms to the Authority pursuant to *N.J.A.C. 19:30-3.7*.

"Project owner/applicant" means the entity which or individual who has applied for, or is the recipient of, or will be the recipient of Authority financial assistance.

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

HISTORY:

Amended by R.1990 d.411, effective August 20, 1990.

See: *22 N.J.R. 1537(a)*, *22 N.J.R. 2532(a)*.

Definition for construction contract amended; minority worker added. Section recodified from 6.1.

Amended by R.2005 d.274, effective August 15, 2005.

See: *37 N.J.R. 1714(a)*, *37 N.J.R. 3058(a)*.

Added definitions "Authority", "AA Officer", "Construction project", "Office of Affirmative Action", and "Subcontractor", and rewrote "Minority worker" definition.

Amended by R.2010 d.285, effective December 6, 2010.

See: *42 N.J.R. 2019(a)*, *42 N.J.R. 2969(a)*.

Inserted definitions "Affirmative action", "Authority financial assistance", "Entity", "Monitoring" and "Prime contractor"; in definition "Authority", inserted "the Internal Process Management unit in"; substituted definition "AA Compliance Officer" for definition "AA Officer"; in definition "AA Compliance Officer", substituted "financed" for "funded"; rewrote definition "Construction contract" and "Construction project"; deleted definition "Office of Affirmative Action"; in paragraph 1 of definition "Minority worker", substituted "black" for "Black"; and in definition "Project owner/applicant", inserted "or will be the recipient of".

NOTES:

LexisNexis 50 State Surveys, Legislation & Regulations

Affirmative Action Compliance

NOTES:

Chapter Notes



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N.J.A.C. 19:30-3.2 (2010)

§ 19:30-3.2 Affirmative Action program for recipients of Authority financial assistance

(a) The Authority will maintain and administer an Affirmative Action Program for the hiring of minority and women workers employed in the performance of construction contracts undertaken in connection with any project that receives Authority financial assistance or undertaken to fulfill any condition of receiving Authority financial assistance including the performance of any contract to construct, renovate or otherwise prepare a facility for operations which are necessary for the receipt of Authority financial assistance.

(b) This section prescribes procedures designed to eliminate unproductive administrative paperwork, red-tape and delays.

(c) A summary of the Authority's compliance requirements concerning affirmative action and all corresponding report forms and guidance documents can be found on the Authority's Internet webpage at: www.njeda.com/affirmativeaction.

HISTORY:

New Rule, R.2010 d.285, effective December 6, 2010.

See: 42 *N.J.R.* 2019(a), 42 *N.J.R.* 2969(a).

Former *N.J.A.C. 19:30-3.2*, Application of affirmative action regulations, recodified to *N.J.A.C. 19:30-3.3*.

NOTES:

LexisNexis 50 State Surveys, Legislation & Regulations

Affirmative Action Compliance

NOTES:

Chapter Notes



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 CHAPTER 30. ADMINISTRATIVE RULES
 SUBCHAPTER 3. AFFIRMATIVE ACTION IN AUTHORITY-FINANCED CONSTRUCTION PROJECTS

N.J.A.C. 19:30-3.3 (2010)

§ 19:30-3.3 Application of affirmative action regulations

(a) Every contractor or subcontractor involved in a construction contract for a project that has received Authority financial assistance or for a project undertaken to fulfill any condition of receiving Authority financial assistance, including the performance of any contract to construct, renovate or otherwise prepare a facility for operations which are necessary for the receipt of Authority financial assistance, is required to undertake a program that is designed to employ minority and women workers in accordance with the hiring goals established by the Office of Affirmative Action of Contract Compliance and Equal Opportunity in Public Contracts, New Jersey Department of Treasury unless specifically exempted by *N.J.A.C. 19:30-3.4*.

(b) The project owner/applicant shall be responsible for the performance of its contractors under this subchapter.

HISTORY:

Amended by R.1990 d.411, effective August 20, 1990.

See: 22 *N.J.R. 1537(a)*, 22 *N.J.R. 2532(a)*.

References to female workers and the requirements of *N.J.A.C. 17:27-7.3* added. Section recodified from 6.2.

Amended by R.2005 d.274, effective August 15, 2005.

See: 37 *N.J.R. 1714(a)*, 37 *N.J.R. 3058(a)*.

Rewrote (a).

Recodified from *N.J.A.C. 19:30-3.2* and amended by R.2010 d.285, effective December 6, 2010.

See: 42 *N.J.R. 2019(a)*, 42 *N.J.R. 2969(a)*.

Rewrote (a). Former *N.J.A.C. 19:30-3.3*, Compliance and determining good faith, recodified to *N.J.A.C. 19:30-3.6*.

NOTES:

LexisNexis 50 State Surveys, Legislation & Regulations

Affirmative Action Compliance

NOTES:

Chapter Notes



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 NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
 CHAPTER 30. ADMINISTRATIVE RULES
 SUBCHAPTER 3. AFFIRMATIVE ACTION IN AUTHORITY-FINANCED CONSTRUCTION PROJECTS

N.J.A.C. 19:30-3.4 (2010)

§ 19:30-3.4 Exemptions of Authority affirmative action regulations

(a) The performance of construction contracts undertaken in connection with any project that receives Authority financial assistance or undertaken to fulfill any condition of receiving Authority financial assistance including the performance of any contract to construct, renovate or otherwise prepare a facility for operations which are necessary for the receipt of Authority financial assistance, are subject to the requirements of this subchapter, unless the work being performed under the contract is:

1. Performed on a facility owned by a landlord of the entity receiving the Authority financial assistance;
2. The landlord is a party to the construction contract(s); and
3. Less than 55 percent of the facility is leased by the entity at the time of the construction contract(s) and under any agreement to subsequently lease the facility.

(b) This subchapter shall not apply to construction commencing more than two years after an entity has executed with the Authority a commitment letter regarding Authority financial assistance and the first payment or other provision of the assistance is received.

HISTORY:

New Rule, R.2010 d.285, effective December 6, 2010.

See: 42 *N.J.R.* 2019(a), 42 *N.J.R.* 2969(a).

Former *N.J.A.C. 19:30-3.4*, Monitoring by the Authority, recodified to *N.J.A.C. 19:30-3.7*.

NOTES:

LexisNexis 50 State Surveys, Legislation & Regulations

Affirmative Action Compliance

NOTES:

Chapter Notes



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NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
CHAPTER 30. ADMINISTRATIVE RULES
SUBCHAPTER 3. AFFIRMATIVE ACTION IN AUTHORITY-FINANCED CONSTRUCTION PROJECTS

N.J.A.C. 19:30-3.5 (2010)

§ 19:30-3.5 Construction contracts

(a) The project owner/applicant and prime contractor or landlord not exempted by *N.J.A.C. 19:30-3.4* shall resolve any questions regarding this subchapter with the Authority prior to the execution of any construction contracts or any construction contracts undertaken to fulfill any condition of receiving Authority financial assistance including the performance of any contract to construct, renovate or otherwise prepare a facility for operations which are necessary for the receipt of Authority financial assistance.

(b) Construction projects that are undertaken to otherwise prepare a facility for operations which are necessary for the receipt of Authority financial assistance and therefore do not receive any Authority financial assistance or other provision of the assistance until after the construction project is complete (including, but not limited to, Business Employment Incentive Program and Business Retention and Relocation Assistance Grant Program) are exempt from the retainage provisions of (c)2 below.

(c) Every construction contract must require that:

1. The NJEDA Addendum to Construction Contract, which is provided by the Authority as part of its application for financial assistance and also available at www.njeda.com/affirmativeaction, must be part of all construction contracts and must be signed by the project owner/applicant, prime contractor and subcontractor (all tiers);

2. Unless specifically exempted by *N.J.A.C. 19:30-3.4* or *3.5(b)*, 10 percent of every disbursement for each construction contract in connection with the construction project shall be retained by the project owner/applicant, agent, trustee or lender until 50 percent completion of the contract. Upon notification to the AA Compliance Officer that a contract is 50 percent complete and confirmation from the AA Compliance Officer that the project is in substantial compliance with this subchapter, five percent of every disbursement for each construction contract must be retained. Upon approximately 90 percent completion of the construction contract and receipt of an Authority Affirmative Action Completion Certificate that is acceptable to the Authority, the Authority will notify the project owner/applicant that the remaining retainage may be released;

3. 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 or subcontractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that 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;

4. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Authority setting forth provisions of this nondiscrimination clause;

5. The contractor or subcontractor, where applicable, will in all solicitations or advertisements for employees placed by or on behalf of the contractor or subcontractor, 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;

6. The contractor or subcontractor, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a referral letter, to be provided by the Authority, advising the labor union or workers' representative of the contractor's commitments under this subchapter and shall post copies of the referral letters in conspicuous places available to employees and applicants for employment;

7. The contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the applicable county employment goals established in accordance with *N.J.A.C. 17:27-7.2*; provided, however, that the Authority may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed in *N.J.A.C. 19:30-3.6*, as long as the Authority is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Authority, that its percentage of active "card-carrying" members who are minority and women workers is equal to or greater than the applicable employment goals established in accordance with *N.J.A.C. 17:27-7.2*;

8. The contractor that is awarded a construction contract or the project owner/applicant must submit an initial project workforce report. Each initial workforce report shall identify the estimated workforce requirements, by trade or craft, of the construction contractors and subcontractors for the duration of the construction contract;

9. The contractor must maintain or submit certified payrolls to the Authority pursuant to *N.J.A.C. 19:30-4.4*;

10. The contractor must submit a monthly project workforce report to the Authority within 15 business days after the end of the reporting month; and

11. 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, 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.

(d) In the event a construction contract has been executed between a project owner/applicant or landlord not exempted by *N.J.A.C. 19:30-3.4* and the contractor or subcontractor before the project owner/applicant applied to and/or received final approval, the Authority will require that any executed construction contract(s) be amended to include the NJEDA Addendum to Construction Contract, on a go-forward basis or incorporate such addendum by side letter.

HISTORY:

Amended by R.1990 d.411, effective August 20, 1990.

See: 22 *N.J.R. 1537(a)*, 22 *N.J.R. 2532(a)*.

Reference to female workers and Treasury rules added. Section recodified from 6.5.

Amended by R.1995 d.435, effective August 21, 1995.

See: 27 *N.J.R. 2377(a)*, 27 *N.J.R. 3216(a)*.

Amended by R.2002 d.223, effective July 15, 2002.

See: 34 *N.J.R. 1247(a)*, 34 *N.J.R. 2469(a)*.

In (a)7, inserted "applicable" preceding "rules".

Amended by R.2005 d.274, effective August 15, 2005.

See: *37 N.J.R. 1714(a)*, *37 N.J.R. 3058(a)*.

Rewrote the section.

Amended by R.2010 d.285, effective December 6, 2010.

See: *42 N.J.R. 2019(a)*, *42 N.J.R. 2969(a)*.

Added new (a), (b) and (d); recodified former (a) as (c); and rewrote (c).

NOTES:

LexisNexis 50 State Surveys, Legislation & Regulations

Affirmative Action Compliance

NOTES:

Chapter Notes



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 CHAPTER 30. ADMINISTRATIVE RULES
 SUBCHAPTER 3. AFFIRMATIVE ACTION IN AUTHORITY-FINANCED CONSTRUCTION PROJECTS

N.J.A.C. 19:30-3.6 (2010)

§ 19:30-3.6 Mandatory language for construction contracts receiving Authority financial assistance; good faith

(a) A contractor will be considered in compliance with this subchapter only if the contractor has made good faith efforts to meet the minority and women hiring goals for each trade or craft employed on the project. The goals are expressed as percentages of the total hours worked on the project in each trade. The goals are established by the Department of the Treasury, Division of Public Contracts Equal Employment Opportunity Compliance and can be found at the Division's website at: www.state.nj.us/treasury/contract_compliance/. The contractor must take the following steps in this effort:

1. When hiring or scheduling workers in each construction trade, the contractor or subcontractor shall make good faith efforts to employ minority and women workers in each construction trade consistent with the applicable employment goal prescribed by *N.J.A.C. 17:27-7.2*; provided, however, that the Authority may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by this paragraph and (a)2 below, as long as the Authority is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Authority, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the applicable employment goal established in accordance with *N.J.A.C. 17:27-7.3*. A good faith effort by the contractor or subcontractor 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 this subchapter as supplemented and amended from time to time. 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 shall attempt to hire or schedule minority and women workers directly, consistent with the applicable employment goal. 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 the applicable employment goal, the contractor or subcontractor shall be prepared to hire or schedule minority and women workers directly, consistent with the applicable employment goal, by complying with the hiring or scheduling procedures prescribed under (a)2 below; and the contractor or subcontractor shall take said action immediately if it determines or is so notified by the Authority that the union is not referring minority and women workers consistent with the applicable employment goal.

2. If the hiring or scheduling of a workforce consistent with the employment goal has not or cannot be achieved 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 shall take the following actions consistent with the applicable county employment goals:

i. Notify the AA Compliance Officer, and minority and women referral organizations listed by the Department of the Treasury, Division of Public Contracts Equal Employment Opportunity Compliance pursuant to *N.J.A.C. 17:27-5.3*, of its workforce needs, and request referral of minority and women workers;

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

iii. Prior to commencement of work, 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. Leave standing requests for additional referral to 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 until such time as the workforce is consistent with the employment goal; and

v. If it is necessary to lay off any of the workers in a given trade on the construction site, assure, consistent with the applicable State and Federal statutes and court decisions, that sufficient minority and women employees remain on the site consistent with the employment goal; and employ any minority and women workers laid off by the contractor on any other construction site on which its workforce composition is not consistent with an employment goal established pursuant to rules implementing *N.J.S.A. 10:5-31* et seq.;

3. The contractor or subcontractor shall adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:

i. 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 determine the qualifications of such individuals and if the contractor's or subcontractor's workforce in each construction trade is not consistent with the applicable employment goal, it shall hire or schedule those individuals who satisfy appropriate qualification standards. 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 Authority. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of these requirements, however, are limited by the provisions of (a)4 below.

ii. If the contractor's or subcontractor's workforce is consistent with the applicable employment goal, the name of any interested woman or minority individual shall be maintained on a waiting list for the first consideration, in the event the contractor's or subcontractor's workforce is no longer consistent with the applicable employment goal.

iii. 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 AA Compliance Officer.

iv. The contractor or subcontractor shall 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 Authority and submitted promptly to the AA Compliance Officer upon request.

4. 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 collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, in implementing the procedures of (a)2 above, the contractor or subcontractor shall, where applicable, employ minority and women workers residing within the geograph-

ical jurisdiction of the union. After notification of award, but prior to signing a construction contract, the contractor shall submit to the Authority an initial EDA project workforce report provided by the Authority for distribution to and completion by the contractor, in accordance with *N.J.A.C. 19:30-3.7*. The contractor shall also submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Authority. The contractor agrees to notify the Authority and at least two minority referral organizations of the contractor's labor needs, and to request referrals of minority and women workers. The contractor shall leave standing requests for referrals of minority and women workers with the local unions, the State Employment Service, New Jersey Bureau of Apprenticeship and Training, and at least two referral sources designated from time to time by the Authority until such time as the contractor has met its hiring goals.

5. In conforming with the applicable employment goals, the contractor or subcontractor shall review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, 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.

(b) When compliance challenges are initiated pursuant to *N.J.A.C. 19:30-3.8*, the Authority 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 knowledge of and has considered the general availability of minorities and women having requisite skills in the immediate labor area;

2. 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;

3. Whether, when the opportunity has presented itself, the contractor or subcontractor has considered promoting minority and women employees within its organization;

4. Whether the contractor or subcontractor attempted to hire minorities and women based upon the anticipated expansion, contraction and turnover of its workforce;

5. 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;

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

7. Whether the contractor or subcontractor has documented its attempts to attain the goals.

HISTORY:

Amended by R.1990 d.411, effective August 20, 1990.

See: 22 *N.J.R. 1537(a)*, 22 *N.J.R. 2532(a)*.

References to female workers added. Section recodified from 6.3.

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 *N.J.R. 1705(a)*, 2602(c).

In (a), deleted "The Authority will publish these goals as part of its Affirmative Action program." Added "The goals are published annually by the Department of the Treasury."

Amended by R.2005 d.274, effective August 15, 2005.

See: 37 *N.J.R. 1714(a)*, 37 *N.J.R. 3058(a)*.

Added "and determining good faith" following "Compliance" in the rule heading; rewrote (a) and added (b).

Recodified from *N.J.A.C. 19:30-3.3* and amended by R.2010 d.285, effective December 6, 2010.

See: 42 *N.J.R. 2019(a)*, 42 *N.J.R. 2969(a)*.

Section was "Compliance and determining good faith". In the introductory paragraph of (a), substituted "established" for "published", and inserted ", Division of Public Contracts Equal Employment Opportunity Compliance and can be found at the Division's website at: www.state.nj.us/treasury/contract_compliance/"; in the introductory paragraph of (a)1, (a)1i, (a)3i, (a)3iv and the introductory paragraph of (b), substituted "Authority" for "Office of Affirmative Action" throughout; in the introductory paragraph of (a)1, updated the N.J.A.C. references; in (a)1i, substituted "this subchapter" for "the rules promulgated by the Treasurer, pursuant to *N.J.S.A. 10:5-31 et seq.*"; in (a)2i, substituted "Compliance Officer," for "Officer, the Office of Affirmative Action," and substituted "Department of the Treasury, Division of Public Contracts Equal Employment Opportunity Compliance" for "Office of Affirmative Action"; in (a)3iii, inserted "Compliance" and deleted "and to the Office of Affirmative Action" from the end; in (a)3iv, substituted "AA Compliance Officer" for the second occurrence of "Office of Affirmative Action"; rewrote (a)4; in (a)5, inserted "gender identity or expression, disability, nationality"; and in the introductory paragraph of (b), updated the N.J.A.C. reference. Former *N.J.A.C. 19:30-3.6*, Failure to comply, recodified to *N.J.A.C. 19:30-3.8*.

NOTES:**LexisNexis 50 State Surveys, Legislation & Regulations**

Affirmative Action Compliance

NOTES:

Chapter Notes



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TITLE 19. OTHER AGENCIES
 NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
 CHAPTER 30. ADMINISTRATIVE RULES
 SUBCHAPTER 3. AFFIRMATIVE ACTION IN AUTHORITY-FINANCED CONSTRUCTION PROJECTS

N.J.A.C. 19:30-3.7 (2010)

§ 19:30-3.7 Monitoring by the Authority

(a) The Authority will be responsible for monitoring compliance with this subchapter. The Authority staff will be responsible to review contractor performance for compliance with this subchapter. The prime contractor, as designated by the project owner/applicant or landlord not exempted by *N.J.A.C. 19:30-3.4*, will be required to submit to the Authority the documents in (a)1 through 4 below. The required forms are available for download at: www.njeda.com/affirmativeaction.

1. An NJEDA Addendum to Construction Contract that has been signed by each contractor and subcontractor and, where applicable, the project owner/applicant;
2. An NJEDA initial project workforce report;
3. An NJEDA monthly project workforce report; and
4. At approximately 90 percent completion of a construction contract, an NJEDA Affirmative Action completion certificate.

(b) The Affirmative Action Compliance Officer will make field inspections of project sites, and may perform audits of records relating to construction activities on the construction project.

(c) Both the project owner/applicant and the prime contractor shall designate an employee from their respective organizations who will coordinate with the Authority and act as liaison with the Authority's Affirmative Action Compliance Officer.

(d) The Authority may prioritize its monitoring of construction projects and contracts based on available staff, cost, nature, timing and extent of the work to be performed under the contract, the number of workers needed to perform the contract, and any other relevant factors.

(e) The AA Compliance Officer may assist contractors in the use of outreach, referral and training programs for minority and women workers.

HISTORY:

Amended by R.1990 d.411, effective August 20, 1990.

See: 22 *N.J.R. 1537(a)*, 22 *N.J.R. 2532(a)*.

Monitoring may be prioritized by Authority. Section recodified from 6.4.

Amended by R.1995 d.435, effective August 21, 1995.

See: 27 *N.J.R. 2377(a)*, 27 *N.J.R. 3216(a)*.

N.J.A.C. 19:30-3.7

Amended by R.2005 d.274, effective August 15, 2005.

See: *37 N.J.R. 1714(a)*, *37 N.J.R. 3058(a)*.

Rewrote the section, added (f) through (i).

Recodified from *N.J.A.C. 19:30-3.4* and amended by R.2010 d.285, effective December 6, 2010.

See: *42 N.J.R. 2019(a)*, *42 N.J.R. 2969(a)*.

Rewrote the section. Former *N.J.A.C. 19:30-3.7*, Chief Executive Officer to enforce regulations, recodified to *N.J.A.C. 19:30-3.9*.

NOTES:

LexisNexis 50 State Surveys, Legislation & Regulations

Affirmative Action Compliance

NOTES:

Chapter Notes



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TITLE 19. OTHER AGENCIES
 NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
 CHAPTER 30. ADMINISTRATIVE RULES
 SUBCHAPTER 3. AFFIRMATIVE ACTION IN AUTHORITY-FINANCED CONSTRUCTION PROJECTS

N.J.A.C. 19:30-3.8 (2010)

§ 19:30-3.8 Failure to comply

(a) In the event the Authority determines that a contractor is not in compliance with this subchapter, the Authority will notify the contractor, the project owner/applicant, the construction lender, and the agent or trustee, in writing, of the steps the contractors should take to be considered in compliance. The Authority's actions may include:

1. The Authority on its own initiative or in response to monitoring conducted by an AA Compliance Officer, or in response to a written complaint or allegation from an interested party, shall investigate any complaint or allegation of violation of this subchapter. If the Authority determines there is a substantial probability that a violation is occurring, it may issue a written alert notice to a contractor or subcontractor and/or project owner/applicant if applicable. The alert notice shall explain in sufficient detail the facts of the alleged violation.

2. If the alleged violation explained in the alert notice has not been corrected to the satisfaction of the Authority within seven business days after it is received by the contractor or subcontractor, the Authority shall issue a violation notice to said contractor or subcontractor and/or project owner/applicant if applicable. Said violation notice shall explain in sufficient detail the facts of the continuing violation.

3. The Authority, 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. If the Authority staff investigating the complaint or allegation determines there is a substantial probability that a violation is occurring, the Authority shall issue a violation notice to said contractor or subcontractor and/or project owner/applicant if applicable. Said violation notice shall explain in sufficient detail the facts of the continuing violation.

4. The notice of violation shall notify the alleged violator that it shall submit within seven business days, a written statement explaining why it is not in violation of this subchapter or an explanation of how it will correct any such violation. If the Authority determines that the contractor or subcontractor has not adequately explained why it is not in violation or if the Authority determines that the alleged violation is continuing to occur, then it shall conduct an investigatory conference to determine whether there is a violation and/or if corrective measures must be taken. A conference may also be conducted to discuss and resolve issues before imposing financial penalties in accordance with *N.J.S.A. 10:5-35* and 36. The investigatory conference shall be conducted within 30 business days of the alleged violator's submission of its written statement in response to the violation notice. The Authority 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.

5. A technical assistance meeting with the Authority may be requested by a contractor and/or subcontractor at any time, whether or not a violation has been alleged.

(b) If the contractor fails to comply or otherwise respond after receipt of the notice in (a) above, and/or when the Authority determines that a contractor, subcontractor or project owner/applicant or landlord not exempted by *N.J.A.C.*

19:30-3.4 is in violation of this subchapter, the Authority may take action against the contractor, subcontractor or project owner/applicant by ordering or taking part in any or all of the remedial actions in (b)1 through 5 below:

1. Institute debarment proceedings to preclude a contractor from contracting on Authority projects (see *N.J.A.C. 19:30-2*); and

2. Refer reported violations to the Attorney General for enforcement action under the "Law Against Discrimination".

3. Subject the contractor, subcontractor or project owner/applicant to a fine of up to \$ 1,000 for each violation for each day during which the violation continues, 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.);

4. Direct the project owner/applicant/agent/trustee or lender to withhold part or all of the contract or subcontract payments then due and owing; and/or

5. Refer the determination of violation proceeding to the Authority unit that administers the Authority financial assistance to determine if the commitment to, or offer of, Authority financial assistance should be withdrawn from the project owner/applicant or terminated and/or repaid.

HISTORY:

Amended by R.1990 d.411, effective August 20, 1990.

See: 22 *N.J.R. 1537(a)*, 22 *N.J.R. 2532(a)*.

Reference to subchapter 2 added. Section recodified from 6.6.

Amended by R.2005 d.274, effective August 15, 2005.

See: 37 *N.J.R. 1714(a)*, 37 *N.J.R. 3058(a)*.

Rewrote (a), added (c)

Recodified from *N.J.A.C. 19:30-3.6* and amended by R.2010 d.285, effective December 6, 2010.

See: 42 *N.J.R. 2019(a)*, 42 *N.J.R. 2969(a)*.

Rewrote the section.

NOTES:

Chapter Notes



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TITLE 19. OTHER AGENCIES
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CHAPTER 30. ADMINISTRATIVE RULES
SUBCHAPTER 3. AFFIRMATIVE ACTION IN AUTHORITY-FINANCED CONSTRUCTION PROJECTS

N.J.A.C. 19:30-3.9 (2010)

§ 19:30-3.9 Chief Executive Officer to enforce regulations

The Chief Executive Officer may require applicants for Authority financial assistance to make such additional representations to the Authority and to enter into such covenants and agreements with the Authority as are necessary to carry out the purposes of this subchapter, including requiring such applicant to require by contract any landlord not exempted by *N.J.A.C. 19:30-3.4* to comply with this subchapter. The Chief Executive Officer shall take such steps as are necessary to ensure compliance with this subchapter.

HISTORY:

Amended by R.1990 d.411, effective August 20, 1990.

See: 22 *N.J.R. 1537(a)*, 22 *N.J.R. 2532(a)*.

Text allowing exemptions deleted at (b). Section recodified from 6.7.

Amended by R.2005 d.274, effective August 15, 2005.

See: 37 *N.J.R. 1714(a)*, 37 *N.J.R. 3058(a)*.

Substituted "Chief Executive Officer" for "Executive Director" throughout.

Recodified from *N.J.A.C. 19:30-3.7* and amended by R.2010 d.285, effective December 6, 2010.

See: 42 *N.J.R. 2019(a)*, 42 *N.J.R. 2969(a)*.

Inserted "financial" and ", including requiring such applicant to require by contract any landlord not exempted by *N.J.A.C. 19:30-3.4* to comply with this subchapter".

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Chapter Notes