



NEW JERSEY ADMINISTRATIVE CODE  
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\*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

TITLE 19. OTHER AGENCIES  
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
CHAPTER 30. ADMINISTRATIVE RULES

*N.J.A.C. 19:30 (2015)*

Title 19, Chapter 30 -- Chapter Notes

CHAPTER AUTHORITY:

*N.J.S.A. 34:1B-1* et seq.

CHAPTER SOURCE AND EFFECTIVE DATE:

R.2010 d.285, effective November 9, 2010.

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

CHAPTER EXPIRATION DATE:

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 30, Administrative Rules, expires on November 9, 2017. See: *43 N.J.R. 1203(a)*.

Pursuant to 28 C.F.R. Part 35, Subchapter 7, Disability Discrimination Complaint Procedure, is exempt from the provisions of Executive Order No. 66(1978).

CHAPTER HISTORICAL NOTE:

Chapter 30, Administrative Rules, was adopted as R.1974 d.332, effective December 3, 1974. See: 6 N.J.R. 455(b), 7 N.J.R. 34(c).

Subchapter 3, Payment of Prevailing Wages in Authority Projects, was adopted as R.1979 d.337, effective August 24, 1979. See: 11 N.J.R. 152(b), 11 N.J.R. 530(b).

Subchapter 4, Targeting of Authority Assistance, was adopted as R.1979 d.338, effective August 24, 1979. See: 11 N.J.R. 264(c), 11 N.J.R. 530(c).

Subchapter 5, Debarment of Applicants and Contractors, was adopted as R.1981 d.167, effective June 4, 1981. See: 12 N.J.R. 356(a), 13 N.J.R. 378(d).

Subchapter 2, Fees and Charges of Authority, was repealed and Subchapter 2, Fees and Charges, was adopted as new rules by R.1981 d.245, effective July 9, 1981. See: 13 N.J.R. 248(c), 13 N.J.R. 465(e).

Subchapter 6, Affirmative Action in Authority-Financed Construction Projects, was adopted as R.1984 d.263, effective July 2, 1984. See: 16 N.J.R. 704(a), 16 N.J.R. 1808(b).

Pursuant to Executive Order No. 66(1978), Subchapter 3, Payment of Prevailing Wages in Authority Projects, was re-adopted as R.1984 d.320, effective July 16, 1984. See: 16 N.J.R. 1344(a), 16 N.J.R. 2168(a).

Subchapter 7, Private Activity Bonds Reallocation and Carryforward, was adopted as R.1985 d.500, effective October 7, 1985. See: 17 N.J.R. 1750(a), 17 N.J.R. 2454(b).

Subchapter 2, Fees and Charges, was repealed and Subchapter 2, Fees, was adopted as new rules by R.1986 d.311, effective August 4, 1986. See: 18 N.J.R. 1094(b), 18 N.J.R. 1614(a).

Pursuant to Executive Order No. 66(1978), Chapter 30, Administrative Rules, was readopted as R.1990 d.411, effective July 23, 1990. As a part of R.1990 d.411, effective August 20, 1990, Subchapter 2, Fees, was recodified as Subchapter 6; Subchapter 4, Targeting of Authority Assistance, was repealed and Subchapter 3, Payment of Prevailing Wages in Authority Projects, was recodified as Subchapter 4; Subchapter 5, Disqualification of Applicants and Debarment of Contractors, was recodified as Subchapter 2, Disqualification/Debarment/Conflict of Interest; Subchapter 5, Targeting of Authority Assistance, was adopted as new rules; Subchapter 6, Affirmative Action in Authority-Financed Construction Projects, was recodified as Subchapter 3; and Subchapter 7, Private Activity Bonds Reallocation and Carryforward, was repealed. See: 22 N.J.R. 1537(a), 22 N.J.R. 2532(a).

Subchapter 7, Disability Discrimination Complaint Procedure, was adopted as R.1994 d.111, effective March 7, 1994. See: 25 N.J.R. 4864(b), 26 N.J.R. 1248(a).

Pursuant to Executive Order No. 66(1978), Chapter 30, Administrative Rules, was readopted as R.1995 d.435, effective July 20, 1995. See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

Subchapter 8, Professional Services Contracts, was adopted as R.2000 d.5, effective January 3, 2000. See: 31 N.J.R. 3244(a), 32 N.J.R. 70(a).

Pursuant to Executive Order No. 66(1978), Chapter 30, Administrative Rules, was readopted as R.2000 d.297, effective June 16, 2000. See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Chapter 30, Administrative Rules, was readopted as R.2005 d.274, effective July 22, 2005. See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).

Chapter 30, Administrative Rules, was readopted as R.2010 d.285, effective November 9, 2010. See: Source and Effective Date. See, also, section annotations.



NEW JERSEY ADMINISTRATIVE CODE  
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TITLE 19. OTHER AGENCIES  
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
CHAPTER 30. ADMINISTRATIVE RULES  
SUBCHAPTER 1. GENERAL PROVISIONS

*N.J.A.C. 19:30-1.1 (2015)*

§ 19:30-1.1 Purpose and objectives

(a) These rules are established to effectuate, and shall be applied so as to accomplish, the general purposes of "The New Jersey Economic Development Authority Act" (chapter 80, P.L. 1974; C.34:1B-1 et seq.), and the following specific objectives:

1. To foster and promote the economy of the State;
2. To increase opportunities for gainful employment and to improve living conditions;
3. To assist in the economic development or redevelopment of political subdivisions within the State;
4. To contribute to the prosperity, health and general welfare of the State and its inhabitants by making available financial and other assistance to induce manufacturing, industrial, commercial and other employment-promoting enterprises to locate, remain, or expand within the State; and
5. To protect and enhance the quality of the natural environment.

HISTORY:

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

See: 22 New Jersey Register 1537(a), 22 New Jersey Register 2532(a).

Authority's general objectives clarified.



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TITLE 19. OTHER AGENCIES  
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
CHAPTER 30. ADMINISTRATIVE RULES  
SUBCHAPTER 1. GENERAL PROVISIONS

*N.J.A.C. 19:30-1.2 (2015)*

§ 19:30-1.2. Definitions

The following words and terms, when used in this chapter and in *N.J.A.C. 19:31*, shall have the following meanings unless the context clearly indicates otherwise.

"Act" means the New Jersey Economic Development Authority Act (chapter 80, P.L. 1974), as amended and supplemented.

"Authority" means the staff of the New Jersey Economic Development Authority.

"Chief Executive Officer" means the Chief Executive Officer of the New Jersey Economic Development Authority.

Words or terms which are defined in the Act are used in this chapter and in *N.J.A.C. 19:31* as defined in the Act.

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 of authority clarified; definitions apply also.  
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".

**NOTES:**

Chapter Notes



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TITLE 19. OTHER AGENCIES  
 NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
 CHAPTER 30. ADMINISTRATIVE RULES  
 SUBCHAPTER 1. GENERAL PROVISIONS

*N.J.A.C. 19:30-1.3 (2015)*

§ 19:30-1.3. Organization

(a) The governing body of the New Jersey Economic Development Authority, in but not of the Department of Treasury, consists of the Chief Executive Officer of the New Jersey Commerce, Economic Growth and Tourism Commission, the Commissioner of Banking and Insurance, the Commissioner of Labor and Workforce Development, the State Treasurer, the Commissioner of Education and eight public members and three alternate members appointed by the Governor (collectively referred to as Members). Two public members and one alternate member are appointed by the Governor upon the advice and recommendation of the Senate President, and two public members and one alternate member are appointed by the Governor upon the recommendation of the Speaker of the General Assembly. A representative of the Economic Recovery Board shall serve as a non-voting member. The Authority is chaired by a public member appointed by the Governor.

(b) The Authority maintains the following functional divisions to administer its programs:

1. The Program Services Division administers the issuance of tax exempt bonds.
  - i. To manufacturing firms to meet capital financing needs;
  - ii. For certain exempt activities as defined in the United States Internal Revenue Code;
  - iii. To benefit certain nonprofit organizations;
  - iv. To refund eligible projects; and
  - v. To benefit certain local, county and State governmental units or agencies.
2. The Program Services Division also administers the issuance of taxable bonds for projects not eligible for tax-exempt bonds,
3. The Credit Underwriting Division administers guarantees and direct loans for fixed asset financing and for working capital; and
4. The Division of Real Estate Development develops modern business parks and commercial facilities to provide improved, affordable building space for businesses and other users in urban centers and other areas in need of economic expansion or diversity.

HISTORY:

New Rule R.1990 d.411, effective August 20, 1990.

See: 22 New Jersey Register 1537(a), 22 New Jersey Register 2532(a).  
 Amended by R.1995 d.435, effective August 21, 1995.

See: 27 New Jersey Register 2377(a), 27 New Jersey Register 3216(a).  
 Amended by R.2000 d.297, effective July 17, 2000.

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

Rewrote (a).

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

See: *37 New Jersey Register 1714(a), 37 New Jersey Register 3058(a)*.

Rewrote the section.



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TITLE 19. OTHER AGENCIES  
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
CHAPTER 30. ADMINISTRATIVE RULES  
SUBCHAPTER 1. GENERAL PROVISIONS

*N.J.A.C. 19:30-1.4 (2015)*

§ 19:30-1.4. Public information

The public may obtain general information concerning Authority programs by submitting a request in writing detailing the specific information desired to the Marketing and Policy Division, New Jersey Economic Development Authority, PO Box 990, Trenton, New Jersey, 08625-0990.

**HISTORY:**

New Rule R.1990 d.411, effective August 20, 1990.

See: 22 New Jersey Register 1537(a), 22 New Jersey Register 2532(a).  
Amended by R.2000 d.297, effective July 17, 2000.

See: 32 New Jersey Register 1705(a), 32 New Jersey Register 2602(c).

Substituted "submitting a request in writing detailing the specific information desired to" for "contacting" following "programs by".

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

See: 37 New Jersey Register 1714(a), 37 New Jersey Register 3058(a).

Substituted "Marketing and Policy Division" for "Public Affairs Office".

**NOTES:**

Chapter Notes



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TITLE 19. OTHER AGENCIES  
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
CHAPTER 30. ADMINISTRATIVE RULES  
SUBCHAPTER 1. GENERAL PROVISIONS

*N.J.A.C. 19:30-1.5 (2015)*

§ 19:30-1.5. (Reserved)

HISTORY:

New Rule R.1990 d.411, effective August 20, 1990.

See: 22 New Jersey Register 1537(a), 22 New Jersey Register 2532(a).  
Repealed and reserved by R.2005 d.274, effective August 15, 2005.

See: 37 New Jersey Register 1714(a), 37 New Jersey Register 3058(a).



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TITLE 19. OTHER AGENCIES  
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
CHAPTER 30. ADMINISTRATIVE RULES  
SUBCHAPTER 1. GENERAL PROVISIONS

*N.J.A.C. 19:30-1.6 (2015)*

§ 19:30-1.6 Petitions for rules

Pursuant to *N.J.S.A. 52:14B-4(f)*, interested persons may petition the Authority for the promulgation, amendment or repeal of any rule by the Authority.

**HISTORY:**

New Rule R.1990 d.411, effective August 20, 1990.

See: 22 New Jersey Register 1537(a), 22 New Jersey Register 2532(a).

**NOTES:**

Chapter Notes



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 NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
 CHAPTER 30. ADMINISTRATIVE RULES  
 SUBCHAPTER 1. GENERAL PROVISIONS

*N.J.A.C. 19:30-1.7 (2015)*

§ 19:30-1.7. Procedure for petitioner

(a) Any person who wishes to petition the Authority to promulgate, amend or repeal a rule must submit to the Chief Executive Officer, in writing and signed by the petitioner, the following information:

1. The full name and address of the petitioner;
2. The substance or nature of the rulemaking which is requested;
3. The reasons for the request and the petitioner's interest in the matter, including any relevant organization, affiliation, or economic interest; and
4. The statutory authority under which the Authority may take the requested action.

(b) The petitioner shall send the petition to the following address:

Chief Executive Officer  
 New Jersey Economic Development Authority  
 PO Box 990  
 Trenton, New Jersey 08625

(c) Any materials submitted to the Authority not in substantial compliance with (a) and (b) above shall not be deemed to be a valid petition for rulemaking requiring further action pursuant to *N.J.S.A. 52:14B-4(f)*.

HISTORY:

New Rule R.1990 d.411, effective August 20, 1990.

See: 22 New Jersey Register 1537(a), 22 New Jersey Register 2532(a).  
 Amended by R.2000 d.297, effective July 17, 2000.

See: 32 New Jersey Register 1705(a), 32 New Jersey Register 2602(c).

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

See: 37 New Jersey Register 1714(a), 37 New Jersey Register 3058(a).

Substituted "Chief Executive Officer" for "Executive Director" in the introductory paragraph in (a) and the address in (b).



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TITLE 19. OTHER AGENCIES  
 NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
 CHAPTER 30. ADMINISTRATIVE RULES  
 SUBCHAPTER 1. GENERAL PROVISIONS

*N.J.A.C. 19:30-1.8 (2015)*

§ 19:30-1.8. Procedure of the Authority

(a) Upon receipt of a petition in compliance with *N.J.A.C. 19:30-1.6* and *1.7*, the Authority shall file a notice of petition with the Office of Administrative Law for publication in the New Jersey Register, to include:

1. The date the petition was received by the Authority;
2. The name and address of the petitioner;
3. The substance or nature of the rulemaking which is requested; and
4. The problem or purpose behind the request.

(b) Within 30 days of receiving the petition, the Authority shall mail to the petitioner and file with the Office of Administrative Law for publication in the New Jersey Register a notice of action on the petition which will include:

1. The name of the petitioner;
2. Certification by the Chief Executive Officer that the petition was considered pursuant to law;
3. The substance or nature of the Authority action; and
4. A brief statement of reasons for the Authority action.

(c) Authority action on a petition may include:

1. Denying the petition;
2. Filing a notice of proposed rule or a notice of pre-proposal for a rule with the Office of Administrative Law; or
3. Referring the matter for further deliberations, the nature of which will be specified and which will conclude upon a specified date. The results of these further deliberations will be mailed to the petitioner and submitted to the Office of Administrative Law for publication in the New Jersey Register.

HISTORY:

New Rule R.1990 d.411, effective August 20, 1990.

See: 22 New Jersey Register 1537(a), 22 New Jersey Register 2532(a).  
 Amended by R.1995 d.435, effective August 21, 1995.

See: 27 New Jersey Register 2377(a), 27 *New Jersey Register* 3216(a).  
 Amended by R.2005 d.274, effective August 15, 2005.

See: 37 *New Jersey Register* 1714(a), 37 *New Jersey Register* 3058(a).

In (b)2, substituted "Chief Executive Officer" for "Executive Director".



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TITLE 19. OTHER AGENCIES  
 NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
 CHAPTER 30. ADMINISTRATIVE RULES  
 SUBCHAPTER 2. DISQUALIFICATION/ DEBARMENT/ CONFLICT OF INTEREST

*N.J.A.C. 19:30-2.1 (2015)*

§ 19:30-2.1 Definitions

(a) For the purposes of this subchapter, the following words and terms shall have the following meanings.

"Affiliates" means persons having an overt or covert relationship such that any one of them directly or indirectly controls or has the power to control another.

"Authority project contracting" means any arrangement giving rise to an obligation to perform any service in connection with the construction of a project financed with, and paid for in whole or in part with Authority assistance, including the service of architects, engineers and professional planners.

"Debarment" means an exclusion from contracting with the Authority and exclusion from Authority project contracting on the basis of a lack of responsibility evidenced by an offense or inadequacy of performance for a reasonable period of time commensurate with the seriousness of the offense.

"Disqualification" means an exclusion from receiving Authority financial assistance or from being a tenant in an Authority-financed project or Authority-owned project.

"Ethics Liaison Officer" means the Ethics Liaison Officer of the New Jersey Economic Development Authority.

HISTORY:

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

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

Section recodified from 5.1.

Inadequacy of performance replaced failure as basis for debarment; definition for disqualification added.

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

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

In definition "Disqualification", inserted "or Authority-owned project"; and added definition "Ethics Liaison Officer".



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TITLE 19. OTHER AGENCIES  
 NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
 CHAPTER 30. ADMINISTRATIVE RULES  
 SUBCHAPTER 2. DISQUALIFICATION/ DEBARMENT/ CONFLICT OF INTEREST

*N.J.A.C. 19:30-2.2 (2015)*

§ 19:30-2.2 Causes for disqualification/debarment of persons

(a) The Authority may decline to give financial assistance, or approval as a tenant in any Authority-financed project or Authority-owned project, to any person, or may debar a person from Authority project contracting for any of the following causes:

1. Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance or such contract or subcontract;

2. Violation of the Federal Organized Crime Control Act of 1970, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice, or any other offense indicating a lack of business integrity or honesty;

3. Violation of the Federal or State antitrust statutes, or of the Federal Anti-Kickback Act; (*18 U.S.C. 874*);

4. Violation of any law governing the conduct of elections of the Federal Government, State of New Jersey or of its political subdivision;

5. Violation of the "Law Against Discrimination" (P.L. 1945, c.169, *N.J.S.A. 10:5-1* et seq., as supplemented by P.L. 1975, c.127), or of the act banning discrimination in public works employment (*N.J.S.A. 10:2-1* et seq.) or of the act prohibiting discrimination by industries engaged in defense work in the employment of persons therein (c.114, L.1942, *N.J.S.A. 10:1-10* et seq.);

6. Violation of any laws governing hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages, or child labor;

7. Violation of any law governing the conduct of occupations or professions of regulated industries;

8. Violation of any law which may bear upon a lack of responsibility or moral integrity;

9. Any other cause of such serious and compelling nature as may be determined by the Authority to warrant disqualification for assistance or debarment from contracting with the Authority or from Authority project contracting;

10. Debarment by any department, agency, or instrumentality of the State or Federal government;

11. Violation of any of the following prohibitions on vendor activities representing a conflict of interest, or failure to report a solicitation as set forth in (a)11ii below:

i. No person shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any Authority officer or employee or special Authority officer or employee, as defined by N.J.S.A. 52:13D-13b and e, with which such person transacts or offers or proposes to transact business, or to any member of the immediate family as defined by N.J.S.A. 52:13D-13i, of any such officer or employee, or partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.

ii. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any Authority officer or employee or special Authority officer or employee from any person shall be reported in writing by the person to the Attorney General and the Ethics Liaison Officer.

iii. No person may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such person to, any Authority officer or employee or special Authority officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to the Authority, or with any person, firm or entity with which he or she is employed or associated or in which he or she has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this subsection shall be reported in writing to the Authority Ethics Liaison Officer and the State Ethics Commission, which may grant a waiver of this restriction upon application of the Authority officer or employee or special Authority officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

iv. No person shall influence, or attempt to influence or cause to be influenced, any Authority officer or employee or special Authority officer or employee in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of the officer or employee.

v. No person shall cause or influence, or attempt to cause or influence, any Authority officer or employee or special Authority officer or employee to use, or attempt to use, his or her official position to secure unwarranted privileges or advantages for the person or any other person.

(b) The provisions in (a)11 above shall not be construed to prohibit an Authority officer or employee or special Authority officer or employee from receiving gifts from or contracting with persons under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the State Ethics Commission may promulgate.

#### HISTORY:

Amended by R.1989 d.207, effective April 17, 1989.

See: 21 N.J.R. 129(a), 21 N.J.R. 1022(a).

(a)11 and (b) added, prohibitions on vendor activities representing conflicts of interest.

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

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

Section recodified from 5.2.

Tenancy or other disqualification/debarment may be denied based on any cause in (a), including failure to report solicitation.

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

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

Amended citations in (a)3.

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

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

In the introductory paragraph of (a), inserted "or Authority-owned project"; in (a)11ii, substituted "Ethics Liaison Officer" for "Executive Commission on Ethical Standards"; in (a)11iii, substituted "Authority Ethics Liaison Officer and the State Ethics Commission" for "Executive Commission on Ethical Standards"; and in (b), substituted "State Ethics Commission" for "Executive Commission on Ethical Standards".

#### NOTES:

#### CROSS REFERENCES:

Applicability to business employment incentive program grants, see *N.J.A.C. 19:31-10.8*.

## CASE NOTES:

*Initial Decision (2007 N.J. AGEN LEXIS 157)* adopted, which found that a corporation was properly debarred from Division of Property Management and Construction contracting and Schools Construction Corporation contracting for a period of four years because the actions of its corporate officers in seeking to influence the public contracting process through donations to political parties in excess of that which the Legislature permitted involved the commission of a criminal offense involving a lack of business integrity and demonstrating moral turpitude which reflected adversely upon the moral responsibility of the individuals and, as such, the corporation; because the corporation was by its very nature able to act only through individuals, it had to be held responsible for what those individuals did, especially when the activity directly affected the pocketbook of the corporation. *Dep't of Treasury, Div. of Prop. Mgmt. & Constr. v. JCA Associates, Inc.*, OAL Dkt. No. TPP 00055-05S and SCC 06543-05 S (*Consolidated*), 2007 N.J. AGEN LEXIS 1190, Final Decision (May 4, 2007).

*Initial Decision (2006 N.J. AGEN LEXIS 422)* adopted, which found that respondent was properly debarred from bidding on any school facilities projects financed or constructed pursuant to the Educational Facilities Construction and Financing Act, *N.J.S.A. 18A:7G-1 et seq.*, where respondent provided false information regarding his prior criminal history on his prequalification application; his dishonest acts in certifying the false information demonstrated a lack of business integrity or honesty and there were no mitigating factors that would have precluded debarment. *N.J. Schools Construction Corp. v. Bogey's Trucking & Paving, Inc.*, OAL Dkt. No. SCC 6544-05, 2006 N.J. AGEN LEXIS 1137, Final Decision (October 5, 2006).



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 NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
 CHAPTER 30. ADMINISTRATIVE RULES  
 SUBCHAPTER 2. DISQUALIFICATION/ DEBARMENT/ CONFLICT OF INTEREST

*N.J.A.C. 19:30-2.3 (2015)*

§ 19:30-2.3 Conditions affecting the disqualification/debarment of a person(s)

(a) The following conditions shall apply concerning disqualification/debarment:

1. The existence of any of the causes set forth in *N.J.A.C. 19:30-2.2(a)* shall not necessarily require that a person be disqualified/debarred. In each instance, the decision to disqualify/debar shall be made within the discretion of the Authority unless otherwise required by law, and shall be rendered in the best interests of the Authority.

2. All mitigating factors shall be considered in determining the seriousness of the offense or inadequacy of performance, and in deciding whether disqualification/debarment is warranted.

3. The existence of a cause set forth in *N.J.A.C. 19:30-2.2(a)1* through 8 shall be established upon the rendering of a final judgment or conviction including a guilty plea or a plea of nolo contendere by a court of competent jurisdiction or by an administrative agency empowered to render such judgment. In the event an appeal taken from such judgment or conviction results in reversal thereof, the disqualification/debarment shall be removed upon the request of the disqualified/debarred person unless other cause for disqualification/debarment exists.

4. The existence of a cause set forth in *N.J.A.C. 19:30-2.2(a)9* and 11 shall be established by evidence which the Authority determines to be clear and convincing in nature.

5. Debarment for the cause set forth in *N.J.A.C. 19:30-2.2(a)10* shall be proper, provided that one of the causes set forth in *N.J.A.C. 19:30-2.2(a)1* through 8 was the basis for debarment by the original debarring agency. Such debarment may be based entirely on the record of facts obtained by the original debarring agency, or upon a combination of such facts and additional facts.

**HISTORY:**

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

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

Disqualification provisions added. Section recodified from 5.3.

**CASE NOTES:**

*Initial Decision (2006 N.J. AGEN LEXIS 422)* adopted, which found that respondent was properly debarred from bidding on any school facilities projects financed or constructed pursuant to the Educational Facilities Construction and Financing Act, *N.J.S.A. 18A:7G-1* et seq., where respondent provided false information regarding his prior criminal history on his prequalification application; his dishonest acts in certifying the false information demonstrated a lack of business integrity or honesty and there were no mitigating factors that would have precluded debarment. *N.J. Schools*

*Construction Corp. v. Bogey's Trucking & Paving, Inc., OAL Dkt. No. SCC 6544-05, 2006 N.J. AGEN LEXIS 1137, Final Decision (October 5, 2006).*



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\*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

TITLE 19. OTHER AGENCIES  
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
CHAPTER 30. ADMINISTRATIVE RULES  
SUBCHAPTER 2. DISQUALIFICATION/ DEBARMENT/ CONFLICT OF INTEREST

*N.J.A.C. 19:30-2.4 (2015)*

§ 19:30-2.4 Procedures; period of disqualification/debarment

(a) When the Authority seeks to disqualify/debar a person or his affiliates, the person or persons shall be furnished with a written notice stating that:

1. Disqualification/debarment is being considered;
2. The reasons for the proposed disqualification/debarment; and

3. An opportunity for a hearing will be afforded to such person or persons if the hearing is requested in writing and the request is received by the Authority within seven days from the date of personal delivery or the date of receipt of the mailing of such disqualification/debarment notice.

(b) All such hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act (N.J.S.A. 54:14B-1 et seq.). Where any Federal or State department, agency or instrumentality has already imposed debarment upon a party, the Authority may also impose a similar debarment without affording an opportunity for a hearing, provided the Authority furnishes notice of the proposed similar debarment to that party, and affords that party an opportunity to present information in his behalf to explain why the proposed similar debarment should not be imposed in whole or in part.

(c) Disqualification/debarment shall be a reasonable, definitely stated period of time which as a general rule shall not exceed five years. Disqualification/debarment for an additional period shall be permitted provided that notice thereof is furnished and the party is afforded an opportunity to present information in his behalf to explain why the additional period of disqualification/debarment should not be imposed.

(d) Except as otherwise provided by law, a disqualification/debarment may be removed or the period thereof may be reduced in the discretion of the Authority, upon the submission of a good faith application under oath, supported by documentary evidence, setting forth substantial and appropriate grounds for the granting of relief, such as newly discovered material evidence, reversal of a conviction or judgment, actual change of ownership, management or control, or the elimination of the cause or causes for which the disqualification/debarment was imposed.

(e) A disqualification/debarment may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case by case basis after giving due regard to all relevant facts and circumstances.

(f) The offense or inadequacy of performance of an individual may be imputed to a person with whom he is affiliated, where such conduct was accomplished within the course of his official duty or was effected by him with the knowledge or approval of such person.

**HISTORY:**

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

See: 22 New Jersey Register 1537(a), 22 New Jersey Register 2532(a).

Disqualification and hearing request provisions added; debarment may extend to affiliates. Section recodified from 5.4.



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\*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

TITLE 19. OTHER AGENCIES  
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
CHAPTER 30. ADMINISTRATIVE RULES  
SUBCHAPTER 2. DISQUALIFICATION/ DEBARMENT/ CONFLICT OF INTEREST

*N.J.A.C. 19:30-2.5 (2015)*

§ 19:30-2.5 Notice to Attorney General and Treasurer

Insofar as practicable, prior notice of any proposed debarment shall be given to the Attorney General and the State Treasurer. The Authority shall supply to the State Treasurer a list of all persons having been debarred in accordance with the procedures prescribed herein.

**HISTORY:**

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

See: 22 New Jersey Register 1537(a), 22 New Jersey Register 2532(a).

Section recodified from 5.5.



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\*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

TITLE 19. OTHER AGENCIES  
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
CHAPTER 30. ADMINISTRATIVE RULES  
SUBCHAPTER 2. DISQUALIFICATION/ DEBARMENT/ CONFLICT OF INTEREST

*N.J.A.C. 19:30-2.6 (2015)*

§ 19:30-2.6 Authority discretion

Nothing contained in this subchapter is intended to limit the discretion of the Authority or the members in determining eligibility for financial assistance or eligibility of tenants, or in refraining from contracting with any person. The purpose of this subchapter is to provide notice of certain offenses or failures which may result in disqualification for assistance or debarment. Project applicants, tenants, and contractors must meet any other applicable standards and policies.

**HISTORY:**

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

See: 22 New Jersey Register 1537(a), 22 New Jersey Register 2532(a).

Authority includes staff members; eligibility for tenancy included. Section recodified from 5.6.



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\*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

TITLE 19. OTHER AGENCIES  
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
CHAPTER 30. ADMINISTRATIVE RULES  
SUBCHAPTER 2. DISQUALIFICATION/ DEBARMENT/ CONFLICT OF INTEREST

*N.J.A.C. 19:30-2.7 (2015)*

§ 19:30-2.7. Chief Executive Officer to implement regulation

The Chief Executive Officer is authorized to take all necessary action to implement and administer the provisions of this subchapter.

HISTORY:

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

See: 22 New Jersey Register 1537(a), 22 New Jersey Register 2532(a).

Recodified from 5.7.

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

See: 32 New Jersey Register 1705(a), 32 New Jersey Register 2602(c).

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

See: 37 New Jersey Register 1714(a), 37 New Jersey Register 3058(a).

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



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\*\*\* This file includes all Regulations adopted and published through the \*\*\*  
 \*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

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 (2015)*

§ 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".



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\*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

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. 19:30-3.2 (2015)*

§ 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](http://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*.



NEW JERSEY ADMINISTRATIVE CODE  
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\*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

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. 19:30-3.3 (2015)*

§ 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*.



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\*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

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. 19:30-3.4 (2015)*

§ 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*.



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\*\*\* This file includes all Regulations adopted and published through the \*\*\*  
 \*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

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. 19:30-3.5 (2015)*

§ 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](http://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.

N.J.A.C. 19:30-3.5

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).



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\*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

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. 19:30-3.6 (2015)*

§ 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/](http://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).

## N.J.A.C. 19:30-3.6

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/](http://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*.



NEW JERSEY ADMINISTRATIVE CODE  
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 \*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

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 (2015)*

§ 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](http://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*.



NEW JERSEY ADMINISTRATIVE CODE  
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\*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

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 (2015)*

§ 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.



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 \*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

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. 19:30-3.9 (2015)*

§ 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".



NEW JERSEY ADMINISTRATIVE CODE  
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\*\*\* This file includes all Regulations adopted and published through the \*\*\*  
 \*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

TITLE 19. OTHER AGENCIES  
 NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
 CHAPTER 30. ADMINISTRATIVE RULES  
 SUBCHAPTER 4. PAYMENT OF PREVAILING WAGES IN AUTHORITY PROJECTS

*N.J.A.C. 19:30-4.1 (2015)*

§ 19:30-4.1 Definitions

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

"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. 1999, c. 26 (*N.J.S.A. 34:1B-124 et seq.*), that enables the entity to engage in a construction contract.

"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. 19:30-4.2*.

"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.

"Prevailing wage rate" means the prevailing wage rate established by the Commissioner of New Jersey Department of Labor and Workforce Development from time to time in accordance with the provisions of *N.J.S.A. 34:11-56.25 et seq.* for the locality in which the project is located.

HISTORY:

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

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

Definitions of Authority and Executive Director deleted; construction contract includes installation of equipment and any agreement, whether oral or written. Section recodified from 3.1.

Amended by R.2000 d.482, effective December 4, 2000.

See: 32 N.J.R. 3555(a), 32 N.J.R. 4275(b).

In "Construction contract", substituted "receiving" for "that has received final approval for".

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 Workforce Development" following "Department of Labor" to "Prevailing wage rate" definition.

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 "Definition". Added definitions "Authority financial assistance", "Construction project" and "Contractor"; rewrote definition "Construction contract"; and in definition "Prevailing wage rate", updated the N.J.S.A. reference.



NEW JERSEY ADMINISTRATIVE CODE  
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\*\*\* This file includes all Regulations adopted and published through the \*\*\*  
 \*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

TITLE 19. OTHER AGENCIES  
 NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
 CHAPTER 30. ADMINISTRATIVE RULES  
 SUBCHAPTER 4. PAYMENT OF PREVAILING WAGES IN AUTHORITY PROJECTS

*N.J.A.C. 19:30-4.2 (2015)*

§ 19:30-4.2 Payments of prevailing wages in projects receiving assistance

(a) Not less than the prevailing wage rate shall be paid to workers employed in the performance of any construction contract, including contracts for millwork fabrication, undertaken in connection with Authority financial assistance or any of its projects, those projects which it undertakes pursuant to P.L. 2002, c. 43 (*N.J.S.A. 52:27BBB-1 et seq.*), 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, unless the work performed under the contract is:

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

(b) In accordance with P.L. 2007, c. 245 (*N.J.S.A. 34:1B-5.1*), nothing in this subchapter shall be construed as requiring the payment of prevailing wage 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.

HISTORY:

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

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

Stylistic changes. Section recodified from 3.2.

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

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

Section was "Payments of prevailing wages in projects receiving assistance".



NEW JERSEY ADMINISTRATIVE CODE  
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\*\*\* This file includes all Regulations adopted and published through the \*\*\*  
\*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

TITLE 19. OTHER AGENCIES  
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
CHAPTER 30. ADMINISTRATIVE RULES  
SUBCHAPTER 4. PAYMENT OF PREVAILING WAGES IN AUTHORITY PROJECTS

*N.J.A.C. 19:30-4.3 (2015)*

§ 19:30-4.3 Assurances required

(a) Recipients of Authority financial assistance for construction contracts shall deliver an NJEDA affirmative action completion certificate to the Authority (or designated agent for the Authority), upon completion of the contract, signed by an authorized representative of the recipient, representing and confirming that:

1. It has complied and has caused its landlord, if applicable, contractors and subcontractors to comply with the requirements of *N.J.A.C. 19:30-4.2*; or

2. It has not entered into any construction contracts subject to the provisions of *N.J.A.C. 19:30-4.2(a)* and its landlord has not entered in any contracts pursuant to *N.J.A.C. 19:30-4.2(a)*.

HISTORY:

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

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

Correction of citation. Section recodified from 3.3.

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

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

In the introductory paragraph of (a), inserted "Authority financial", substituted "an NJEDA affirmative action completion" for "a" and substituted "contract" for "project"; in (a)1, inserted "landlord, if applicable", and deleted "and attaching true copies of all such construction contracts with contractors and subcontractors" following "19:30-4.2"; and in (a)2, inserted "(a) and its landlord has not entered in any contracts pursuant to *N.J.A.C. 19:30-4.2(a)*".



NEW JERSEY ADMINISTRATIVE CODE  
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\*\*\* This file includes all Regulations adopted and published through the \*\*\*  
\*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

TITLE 19. OTHER AGENCIES  
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
CHAPTER 30. ADMINISTRATIVE RULES  
SUBCHAPTER 4. PAYMENT OF PREVAILING WAGES IN AUTHORITY PROJECTS

*N.J.A.C. 19:30-4.4 (2015)*

§ 19:30-4.4 Contract provisions required

(a) All construction contracts in the amount of \$ 2,000 or more shall require that:

1. Prime contractors maintain and submit certified payroll records to the Authority; or
2. Contractors and subcontractors:

i. Permit the Authority, or its designated agent, complete access to payroll records and other records for purposes of determining compliance with the provisions of this subchapter; and

ii. Keep accurate records showing the name, craft or trade, and actual hourly rate of wages paid to each worker employed in connection with the performance of the contract and to preserve such records for two years from the date of payment.

HISTORY:

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

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

Stylistic change. Section recodified from 3.4.

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.



NEW JERSEY ADMINISTRATIVE CODE  
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\*\*\* This file includes all Regulations adopted and published through the \*\*\*  
\*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

TITLE 19. OTHER AGENCIES  
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
CHAPTER 30. ADMINISTRATIVE RULES  
SUBCHAPTER 4. PAYMENT OF PREVAILING WAGES IN AUTHORITY PROJECTS

*N.J.A.C. 19:30-4.5 (2015)*

§ 19:30-4.5 Violation

A violation of the provisions of this subchapter shall be deemed a violation of *N.J.S.A. 34:11-56.25* et seq. and *N.J.A.C. 12:60-5.1*, and the Internal Process Management unit in the EDA shall 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, terminated and/or repaid.

HISTORY:

Repeal and New Rule R.1990 d.411, effective August 20, 1990.

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

Section 3.5, Executive Director to enforce compliance, was repealed and recodified from 4.5.

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.



NEW JERSEY ADMINISTRATIVE CODE  
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\*\*\* This file includes all Regulations adopted and published through the \*\*\*  
\*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

TITLE 19. OTHER AGENCIES  
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
CHAPTER 30. ADMINISTRATIVE RULES  
SUBCHAPTER 4. PAYMENT OF PREVAILING WAGES IN AUTHORITY PROJECTS

*N.J.A.C. 19:30-4.6 (2015)*

§ 19:30-4.6 (Reserved)

HISTORY:

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

See: 22 New Jersey Register 1537(a), 22 New Jersey Register 2532(a).

Section was 3.6, Effective date.



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\*\*\* This file includes all Regulations adopted and published through the \*\*\*  
\*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

TITLE 19. OTHER AGENCIES  
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
CHAPTER 30. ADMINISTRATIVE RULES  
SUBCHAPTER 5. TARGETING OF AUTHORITY ASSISTANCE

*N.J.A.C. 19:30-5.1 (2015)*

§ 19:30-5.1 Priority consideration of projects in economically distressed localities

(a) Subject to Federal tax law compliance and certain other legal restraints, any project located anywhere in the State of New Jersey may qualify for assistance from the Authority if it meets certain economic needs. Nevertheless, the Authority recognizes the special needs of certain municipalities and, accordingly, affords them priority consideration in offering its assistance. Such municipalities are eligible locations for a period of one year or longer.

(b) Qualification under this subchapter is not tantamount to project approval; it merely identifies certain municipalities for priority consideration. Projects must meet eligibility standards set forth in *N.J.A.C. 19:31*.

HISTORY:

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

See: 27 New Jersey Register 2377(a), 27 New Jersey Register 3216(a).



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\*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

TITLE 19. OTHER AGENCIES  
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
CHAPTER 30. ADMINISTRATIVE RULES  
SUBCHAPTER 5. TARGETING OF AUTHORITY ASSISTANCE

*N.J.A.C. 19:30-5.2 (2015)*

§ 19:30-5.2 Municipalities eligible for priority consideration

(a) Municipalities meeting either of the following criteria are considered eligible locations:

1. Constituting a "qualifying municipality" as defined in *N.J.S.A. 52:27D-178*, which designates certain municipalities as "New Jersey Urban Aid Municipalities" based on a formula including, but not limited to:

i. At least one publicly financed dwelling unit for low income families in municipalities with populations in excess of 15,000;

ii. The number of children receiving "Aid to Dependent Children" exceeds 250;

iii. The municipality's equalized tax rate exceeds the State equalized tax rate; and

iv. The municipality's equalized valuation per capita is less than the State equalized valuation per capita.

2. Eligibility under the Authority's formula requires that a municipality meet three of the four following standards:

i. Unemployment rate above the State average;

ii. Per capita income lower than the State average;

iii. Ratables per capita less than the State average;

iv. A total number of unemployed persons of 1,000 or more.

(b) A municipality shall remain on the list of eligible locations for a period of one year after the municipality ceases to meet the criteria in (a)1 and 2 above.

**HISTORY:**

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

See: 27 New Jersey Register 2377(a), 27 New Jersey Register 3216(a).



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\*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

TITLE 19. OTHER AGENCIES  
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
CHAPTER 30. ADMINISTRATIVE RULES  
SUBCHAPTER 5. TARGETING OF AUTHORITY ASSISTANCE

*N.J.A.C. 19:30-5.3 (2015)*

§ 19:30-5.3. Special eligibility list

The Chief Executive Officer shall, from time to time, establish a list of municipalities and activities by Standard Industrial Classification Number, eligible for Authority assistance, notwithstanding the requirements of *N.J.A.C. 19:30-5.2* and 19:31, based on the Authority's objectives as indicated in *N.J.A.C. 19:30-1.1*.

HISTORY:

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

See: *37 New Jersey Register 1714(a)*, *37 New Jersey Register 3058(a)*.

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



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 \*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

TITLE 19. OTHER AGENCIES  
 NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
 CHAPTER 30. ADMINISTRATIVE RULES  
 SUBCHAPTER 6. FEES

*N.J.A.C. 19:30-6.1 (2015)*

§ 19:30-6.1 Application fee

(a) Except as set forth in (c) and (d) below, a non-refundable fee of \$ 1,000 shall accompany every application for Authority assistance, except for:

1. An application under the Edison Innovation Angel Growth Fund, the Edison Innovation VC Growth Fund, and the Edison Innovation Growth Stars Fund, for which the fee is \$ 2,500;

2. An application submitted by a higher education institution pursuant to P.L. 2009, c. 90 for which the fee is .125 percent of the total project cost or \$ 15,000, whichever is greater;

3. An application for assistance under the Small Business Fund and *N.J.S.A. 34:1B-47* et seq., for which the fee is \$ 300.00; and

4. An application for assistance under the Real Estate Impact Fund, for which the fee is \$ 2,500; and the full amount of direct costs of any analysis by a third party retained by the Authority, if the Authority deems such retention to be necessary, shall be paid.

(b) The non-refundable application fee of \$ 1,000 for a guarantee of a bond issued by the Authority is in addition to the bond application fee.

(c) For applicants filing concurrent applications for Authority assistance for multiple products of equivalent type, for example all loans, the application fee for the subsequent application shall be reduced by 50 percent.

(d) For applicants filing application(s) for Authority assistance within 12 months of closing a previous financing, a non-refundable application fee in an amount equaling 50 percent of the regular application fee shall be paid.

**HISTORY:**

Amended by R.1987 d.318, effective August 3, 1987.

See: 19 N.J.R. 922(a), 19 N.J.R. 1456(b).

Changed non-refundable fee of \$ 250.00 to \$ 500.00. Added text "except for an . . ."

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

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

Exception for Trade Adjustment Assistance Center added. Section recodified from 2.1.

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.2009 d.38, effective January 20, 2009.

See: *40 N.J.R. 5954(a)*, *41 N.J.R. 638(a)*.

Inserted designation (a); rewrote (a); and added (b) and (c).

Amended by R.2010 d.078, effective June 7, 2010.

See: *41 N.J.R. 4428(a)*, *42 N.J.R. 1081(a)*.

In (a), inserted "and except for an application submitted by a higher education institution pursuant to P.L. 2009, c. 90 for which the fee is .125 percent of the total project cost or \$ 15,000, whichever is greater".

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.

Amended by R.2011 d.195, effective July 18, 2011.

See: *43 N.J.R. 955(a)*, *43 N.J.R. 1602(b)*.

In (a)1, substituted "Edison Innovation Angel Growth Fund, the Edison Innovation VC Growth Fund, and the Edison Innovation Growth Stars Fund" for "Edison Innovation Growth Fund", and deleted ".25 percent of the loan amount, not to exceed" following "is".

Amended by R.2015 d.014, effective January 20, 2015.

See: *46 N.J.R. 1593(a)*, *47 N.J.R. 277(b)*.

Deleted (a)3, and recodified former (a)4 as (a)3.

Amended by R.2015 d.018, effective January 20, 2015.

See: *46 N.J.R. 2107(a)*, *47 N.J.R. 298(a)*.

In (a)3, substituted "; and" for a period; and added (a)4.



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 \*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

TITLE 19. OTHER AGENCIES  
 NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
 CHAPTER 30. ADMINISTRATIVE RULES  
 SUBCHAPTER 6. FEES

*N.J.A.C. 19:30-6.2 (2015)*

§ 19:30-6.2 Commitment fees

(a) A non-refundable commitment fee of .875 percent of a direct loan amount is charged with the acceptance by an applicant of a direct loan commitment from the Authority, except for any other financing under the Premier Lenders Program, wherein a non-refundable commitment fee of \$ 750.00 shall be charged with the acceptance by an applicant.

(b) A non-refundable fee of .75 percent of the loan amount is charged with the acceptance by an applicant of a direct loan commitment under the Edison Innovation Angel Growth Fund, the Edison Innovation VC Growth Fund, and the Edison Innovation Growth Stars Fund.

(c) A non-refundable fee of .5 percent of the loan or guarantee amount is charged with the acceptance by an applicant of a direct loan or guarantee commitment under the Small Business Fund.

(d) A non-refundable fee of one-half of one percent of the total amount of a direct loan or \$ 100.00, whichever is greater, is charged upon the signing of a commitment letter for a direct loan through funding provided under *N.J.S.A. 34:1B-47 et seq.*

(e) A non-refundable commitment fee of .875 percent of the loan amount is charged with the acceptance by an applicant of any direct loan commitment other than as described in (a), (b), (c), (d) or (e) above.

(f) A non-refundable extension fee of \$ 750.00, per extension requested by the borrower, shall be charged for the granting of an extension of the commitment letter beyond the original expiration date.

HISTORY:

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

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

Section was 2.2.

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

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

Raised commitment fee and added direct participation commitment in (a); added (d) regarding extension fee.

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

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

In (a), deleted "loan" preceding "guarantee"; in (b), substituted "Downtown Beautification" for "Urban Centers Small Loan".

Amended by R.2009 d.38, effective January 20, 2009.

See: *40 N.J.R. 5954(a)*, *41 N.J.R. 638(a)*.

Rewrote (a) and (b); and in (c), substituted ".875 percent" for "\$ 500.00, or one-half of one percent," deleted ", whichever is greater," following "amount", and inserted "(a) or".

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 (c) through (e); recodified former (c) and (d) as (f) and (g); and in (f), substituted ", (b), (c), (d) or (e)" for "or (b)".

Amended by R.2011 d.195, effective July 18, 2011.

See: *43 N.J.R. 955(a)*, *43 N.J.R. 1602(b)*.

In (b), substituted "Edison Innovation Angel Growth Fund, the Edison Innovation VC Growth Fund, and the Edison Innovation Growth Stars Fund" for "Edison Innovation Growth Fund", and deleted the last two sentences.

Amended by R.2012 d.101, effective May 21, 2012.

See: *44 N.J.R. 433(a)*, *44 N.J.R. 1644(a)*.

Rewrote (a).

Amended by R.2015 d.014, effective January 20, 2015.

See: *46 N.J.R. 1593(a)*, *47 N.J.R. 277(b)*.

Deleted former (c), and recodified former (d) through (g) as (c) through (f).



NEW JERSEY ADMINISTRATIVE CODE  
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 \*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

TITLE 19. OTHER AGENCIES  
 NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
 CHAPTER 30. ADMINISTRATIVE RULES  
 SUBCHAPTER 6. FEES

*N.J.A.C. 19:30-6.3 (2015)*

§ 19:30-6.3 Closing fees

(a) Except as set forth in (a)1 below, for Authority-issued bonds, the fee to be paid at closing is one-half of one percent of the amount of the bond issue up to and including \$ 15,000,000; three-eighths of one percent of the amount in excess of the next \$ 10,000,000; and one-half of one percent of the bond amount in excess of \$ 25,000,000.

1. The fee to be paid at closing for Authority-issued bonds which benefit not-for-profit corporations, as defined by the Internal Revenue Code, and governmental bodies shall be one-half of one percent of the amount of the bond issue, up to and including \$ 10,000,000 and one-quarter of one percent of the amount in excess of \$ 10,000,000.

2. The fee to be paid at closing for Authority-issued empowerment zone bonds which benefit a project located either in a Federal empowerment zone or enterprise zone community as those terms are defined by the Internal Revenue Code, shall be one-half of the standard bond closing fee as set forth in (a) above.

3. In all instances, except for conduit bond transactions that support multi-jurisdictional, interstate projects, the fees due and payable for conduit bond transactions shall not exceed \$ 300,000.

(b) For guaranteed Authority-issued bonds or *pari passu* guaranteed financing under the Premier Lenders Program, the guarantee fee, to be paid at closing, shall not exceed 50 basis points as determined by the initial amount of the guaranteed portion of the financing in order that the fee percentage will correspond to the percentage guarantee required (for example, a 25 percent guarantee would incur a guarantee fee of 25 basis points, a 50 percent guarantee would incur a guarantee fee of 50 basis points) multiplied by the dollar amount of the guarantee and by the number of years the guarantee is to be in effect. For a guarantee where the Authority's interest is subordinated, the fee to be paid at closing shall be as set forth in this subsection plus 25 basis points. This fee is in addition to the fee described in (a) above if the Authority's guarantee relates to repayment of a bond issued by the Authority.

(c) For guarantees issued under *N.J.A.C. 19:31-2.1(b)3*, the residual risk guarantee fee to be paid at closing is one-quarter of one percent of the initial amount of the residual risk Authority's exposure in the financing multiplied by the number of years the guarantee is to be in effect.

(d) For direct loans from the Authority, the fee, to be paid at closing, is .875 percent of the loan amount. For direct loans under the Edison Innovation Angel Growth Fund, the Edison Innovation VC Growth Fund, and the Edison Innovation Growth Stars Fund, the fee to be paid at closing is .75 percent of the loan amount. For direct loans under the Small Business Fund, the fee to be paid at closing is .5 percent of the loan amount. For direct loans under *N.J.S.A. 34:1B-47 et seq.*, the fee to be paid at closing is one-half of one percent of the total amount of the direct loan.

(e) For Authority issued taxable bonds, the fee to be paid at closing is one-half of the closing fee set forth in (a) above.

(f) For structured finance lease transactions whether or not the Authority has exposure, the lease origination fee will be one tenth of the sales tax savings achieved at lease signing.

**HISTORY:**

Amended by R.1987 d.318, effective August 3, 1987.

See: 19 N.J.R. 922(a), 19 N.J.R. 1456(b).

Raised "one-tenth" to "one-quarter".

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

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

Section was 2.3.

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

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

Amended fees.

Amended by R.1997 d.270, effective July 7, 1997.

See: 29 N.J.R. 1485(b), 29 N.J.R. 2844(b).

In (b), substituted "guaranteed conventional financing other than Authority issued bonds" for "conventional loans"; and added (d).

Amended by R.1999 d.77, effective March 1, 1999.

See: 31 N.J.R. 33(b), 31 N.J.R. 671(a).

In (a), inserted a reference to government bodies in 1, and added 2.

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

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

Inserted a new (c); recodified former (c) and (d) as (d) and (e); and added a new (f).

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), inserted a new 2 and recodified former 2 as 3.

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

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

Added (g).

Amended by R.2009 d.38, effective January 20, 2009.

See: 40 N.J.R. 5954(a), 41 N.J.R. 638(a).

In (b), substituted ".875 percent" for "one-half of one percent"; rewrote (d); and deleted (g).

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

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

In (d), inserted the last two sentences; and added (g) through (i).

Amended by R.2011 d.195, effective July 18, 2011.

See: 43 N.J.R. 955(a), 43 N.J.R. 1602(b).

In (d), substituted "Edison Innovation Angel Growth Fund, the Edison Innovation VC Growth Fund, and the Edison Innovation Growth Stars Fund" for "Edison Innovation Growth Fund", and deleted "; and, for the Edison Innovation

Commercialization Fund, the fee to be paid at closing is .5 percent of the loan amount" following ".75 percent of the loan amount".

Amended by R.2012 d.101, effective May 21, 2012.

See: *44 N.J.R. 433(a)*, *44 N.J.R. 1644(a)*.

Rewrote (b); and in (d), deleted "other than loans under the Statewide Loan Pool, Preferred Lender Program and the New Jersey Business Growth Fund," preceding the first occurrence of "the fee".

Amended by R.2013 d.082, effective June 3, 2013.

See: *45 N.J.R. 457(a)*, *45 N.J.R. 1413(b)*.

In (b), inserted "pari passu", "dollar amount of the guarantee and by the", and the next-to-last sentence.

Amended by R.2013 d.085, effective June 17, 2013.

See: *45 N.J.R. 631(a)*, *45 N.J.R. 1564(a)*.

In (a)3, inserted ", except for conduit bond transactions that support multi-jurisdictional, interstate projects,".

Amended by R.2015 d.014, effective January 20, 2015.

See: *46 N.J.R. 1593(a)*, *47 N.J.R. 277(b)*.

Deleted (g) through (i).



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 \*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

TITLE 19. OTHER AGENCIES  
 NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
 CHAPTER 30. ADMINISTRATIVE RULES  
 SUBCHAPTER 6. FEES

*N.J.A.C. 19:30-6.4 (2015)*

§ 19:30-6.4 Post-closing fees

(a) The fees in this section are due and payable upon closing of the bond amendment, approval of change of ownership, or signing of modification consent, waiver, or similar documents.

1. For refunding bonds issued to refinance or change the terms of outstanding Authority bonds, an amount equal to one-half of the closing fee (see *N.J.A.C. 19:30-6.3(a)*) shall be charged. Notwithstanding the foregoing, a single modification that does not involve a new purchaser will be charged the fee required under (a)5 below.

2. For combination refunding and new money bonds, an amount equal to one-half of the closing fee (see *N.J.A.C. 19:30-6.3(a)*) shall be charged on the refunding portion and the closing fee (see *N.J.A.C. 19:30-6.3(a)*) shall be charged on the new money portion.

3. For change of ownership of 50 percent or more of the project property or ownership interest in the borrower to an unrelated entity, or to a related entity not previously approved by the Authority for the project, a \$ 1,500 fee shall be charged.

4. For change of ownership of the project property or ownership interest in the borrower to a previously Authority-approved related entity, or for the transfer of less than 50 percent of the project property or ownership interest in the borrower to an unrelated entity (excluding a limited partner, or a shareholder holding or about to hold an ownership interest in the borrower of 10 percent or less), a \$ 750.00 fee shall be charged.

5. For changing project location or description, or changing loan document provisions on bond-financed projects, a \$ 1,500 fee shall be charged.

6. For review and execution of a document or the preparation of documents, or granting a consent or waiver related to an Authority-assisted project, a fee of \$ 250.00 shall be charged. For direct loans, a standard documentation fee of \$ 500.00 shall be charged except for direct loans under the Small Business Fund or *N.J.S.A. 34:1B-47* et seq., for which the fee shall be \$ 300.00; and for any negotiations pertaining to Authority documentation, legal costs of the Authority shall be borne by the borrower.

7. For executing (up to 10 bonds) or authorizing issuance of substitute bonds, a fee of \$ 100.00 per project, per occurrence shall be charged.

8. For modifying or restructuring payment terms for a direct loan or loan guarantee project a fee of \$ 1,000 shall be charged.

9. For each request for any administrative changes, additions, or modifications to the reimbursement under the Brownfields and Contaminated Site Remediation Program, a non-refundable fee of \$ 2,500 shall be paid for projects with an approved maximum aggregate reimbursement of \$ 5,000,000 or less and a non-refundable fee of \$ 5,000 shall be paid for projects with an approved maximum aggregate reimbursement in excess of \$ 5,000,000; and for any major changes, additions, or modifications to the reimbursement under Brownfields and Contaminated Site Remediation Program, such as those requiring extensive staff time and Board approval, a non-refundable fee of \$ 7,500 shall be paid for

projects with an approved maximum aggregate reimbursement of \$ 5,000,000 or less and a non-refundable fee of \$ 25,000 shall be paid for projects with an approved maximum aggregate reimbursement in excess of \$ 5,000,000.

(b) When a transaction does not by its terms fall into one of the above categories, the Authority in its discretion shall determine the appropriate category based on the substance of the transaction. The categorization of the transaction on U.S. Department of the Treasury, Internal Revenue Service Form 8038 will be a significant factor in the determination of the fee.

(c) For those borrowers who choose not to participate in auto-debit transaction payments, a fee of .25 basis points will be added to the rate of interest charged on each applicable loan.

(d) Any payment made on a direct loan which is returned due to insufficient funds shall result in a charge of \$ 35.00.

#### HISTORY:

Amended by R.1987 d.318, effective August 3, 1987.

See: 19 N.J.R. 922(a), 19 N.J.R. 1456(b).

Substantially amended.

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

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

Definitions for refunding bond, related and unrelated entities clarified; examples added at (a)5; scope broadened; limitation on execution of bonds. Section was recodified from 2.4.

Amended by R.1993 d.217, effective May 17, 1993.

See: 25 N.J.R. 916(a), 25 N.J.R. 1998(a).

Added new (a)8.

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

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

Raised fees.

Amended by R.2003 d.453, effective November 17, 2003.

See: 35 N.J.R. 3746(a), 35 N.J.R. 5251(a).

In (a), added the second sentence in 1 and substituted "\$ 1,500" for "\$ 750.00" preceding "fee" in 5.

Amended by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Added (c) and (d).

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

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

In (a)6, inserted the last sentence; and added (a)9.

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote (a)9.



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\*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

TITLE 19. OTHER AGENCIES  
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
CHAPTER 30. ADMINISTRATIVE RULES  
SUBCHAPTER 6. FEES

*N.J.A.C. 19:30-6.5 (2015)*

§ 19:30-6.5 Sign display

Applicants requesting financial assistance from the Authority, where part of the project consists of construction or renovation will be provided a sign upon granting of approval by the Members, which is to be visibly erected at the project site indicating that the financing was made available through the Authority.

HISTORY:

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

See: 22 New Jersey Register 1537(a), 22 New Jersey Register 2532(a).

Fee for sign increased from \$ 50.00 to \$ 75.00. Section was 2.5.

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

See: 27 New Jersey Register 2377(a), 27 New Jersey Register 3216(a).

Required project sign to be visibly erected at all construction or renovation sites.



NEW JERSEY ADMINISTRATIVE CODE  
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\*\*\* This file includes all Regulations adopted and published through the \*\*\*  
\*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

TITLE 19. OTHER AGENCIES  
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
CHAPTER 30. ADMINISTRATIVE RULES  
SUBCHAPTER 6. FEES

*N.J.A.C. 19:30-6.6 (2015)*

§ 19:30-6.6 (Reserved)

HISTORY:

New Rule, R.1995 d.435, effective August 21, 1995.

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

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

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

Deleted "loan" preceding "guarantee" and added "under the Angel Investor Program" following "guarantee".

Repealed by R.2009 d.38, effective January 20, 2009.

See: 40 *N.J.R.* 5954(a), 41 *N.J.R.* 638(a).

Section was "Guarantee incentive fees".



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 \*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

TITLE 19. OTHER AGENCIES  
 NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
 CHAPTER 30. ADMINISTRATIVE RULES  
 SUBCHAPTER 6. FEES

*N.J.A.C. 19:30-6.7 (2015)*

§ 19:30-6.7 Fee waiver

The Chief Executive Officer may, with the approval of the members, waive certain fees upon demonstration by the applicant that the imposition of the fee would impose an undue financial hardship. The members may delegate to a Director, with the concurrence of the Chief Executive Officer, Chief Operating Officer, or Senior Vice President, authority to waive a loan commitment extension fee; and may delegate to a Director, authority to waive late fees when the cause for the late fee is beyond the control of the borrower. The Chief Executive Officer, with the approval of the members, may waive, postpone, or decrease bond application and closing fees for municipal governmental agency(s), State agency projects, or conduit bond transactions that support multi-jurisdictional, interstate projects. In the case of State agency projects, such waiver, postponement, or decrease shall be in accordance with the directives of the State Treasurer regarding the specific State agency projects.

HISTORY:

New Rule, R.1995 d.435, effective August 21, 1995.

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

Amended by R.1999 d.77, effective March 1, 1999.

See: 31 *N.J.R.* 33(b), 31 *N.J.R.* 671(a).

Added a third sentence.

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

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

Rewrote section.

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.

Amended by R.2006 d.369, effective October 16, 2006.

See: 38 *N.J.R.* 3001(a), 38 *N.J.R.* 4503(a).

Rewrote the second sentence.

Amended by R.2010 d.178, effective August 16, 2010.

See: 42 *N.J.R.* 904(a), 42 *N.J.R.* 1900(b).

Deleted "as described in this subchapter," following "certain fees".

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

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

Inserted "extension".

Amended by R.2013 d.085, effective June 17, 2013.

See: *45 N.J.R. 631(a)*, *45 N.J.R. 1564(a)*.

Inserted a comma preceding "or Senior Vice President" and following "postpone" and "postponement", substituted a comma for "or" preceding the first occurrence of "State", and inserted ", or conduit bond transactions that support multi-jurisdictional, interstate projects".



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\*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

TITLE 19. OTHER AGENCIES  
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
CHAPTER 30. ADMINISTRATIVE RULES  
SUBCHAPTER 7. DISABILITY DISCRIMINATION COMPLAINT PROCEDURE

*N.J.A.C. 19:30-7.1 (2015)*

§ 19:30-7.1 Definitions

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

"ADA" means the Americans with Disabilities Act, *42 U.S.C. § 12101* et seq.

"Authority" means the New Jersey Economic Development Authority.

"Designated decision maker" means the Chief Executive Officer of the Authority or his or her designee.

"Disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such impairment; or being regarded as having such impairment.

HISTORY:

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.2010 d.285, effective December 6, 2010.

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

In definition "Designated decision maker", substituted "Chief Executive Officer" for "Executive Director".



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\*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

TITLE 19. OTHER AGENCIES  
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
CHAPTER 30. ADMINISTRATIVE RULES  
SUBCHAPTER 7. DISABILITY DISCRIMINATION COMPLAINT PROCEDURE

*N.J.A.C. 19:30-7.2 (2015)*

§ 19:30-7.2 Purpose

(a) These rules are adopted by the Authority in satisfaction of the requirements of the ADA and regulations promulgated pursuant thereto, *28 C.F.R. 35.107*.

(b) The purpose of these rules is to establish a designated coordinator whose duties shall include assuring that the Authority complies with and carries out its responsibilities under the ADA. Those duties shall also include the investigation of any complaint filed with the Authority pursuant to N.J.A.C. 19:30-7.

HISTORY:

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

See: *27 New Jersey Register 2377(a)*, *27 New Jersey Register 3216(a)*.



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\*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

TITLE 19. OTHER AGENCIES  
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
CHAPTER 30. ADMINISTRATIVE RULES  
SUBCHAPTER 7. DISABILITY DISCRIMINATION COMPLAINT PROCEDURE

*N.J.A.C. 19:30-7.3 (2015)*

§ 19:30-7.3 Required ADA Notice

In addition to any other advice, assistance or accommodation provided, a copy of the following notice shall be given to anyone who inquires regarding the Authority's compliance with the ADA or the availability of accommodation which would allow a qualified individual with a Disability to receive services or participate in a program or activity provided by the Authority.

AUTHORITY NOTICE OF ADA PROCEDURE

The Authority has adopted an internal grievance procedure providing for prompt and equitable resolution of complaints alleging any action prohibited by the U.S. Department of Justice regulations implementing Title II of the Americans with Disabilities Act. Title II states, in part, that no otherwise qualified disabled individual shall, solely by reason of such disability, be excluded from participation in, be denied the benefits of or be subjected to discrimination in programs or activities sponsored by a public entity.

Rules describing and governing the internal grievance procedure can be found in the New Jersey Administrative Code, N.J.A.C. 19:30-7. As those rules indicate, complaints should be addressed to the Authority's designated ADA Coordinator, who has been designated to coordinate ADA compliance efforts, at the following address:

ADA Coordinator  
New Jersey Economic Development Authority  
PO Box 990  
Trenton, New Jersey 08625-0990

1. A complaint may be filed in writing or orally, by any individual (or that individual's authorized representative) who believes that s/he or a specific class of individuals has been subjected to discrimination on the basis of disability. The complaint should contain the name and address of the person filing the complaint and for whom the complaint is being filed, and briefly describe the alleged violation. A form for this purpose is available from the designated ADA coordinator.

2. A complaint should be filed promptly within 20 days from the date of the alleged violation. (Processing of allegations of discrimination which occurred before this grievance procedure was in place will be considered on a case-by-case basis.)

3. An investigation, as may be appropriate, will follow the filing of a complaint. The investigation will be conducted by the Authority's designated ADA Coordinator. The rules contemplate informal but thorough investigations, affording all interested persons and their representatives, if any, an opportunity to submit evidence relevant to a complaint.

4. In most cases a written determination as to the validity of the complaint and a description of the resolution, if any, will be issued by the Designated Decision Maker and a copy forwarded to the complainant no later than 45 days after its filing.

5. The ADA coordinator will maintain the files and records of the Authority relating to the complaints filed.

6. The right of a person to a prompt and equitable resolution of the complaint filed hereunder will not be impaired by the person's pursuit of other remedies such as the filing of an ADA complaint with the responsible Federal department or agency or the New Jersey Division on Civil Rights. Use of this grievance procedure is not a prerequisite to the pursuit of other remedies.

7. The rules will be construed to protect the substantive rights of complainant to meet appropriate due process standards and to assure that the Authority complies with the ADA and implementing Federal rules.

#### HISTORY:

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

See: 27 New Jersey Register 2377(a), 27 *New Jersey Register* 3216(a).



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\*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

TITLE 19. OTHER AGENCIES  
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
CHAPTER 30. ADMINISTRATIVE RULES  
SUBCHAPTER 7. DISABILITY DISCRIMINATION COMPLAINT PROCEDURE

*N.J.A.C. 19:30-7.4 (2015)*

§ 19:30-7.4 Designated ADA coordinator

(a) The designated coordinator of ADA compliance and complaint investigation for the Authority is:

ADA Coordinator

New Jersey Economic Development Authority

PO Box 990

Trenton, New Jersey 08625-0990

(609) 292-1800

(b) All inquiries regarding the Authority's compliance with the ADA and the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the Authority should be directed to the designated coordinator identified in (a) above.

(c) All complaints alleging that the Authority has failed to comply with or has acted in a way that is prohibited by the ADA should be directed to the designated ADA coordinator identified in this section, in accordance with the procedures set forth in *N.J.A.C. 19:30-7.5*.

HISTORY:

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

See: 27 *New Jersey Register* 2377(a), 27 *New Jersey Register* 3216(a).

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

See: 32 *New Jersey Register* 1705(a), 32 *New Jersey Register* 2602(c).



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\*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

TITLE 19. OTHER AGENCIES  
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
CHAPTER 30. ADMINISTRATIVE RULES  
SUBCHAPTER 7. DISABILITY DISCRIMINATION COMPLAINT PROCEDURE

*N.J.A.C. 19:30-7.5 (2015)*

§ 19:30-7.5 Complaint procedure

A complaint alleging that the Authority has failed to comply with the ADA or has acted in a way that is prohibited by the ADA shall be submitted either in writing or orally to the designated ADA coordinator identified in *N.J.A.C. 19:30-7.4(a)*.



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\*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

TITLE 19. OTHER AGENCIES  
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
CHAPTER 30. ADMINISTRATIVE RULES  
SUBCHAPTER 7. DISABILITY DISCRIMINATION COMPLAINT PROCEDURE

*N.J.A.C. 19:30-7.6 (2015)*

§ 19:30-7.6 Complaint contents

(a) A complaint submitted pursuant to this subchapter may be submitted in or on the form set forth at *N.J.A.C. 19:30-7.7*.

(b) A complaint submitted pursuant to this subchapter shall include the following information:

1. The name of the complainant, and/or alternate contact person designated by the complainant to receive communication or provide information for the complainant;
2. The address and telephone number of the complainant or alternate contact person; and
3. A description of manner in which the ADA has not been complied with or has been violated, including times and locations of events and names of witnesses if appropriate.



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\*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

TITLE 19. OTHER AGENCIES  
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
CHAPTER 30. ADMINISTRATIVE RULES  
SUBCHAPTER 7. DISABILITY DISCRIMINATION COMPLAINT PROCEDURE

*N.J.A.C. 19:30-7.7 (2015)*

§ 19:30-7.7 Complaint form

The following form may be utilized for the submission of a complaint pursuant to this subchapter:

Americans with Disabilities Act Complaint Form

Date: .....

Name of complainant:

.....

Address of complainant:

.....

.....  
Telephone number of complainant:

.....

.....  
Disability of complainant:

.....

.....  
Name, address and telephone number of alternate contact person (if applicable):

.....

.....  
Incident or barrier:

Please describe the particular way in which you believe you have been denied the benefits of any service, program or activity or have otherwise been subject to discrimination. Please specify dates, times and places of incidents, and names and/or positions of Authority employees involved, if any, as well as names, addresses and telephone numbers of any witnesses to any such incident.

.....

.....  
.....  
.....  
.....  
.....

Proposed access or accommodation:

If you wish to describe the way in which you feel access may be had to the benefits described above, or what accommodation could be provided to allow access.

.....  
.....  
.....

A copy of the above form may be obtained by contacting the designated ADA coordinator identified at *N.J.A.C. 19:30-7.4(a)*.



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\*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

TITLE 19. OTHER AGENCIES  
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
CHAPTER 30. ADMINISTRATIVE RULES  
SUBCHAPTER 7. DISABILITY DISCRIMINATION COMPLAINT PROCEDURE

*N.J.A.C. 19:30-7.8 (2015)*

§ 19:30-7.8 Investigation

(a) Upon receipt of a complaint submitted pursuant to this subchapter, the designated ADA coordinator will notify the complainant of the receipt of the complaint and the initiation of an investigation into the matter. The designated ADA coordinator will also indicate a date by which it is expected that the investigation will be completed, which date shall not be later than 45 days from the date of receipt of the complaint, unless a later date is agreed to by the complainant.

(b) Upon completion of the investigation, the designated ADA coordinator shall prepare a report for review by the Designated Decision Maker for the Authority. The Designated Decision Maker shall render a written decision within 45 days of receipt of the complaint, unless a later date is agreed to by the complainant, which decision shall be transmitted to the complainant and/or the alternate contact person if so designated by the complainant.



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\*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

TITLE 19. OTHER AGENCIES  
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
CHAPTER 30. ADMINISTRATIVE RULES  
SUBCHAPTER 8. PROFESSIONAL SERVICES CONTRACTS

*N.J.A.C. 19:30-8.1 (2015)*

§ 19:30-8.1. Applicability

The provisions of this subchapter shall apply only to contracts for architectural engineering and land surveying services that involve development and construction of projects which are in excess of \$25,000 and subject to the procurement provisions of *N.J.S.A. 52:34-9.1* et seq. Nothing in this subchapter shall preclude the Authority from using procurement processes other than those prescribed herein if those processes have been approved by the Federal government or other State statute or if an emergency has been declared by the Chief Executive Officer of the New Jersey Economic Development Authority.

HISTORY:

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

See: *37 New Jersey Register 1714(a)*, *37 New Jersey Register 3058(a)*.

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



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\*\*\* New Jersey Register, Vol. 47 No. 24, December 21, 2015 \*\*\*

TITLE 19. OTHER AGENCIES  
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
CHAPTER 30. ADMINISTRATIVE RULES  
SUBCHAPTER 8. PROFESSIONAL SERVICES CONTRACTS

*N.J.A.C. 19:30-8.2 (2015)*

§ 19:30-8.2 Definitions

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

"Authority" means the New Jersey Economic Development Authority.

"Compensation" means the basis of payment by an agency for professional architectural, engineering or land surveying services.

"Professional architectural, engineering and land surveying services" means those services, including planning, environmental, and construction inspection services required for the development and construction of projects, within the scope of the practice of architecture, professional engineering or professional land surveying as defined by the laws of this State or those performed by an architect, professional engineer or professional land surveyor in connection with his or her other professional employment practice.

"Professional firm" means any individual, firm, partnership, corporation, association or other legal entity permitted by law to provide professional architectural, engineering, or land surveying services in this State.



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TITLE 19. OTHER AGENCIES  
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
CHAPTER 30. ADMINISTRATIVE RULES  
SUBCHAPTER 8. PROFESSIONAL SERVICES CONTRACTS

*N.J.A.C. 19:30-8.3 (2015)*

§ 19:30-8.3 Criteria for the selection of the most highly qualified professional firms

(a) Prior to the solicitation of proposals or expressions of interest pertaining to the procurement of professional architectural, engineering or land surveying services for the development and construction of projects, the Authority shall publicly advertise its needs for such services. The advertisement shall conform to the requirements of *N.J.S.A. 52:34-12(a)* and (b), or be publicly advertised through electronic means. The advertisement shall either include a statement of the criteria by which the Authority shall evaluate the technical qualifications of professional firms and determine the order of preference to be used in designating the firms most highly qualified to perform the services or identify such criteria by reference to the provisions of this chapter.

(b) In selecting the most highly qualified professional firms with which to contract for architectural, engineering or land surveying services, the Authority, where applicable, shall consider the following criteria:

1. The experience and qualifications of the firm and designated project team in providing similar services;
2. The experience of the firm and designated project team on projects of similar size and complexity;
3. The experience and capability of the firm and designated project team with respect to any special technologies, techniques, or expertise the project may require;
4. The past performance of the firm; and
5. Any other criteria specified in the Authority's public advertisement of the project.

(c) In selecting and ranking the most highly qualified professional firms, the Authority shall establish weights for the criteria applicable to each project. The Authority may disqualify any firm determined to be unacceptably deficient in one or more of the applicable criteria, regardless of the firm's ranking or score on the remainder of the criteria.