

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 3. GRANTS AND LOANS

16:56-3.1 Airport improvement grants

(a)-(b) (No change.)

[(c) Funding for improvement grants will be determined based upon the prioritized project category. The percentage shares shown in this subsection may be adjusted during the application evaluation process pursuant to N.J.A.C. 16:56-4:

1. For safety improvement projects, the State share can be up to 90 percent of the total construction cost and the recipient share not less than 10 percent of the total construction cost;

2. For rehabilitation of existing system projects, the State share can be up to 85 percent of the total construction cost and the recipient share not less than 15 percent of the total construction cost;

3. For expansion and security projects not State- or Federally mandated, the State share can be up to 80 percent of the total construction cost and the recipient share not less than 20 percent of the total construction cost; and

4. For all other projects, the State share can be up to 75 percent of the total construction cost and the recipient share not less than 25 percent of the total construction cost.]

(c) Financial assistance for airport improvement grants shall not exceed 90 percent of the total project cost and the recipient's share shall not be less than 10 percent of the total project cost.

(d) (No change.)

TREASURY—GENERAL

(a)

DIVISION OF ADMINISTRATION

Small Business Set-Aside

Proposed New Rules: N.J.A.C. 17:13

Authorized By: Ford Scudder, State Treasurer.

Authority: N.J.S.A. 52:18A-30(d), 52:27H-21.7 et seq., 52:32-31, 52:34-6 et seq., 52:34-12, and 52:34-13; P.L. 2008, c. 27; and Executive Order Nos. 71 (2003) and 34 (2006).

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

Proposal Number: PRN 2017-075.

Submit comments by August 4, 2017, to:

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

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978), and N.J.S.A. 52:14B-5.1, N.J.A.C. 17:13 expired on April 20, 2016. These rules outline the basic procedures to register as a small business and become eligible to participate in small business set-aside contracting opportunities with State of New Jersey Executive Branch agencies.

The Department of the Treasury (Department) has reviewed the expired rules proposed herein as new rules and along with the proposed amendments, has determined them to be necessary, reasonable, adequate, efficient, and responsive for the purpose for which they were originally promulgated. In addition, consistent with Executive Order No. 2 (2010), the Department believes the regulatory process can be greatly

streamlined and the simplicity and clarity of the rules enhanced by incorporating the rules of a very similar chapter, N.J.A.C. 17:14, State Construction Contracts for Small Businesses (which also expired April 20, 2016), into Chapter 13 and not propose N.J.A.C. 17:14 as new rules.

The distinction between the two chapters is that one set of rules is for Goods and Services Contracts for Small Businesses and the other is for Construction Contracts for Small Businesses. However, other than slight differences, which can be explained in specific sections of the rules, the basic small business registration procedure and set-aside processes are quite similar. By merging the two chapters, the Department will simplify the review and enhance public utilization consistent with the Red Tape Reduction direction and the Common Sense Principles of Governor Christie's Executive Order No. 2 (2010).

The expired rules proposed herein as new rules include several amendments and new rules, which are summarized below.

The changes update the names of various offices in the Department involved with small business registration and the contracting process. While small business programs were at one time part of the Department of Commerce and its successor, the Commerce and Economic Growth Commission, the administration of these functions is currently placed in the Department of the Treasury and handled by the Division of Revenue and Enterprise Services (DORES), the Division of Purchase and Property, the Division of Property Management and Construction, and the Division of Administration. The changes also adds procedures related to veteran-owned business registration (proposed new N.J.A.C. 17:13-6).

A summary of the expired rules proposed herein as new rules with changes follows.

N.J.A.C. 17:13-1.1 lists the purpose of the rules and expands the scope to include both goods and services and design and construction contracts.

N.J.A.C. 17:13-1.2 defines general terms used throughout the chapter, with the following added definitions related to the Division of Property Management and Construction (DPMC) design and construction contracts (previously part of Chapter 14) and definitions specific to veteran-owned businesses. The added definitions include "bidder," and "construction contract," "consultant," "Division of Property Management and Construction," "Division of Revenue and Enterprise Services," "Small Business Set-Aside Unit," "veteran," and "veteran-owned business." Amendments are proposed to the definitions of "contractor," and "delegated purchasing authority," to include the expanded scope of the chapter, as discussed above. The definition of "Request for Proposals" is proposed for amendment to cross-reference the definition of "Invitation for Bids." The definition of "small business" is proposed for amendment to explain "full-time employee" and to set a monetary cap for design and construction companies. The definition of "term contract" is proposed for amendment to include "hourly rate" as a method of determining when the definition would apply. The definition of "waiver of advertising" is proposed for amendment to delete the final sentence, containing a non-mandatory clause. The definition of "Division of Minority and Women Business Development" is proposed for deletion.

N.J.A.C. 17:13-2.1 outlines eligibility standards to be considered a small business. The standards include the specific revenue limitations for both goods and services and design and construction businesses to be considered a "small business" for purposes of this chapter. Paragraph (a)3 is proposed for amendment to include the definition of "full-time position." Paragraph (a)4 is proposed for amendment to gross revenue limitations for State construction contracts. New subsections (d) and (g) add information similar to the existing subsections, but pertaining to State construction contracts, rather than goods and services.

N.J.A.C. 17:13-2.2 specifies the penalties that may be imposed for businesses providing incomplete or inaccurate information. Paragraph (a)3 is proposed for amendment to change "not less than three months and not more than 24 months" to "12 months" pertaining to the ineligibility period that can be assessed. Paragraph (a)4 and subsections (d) and (e) are proposed for amendment to set a one year limit on the revocation of the registration of the business, or removal from the State's small business database, as appropriate.

N.J.A.C. 17:13-3.1 details the registration procedures applicable to small businesses and is proposed for amendment to include veteran-owned businesses. The section also specifies the required registration fee. The previous fee was \$100.00 for a three-year certification. The proposed fee is \$167.00 for a five-year certification. The annualized fee remains unchanged, but the Department believes that requiring the businesses to pay the fee and submit a full registration form every five years, as opposed to every three, minimizes the administrative impact on the businesses.

N.J.A.C. 17:13-3.2 specifies the time for application to register as a small or, as proposed for amendment, veteran-owned business. This section remains largely unchanged, except for the addition of veteran-owned business under this subchapter.

N.J.A.C. 17:13-3.3, describing the formal procedure for challenging the designation, or lack thereof, as a small business or, as proposed for amendment, veteran-owned business, and 3.4, outlining the process for denial or revocation of a small or, as proposed for amendment, veteran-owned business. The sections include minor changes to unit names, set the Director designee, and revise the notification process to eliminate certified letter notification and provide for more advanced electronic notifications in addition to a letter notification. In addition, N.J.A.C. 17:13-3.4(c)3 is also proposed for amendment to add what is needed to meet the burden of proof.

N.J.A.C. 17:13-4.1 outlines program goals and procedures for the small business set-aside, including the target allocations for each category of small business for both goods and services and design and construction contracts. Other than adding design and construction contracts, this section is unchanged.

N.J.A.C. 17:13-4.2 describes target program and procedures for subcontracting. The section sets forth specific requirements unique to either goods and services or, as proposed for amendment, design and construction contracts. Subparagraph (b)1i is proposed for amendment to include the number of eligible businesses in geographical proximity to the project site. Proposed new subsection (e) adds requirements for the public advertisement, identifying small business categories applicable to the RFP. Recodified paragraphs (f)2 and 3 are replaced to add the steps the bidder is required to take and the documentation needed. Proposed new subsection (g) adds a requirement that the “winning” bidder must cooperate in any surveys or studies conducted by the State contracting agency to determine compliance with this chapter.

N.J.A.C. 17:13-4.3 details the actions required by bidders to demonstrate good faith to solicit and award subcontracts to small businesses. Subsection (b) is proposed for amendment to clarify the records that must be maintained.

N.J.A.C. 17:13-4.4 outlines circumstances where agencies are exempt from these small business set-aside requirements and would instead follow Federal requirements.

N.J.A.C. 17:13-5.1, Planning, 5.2, Reporting requirements, and 5.3, Annual review, are not proposed as new rules as part of this rulemaking. These sections imposed various requirements on State contracting agencies, the Division of Purchase and Property, the Division of Property Management and Construction, and the Small Business Set-Aside Monitoring Unit that have proven to be burdensome and, in many cases, impossible to achieve. The Department hopes to pursue legislative changes in these areas to support more realistic and implementable program reporting. In the interim, the State’s government transparency site www.yourmoney.gov provides an opportunity to review State agency procurement data.

N.J.A.C. 17:13-6.1 is proposed to provide specific guidelines and requirements for registering as a veteran-owned business.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The small business and veteran-owned business rules have an important impact on society. They provide an opportunity for small businesses to participate in the public contracting process. When set-asides are appropriately utilized, they may allow these businesses to win contracts, which they would otherwise not be able to provide a

competitive bid due to scale advantages. Veterans of the United States Armed Forces have been, and continue to be, vital to the business enterprises of this State, and providing additional assistance and support to veterans to better equip them to form and expand business enterprises enables them to realize the American dream that they fought to protect.

Economic Impact

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

In terms of the cost impacts on the private sector, the expired rules proposed herein as new rules include a registration fee that remains at existing levels. Businesses will be required to invest a small amount of administrative resources to complete required forms and file annual renewals.

Federal Standards Statement

A Federal standards analysis is not required because the expired rules proposed herein as new rules relate strictly to the State of New Jersey and its small business and veteran-owned business registration process and small business set-aside process. The expired rules proposed herein as new rules are independent from any Federal systems or requirements.

Jobs Impact

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

Agricultural Industry Impact

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

Regulatory Flexibility Analysis

The expired rules proposed herein as new rules are designed to be used by small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These businesses must utilize the forms and procedures set forth in the rules. Fees and administrative costs that will be incurred are discussed in the Summary and Economic Impact statement above. No professional services are necessary to comply with this chapter. The Department considers the requirements of this chapter to be the minimum necessary for the maintenance of a small and veteran-owned business registration and a set-aside program. For that reason, and because the requirements imposed are not administratively burdensome, the Department has not provided any exceptions or lesser requirements for small businesses.

Housing Affordability Impact Analysis

The expired rules proposed herein as new rules will have an insignificant impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules pertain to small and veteran-owned business registration and set-aside programs.

Smart Growth Development Impact Analysis

The expired rules proposed herein as new rules will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules pertain to small and veteran-owned business registration and set-aside programs.

Full text of the expired rules proposed herein as new rules may be found in the New Jersey Administrative Code at N.J.A.C. 17:13.

Full text of the proposed amendments to the expired rules proposed herein as new rules and the proposed new rule follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 13
[GOODS AND SERVICES CONTRACTS FOR] SMALL
BUSINESSES SET-ASIDE AND VETERAN-OWNED BUSINESS
REGISTRATION

SUBCHAPTER 1. PURPOSE, SCOPE, AND DEFINITIONS

17:13-1.1 Purpose and scope

(a) The rules in this chapter are promulgated by the Department of the Treasury to implement N.J.S.A. 52:32-17 et seq., P.L. 2008, c. 27, and Executive Order No. 71, dated October 2, 2003, to establish a set-aside program that, in part, requires State agencies with contracting authority to make a good faith effort to award State contracts and subcontracts to eligible small businesses. Executive Order No. 71 [(1993)] (2003) requires at least 25 percent of the total dollar value of State contracts to be set aside for small businesses. This percentage goal is an overall program goal for each State contracting agency. State contracting agencies are expected to apply their business judgment when establishing set-aside goals for individual contracts. [The rules in this chapter, as effective prior to April 20, 2009, were jointly promulgated by the New Jersey Commerce Commission and the Department of the Treasury. Pursuant to P.L. 2008, c. 27, effective July 1, 2008, the New Jersey Commerce Commission was abolished and its responsibilities under this chapter were transferred to the Department of the Treasury. Therefore, after July 1, 2008, this chapter must be promulgated by one department, the Department of the Treasury.]

(b) [These] **The rules in this chapter** apply [only] to **both** State contracts for goods and services awarded by any State contracting agency and [are not applicable] to the award of State contracts for construction and [construction related] **construction-related** services, **unless unique rules for a specific contract type are specified.**

(c) Applications and questions regarding eligibility as a small business should be addressed to:

Department of the Treasury
Division of [Minority and Women Business Development]
Revenue and Enterprise Services
33 West State St., [1st] 5th Floor
PO Box 026
Trenton, NJ 08625-0026

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

17:13-1.2 Definitions

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

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

...
[“Contractor” means any party providing goods and/or services or performing or offering to perform under a contract issued by a State contracting agency.]

“Construction contract” means any contract to which the State or any State contracting agency is a party involving any construction, renovation, reconstruction, rehabilitation, alteration, conversion, extension, or demolition of or repair or other changes or improvements of any kind whatsoever to any State public structure or facility. The term also includes contracts for consultant services, supervision, inspection, and other functions incidental to actual construction.

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

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

...
“Delegated purchasing authority” means the authority of a State agency to award contracts below the bid threshold amount pursuant to authority delegated by the Director, Division of Purchase and Property[.]

(See N.J.S.A. 52:25-23[.] or for construction contracts pursuant to the authority delegated by the Director, Division of Property Management and Construction.

“Director” means the head of the Division of [Minority and Women Business Development] **Revenue and Enterprise Services** in the Department of the Treasury.

[“Division of Minority and Women Business Development” or “Division” means the Division within the Department of the Treasury that administers the registration of small business enterprises, the certification of the minority and women businesses, and provides other services to small, minority and women businesses pursuant to Executive Order No. 34 (2006), P.L. 2008, c. 27, §18, and the Set-Aside Act.]

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

“Division of Purchase and Property” means the State agency within the Department of the Treasury which provides centralized [purchasing] **procurement** of goods and services for [other State departments] **Executive Branch State agencies**, pursuant to N.J.S.A. 52:27B-56.

“Division of Revenue and Enterprise Services” or “Division” means the Division in the Department of the Treasury that administers the registration of small business enterprises.

“Goal” means the statutorily determined percentage of contracting dollars awarded by each State contracting agency to small businesses in order to comply with the small business provisions of the Set-Aside Act. It further means the percentage of State contracting dollars that the State contracting agency makes a good faith effort to award to small businesses under Executive Order No. [71 (1993)] **84 (2006).**

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

“Request for Proposals” or “RFP” means the document issued by a State contracting agency to initiate an [advertising] **advertised** bidding and contract award process. **(See the definition of “Invitation for Bids”)**

...
“Set-aside contract,” for the purposes of construing and applying [these] **the rules in this chapter** only, means a contract, specifically designated by a contracting agency [as exclusively available], **in whole or in part**, for award to a small business **either at a prime or subcontract level.**

“Small business” means a business, which has its principal place of business in the State; is independently owned and operated; has no more than 100 full-time employees[;] **(35 hours or more, not including seasonal and part-time employees employed for less than 90 days, if seasonal and casual part-time employment are common to that industry, and consultants employed under other contracts not related to the goods and services which are the subject of the specific contract for which the business wants to be eligible as a small business) and for goods and services contracts**, has gross revenues that do not exceed \$12 million or the applicable Federal revenue standards established at 13 CFR 121.201, incorporated herein by reference, as may be adjusted periodically (see www.sba.gov/tools/resourcelibrary/laws_and_regulations/index.html), [whichever is higher;] and satisfies any additional eligibility standards under this chapter. **For design and construction contracts, has gross revenues that do not exceed \$3 million, or 50 percent of the applicable annual revenue standards set forth in Federal regulation at 13 CFR 121.201 (see www.sba.gov/tools/resourcelibrary/laws_and_regulations/index.html) or whose gross revenues do not exceed the applicable annual revenue standards set forth in Federal regulation at 13 CFR 121.201, as may be adjusted periodically.**

...
“Small Business Set-Aside Unit” or “Unit” means the section in the Department of the Treasury, which provides oversight and direction for the small-business set-aside program for the State of New Jersey.

“State contracting agency” or “contracting agency” means any board, commission, committee, authority, division, department, college, or university of the State, which possesses the legal authority to enter into or award contracts for goods and services or **design and construction contracts**. A list of State contracting agencies shall be maintained at www.newjerseybusiness.gov, and updated as necessary to reflect the addition or elimination of agencies.

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

...

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

1. Establishes a fixed unit price, **hourly rate**, or discount for items to be purchased thereunder;
- 2.-3. (No change.)

...

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

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

“**Veteran-owned business**” means a business, as defined in N.J.S.A. 52:32-49 et seq., which has its principal place of business in the State, is independently owned and operated, and not less than 51 percent of the business is owned by one or more veterans; and the management and daily business operations of which are controlled by one or more veterans.

“Waiver of advertising” means [an] a contract award process authorized by N.J.S.A. 52:34-9 and 52:34-10, which does not require public advertisement and which is subject to approval by the State Treasurer. [Whenever possible, competition is sought prior to issuance of a waiver of advertising.]

SUBCHAPTER 2. ELIGIBILITY REQUIREMENTS FOR SMALL BUSINESSES

17:13-2.1 Standards of eligibility for small businesses for goods and services and for State construction contracts

(a) In order to be eligible as a small business, a business must satisfy all of the following criteria:

- 1.-2. (No change.)
3. The business must be a sole proprietorship, partnership, limited liability company, or corporation with 100 or fewer employees in full-time positions[, not including:
 - i. Seasonal and part-time employees employed for less than 90 days, if seasonal and casual part-time employment are common to that industry; and
 - ii. Consultants employed under other contracts not related to the goods and services which are the subject of the specific contract for which the business wants to be eligible as a small business.] **(35 hours or more not including seasonal and part-time employees employed for less than 90 days, if seasonal and casual part-time employment are common to that industry, and consultants employed under other contract not related to the goods and services which are the subject of the specific contract for which the business wants to be eligible as a small business).**
4. [The] **For goods and services contracts, the business must have gross revenues that do not exceed \$12 million or the applicable Federal revenue standards established at 13 CFR 121.201, incorporated herein by reference, whichever is higher. For State construction contracts, the business must have gross revenues that do not exceed \$3 million or the applicable annual revenue standards set forth in Federal**

regulation at 13 CFR 121.201, incorporated herein by reference, as may be adjusted periodically.

i.-iii. (No change.)

[b] In addition to (a) above, the Division may limit participation in its small business set-aside programs to businesses whose individual owners do not exceed \$ 750,000 in personal net worth.]

[(c)] **(b)** (No change in text.)

[(d)] **(c)** Small businesses, **for goods and services**, will be registered in one of the following three categories:

1.-3. (No change.)

(d) Small businesses for State construction contracts will be registered in one of the following three categories:

1. Small businesses whose gross revenues do not exceed \$3 million;

2. Small businesses whose gross revenues do not exceed 50 percent of the applicable annual revenue standards set forth in Federal regulation at 13 CFR 121.201 (see www.sba.gov/tools/resourcelibrary/laws_and_regulations/index.html), incorporated herein by reference, and as may be adjusted periodically; or

3. Small businesses whose gross revenues do not exceed the applicable annual revenue standards set forth in Federal regulation at 13 CFR 121.201, incorporated herein by reference, as may be adjusted periodically.

(e) Small businesses properly registered in the category in [(d)1] **(c)1** above will be eligible to participate in set-aside contracts and subcontracting programs available to businesses registered in the categories in [(d)1] **(c)1**, 2, and 3 above. Small businesses properly registered in the category in [(d)2] **(c)2** above will be eligible to participate in set-side contracts and subcontracting programs available to businesses registered in the categories in [(d)2] **(c)2** and 3 above. Small businesses properly registered in the category in [(d)3] **(c)3** above will be eligible to participate in set-aside contracts and subcontracting programs available to businesses in the category in [(d)3] **(c)3** above only.

(f) Small businesses properly registered in the category in (d)1 above will be eligible to participate in set-aside contracts and subcontracting programs available to businesses registered in the categories in (d)1, 2, and 3 above. Small businesses properly registered only in the category in (d)2 above will be eligible to participate in set-aside contracts and subcontracting programs available to businesses registered in the categories in (d)2 and 3 above. Small businesses properly registered in the category in (d)3 above will be eligible to participate in set-aside contracts and subcontracting programs available to businesses registered only in the category in (d)3 above.

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

(a) (No change.)

(b) When a business has been approved as a small business, on the basis of false information knowingly supplied by the business, and the business has been awarded a State contract or a subcontract thereto, the [Division] **Small Business Set-Aside Unit**, after notice and opportunity for a contested case hearing pursuant to N.J.S.A. 52:14B-10 and N.J.A.C. 17:13, shall:

1.-2. (No change.)

3. Order the business ineligible to transact any business with a State contracting agency for a period of [not less than three months and not more than 24] **12** months; and

4. [Revoke] **Order the Division of Revenue to revoke** the registration of the business as a small business [and remove the business] **for a period of one year** from the State’s small business database.

(c) (No change.)

(d) The failure of a business to report any such changed circumstances, or the intentional **and/or knowing** reporting of false information, shall disqualify the business for inclusion in the small business database under these rules and [may subject the business to adverse action by contracting agencies, the Attorney General or other enforcement agencies] **shall order the Division of Revenue to revoke**

the registration of the business as a small business for a period of one year from the State's small business database.

(e) When a business has been registered as a small business on the basis of false information knowingly supplied by the business, but the business has not been awarded a State contract, the [Division] **Small Business Set-Aside Unit**, after notice and opportunity for a contested case hearing pursuant to N.J.S.A. 52:14B-10 and N.J.A.C. 17:13-3.1, shall **order the Division of Revenue to revoke the registration of the business as a small business [, remove the business] for a period of one year from the State's small business database [and notify the Office of the Attorney General and State contracting agencies].**

SUBCHAPTER 3. REGISTRATION

17:13-3.1 Registration procedures for small businesses **and veteran-owned businesses**

(a) A business seeking to register as a small business **or a veteran-owned business** shall comply with the following registration procedures:

1. (No change.)

2. The business shall apply to the Division by completing the Vendor Registration Form, available online at www.newjerseybusiness.gov.

i. As part of its application to the Division, a business shall document its principal place of business, independent status, number of employees, and its gross revenues. This documentation shall include appropriate forms or reports otherwise submitted to or issued by State and Federal agencies, such as employee reports filed with the New Jersey Department of Labor and Workforce Development or certificates of incorporation issued by the New Jersey [Department of State] **Division of Revenue and Enterprise Services.**

ii. (No change.)

iii. As part of its application, the business shall pay a non-refundable [\$100.00] **\$167.00** application fee for a [three-year] **five-year** registration.

(b) When an application for registration as a small **or veteran-owned** business has been completed, the Division shall determine whether to approve it and notify the business of its decision. If approved, the Division will issue the business a registration certification and add the business to the small business database.

(c) (No change.)

(d) Every [three] **five** years, no later than 20 days prior to expiration of the small **or veteran** business's registration, and not earlier than 60 days prior to the expiration of such registration, a business interested in remaining registered as a small **or veteran** business shall comply with the registration procedures pursuant to (a) above.

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

1. If the business fails to submit the annual verification statement by the anniversary date **of the registration notice**, the registration will lapse and the business will be [removed] **deemed revoked** from the State's small business database. If the business seeks to be registered **after revocation**, it will have to reapply and pay the [\$100.00] **\$167.00** application fee.

2. If the business submits the annual verification statement by the anniversary date **of the original registration notice**, but either the verification statement or other information received by the Division indicates that the business is no longer eligible for registration as a small **or veteran-owned** business, the Division shall revoke the registration pursuant to this chapter and following revocation, the business shall be [removed] **deemed revoked** from the State's small business database. The business may appeal this revocation pursuant to the procedures set forth at N.J.A.C. 17:13-3.4.

17:13-3.2 Time for application to register as a small **or veteran-owned** business

(a) A business may apply to the Division at any time to be registered as a small **or veteran-owned** business and to be placed on the small business database.

(b) If a business is to be eligible to bid on a specific set-aside contract or participate in the subcontracting target programs for purposes of [these rules] **this chapter**, it must be registered as a small **or veteran-owned** business by the Division on **or before** the date the bid or proposal is due at the State contracting agency.

17:13-3.3 Procedures for challenging a business registered as a small **or veteran-owned** business

(a) The qualification under [these rules] **this chapter** of a business as a small **or veteran-owned** business may be challenged by any third party.

1. A registration challenge shall be made in writing to the [Division] **Small Business Set-Aside Monitoring Unit**, setting forth the factual basis for the challenge. The [Division] **Unit** shall provide a copy of the challenge and a notice granting the opportunity for a hearing to the challenged business. Where a particular contract is at issue, the [Division] **Unit** shall also provide a copy of the challenge to the contracting agency.

2. A registration challenge to the [Division] **Unit** may concern only the qualification of the business under these rules as a small **or veteran-owned** business. Any challenge to a business's qualifications to perform a contract shall be referred to the appropriate State contracting agency.

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

1. The [Division] **Unit** shall notify all interested parties, **including, but not limited to, the challenging party, the business whose registration is at issue, and any affected State contracting agency**, of the time and place of the hearing, and of the right to attend and be represented at the hearing.

2. The burden of proof lies with the challenger **to establish that the business whose registration is at issue is not qualified and/or not properly registered as a small business under this chapter**. However, the [Division] **Unit** may use its own resources to ascertain the validity of a challenge and the status of a business.

3. The hearing will be conducted by [a] **the Unit Manager or his or her designee** [of the Director]. [This designee] **The Unit Manager** will issue a written report [to the Director] within seven working days following the close of the hearing.

4. At the discretion of the [Director's designee] **Unit Manager**, participants at the hearing may be permitted to file written exceptions to the [designee's] report no later than five working days after the date on which the report is made available to the business.

5. Thereafter, the [Director] **Unit Manager** shall issue a final decision on the challenge and notify the parties [certified] **by fax (or other electronic means) and letter**.

6. (No change.)

17:13-3.4 Procedures for denial or revocation of registration as a small **or veteran-owned** business

(a) If the Division either denies an application for small **or veteran-owned** business registration or revokes a registration as a small **or veteran-owned** business, the Division will so notify the business. The denial or revocation is effective as of the date of the Division's notice to the business of its denial or revocation determination.

(b) When a business has been denied registration or had its registration revoked, the business has the right to an appeal. The appeal procedures in this section govern denials and revocations, except for revocations on the basis of false information knowingly supplied by the business **or failure to submit the annual verification statement**. Revocation based on false information knowingly supplied by the business is addressed by the procedures at N.J.A.C. 17:13-2.2.

(c) Within 10 days from receipt of the denial or revocation notification, the business that received the notification may request, in writing to the [Division] **Small Business Set-Aside Unit**, an appeal hearing. The appeal may concern only the qualification of the business under this chapter as a small business **or veteran-owned** business. When the Division receives an appeal, it shall conduct a hearing on the matter as follows.

1. The [Division] **Unit** shall notify the business of the time and place of the hearing and of the right of the business to appear and be represented by counsel at the hearing.

2. The appeal request shall include all information, **including any relevant documents**, available to the appealing business relevant to the appeal.

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

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

5. At the discretion of the [Director's designee] **Unit Manager**, the business may be permitted to file written exceptions to the designee's report no later than five working days after the date on which the report is made available to the business.

6. Thereafter, the [Director] **Unit Manager** shall issue a decision on the appeal and notify the business by [certified] **fax (or other electronic means) and letter.**

SUBCHAPTER 4. SET-ASIDE CONTRACTING AND SUBCONTRACTING PROGRAM

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

(a) Each State contracting agency, consistent with its contracting authority, shall establish and administer a set-aside program which provides [for], **with regard to goods and services contracts, a goal toward** at least 25 percent of the dollar value of its contracts to be awarded to eligible small businesses, as follows: at least 10 percent shall be awarded to small businesses whose gross revenues do not exceed \$500,000; at least an additional 15 percent shall be awarded to the additional categories of small businesses whose gross revenues do not exceed \$12 million or the applicable Federal revenue standards established at 13 CFR 121.201, incorporated herein by reference, whichever is higher. **For design and construction contracts, the goal is to award 25 percent of the total contract value to either prime contractors or subcontractors that qualify as small businesses with revenues that do not exceed the annual revenue standards established by the Federal standard at 13 CFR 121.201.**

1.-2. (No change.)

(b)-(c) (No change.)

17:13-4.2 Subcontracting target program and procedures

(a) (No change.)

(b) Each State contracting agency shall establish written procedures and maintain records as necessary to define, document, and report subcontracts awarded pursuant to this program. The procedures shall include the following provisions:

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

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

ii. The designation of a particular [contract as part of the subcontracting target program shall] **RFP as a small business set-aside subcontracting opportunity may be made prior to the public advertisement for bids or established pursuant to addenda.**

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

1. The Small Business Enterprise (SBE) goal for construction projects set-aside can be reached either at the prime or subcontractor level.

2. The public advertisement shall include a notice to prospective bidders disclosing the SBE goal for the contract.

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

[(c)] **(d)** Nothing in [these rules] **this subchapter** shall be construed as requiring or permitting a State contracting agency to depart from its statutory restrictions or documented policies governing the percentage of a contract which may be subcontracted.

(e) The public advertisement shall include a notice to prospective bidders identifying small business categories applicable to the RFP.

[(d)] **(f)** [The bid documents] **In the event that a goods and services RFP is designated as a small business set-aside subcontracting opportunity, the RFP shall contain a detailed notice to bidders advising of the following:**

1. The bidding package includes a [small business] **subcontractor utilization** [form or forms considered a material and mandatory requirement which] **that must be completed and included as part of the bidder's proposal if the bidder intends to subcontract[.]; and**

2. Failure to complete and submit the form or forms may render the proposal nonresponsive and thus subject to rejection

3. The small business utilization plan will be used by the State contracting agency to determine, prior to award, whether the bidder's proposal is reasonably designed to meet the targets.

(e) A bidder's proposal failing to identify contracts for small businesses shall include documentation of the bidder's good faith efforts to meet the subcontracting targets. Documentation may include a record of the bidder's attempts to contract with eligible businesses and the reasons for failure to meet the subcontracting targets, or a certification that the bidder does not intend to subcontract any work.

(f) The State contracting agency shall review this documentation in order to determine whether the bidder made reasonable efforts to solicit and award contracts to eligible small businesses.

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

(h) The award of any contract pursuant to this program shall be made, in accordance with the State contracting agency's applicable statutes, rules and procedures, to the bidder whose proposal meets or demonstrates a genuine good faith effort to meet the targets.]

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

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

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

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

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

17:13-4.3 Good faith efforts of bidders; requirements

(a) (No change.)

(b) Bidders shall maintain adequate records to document their **good faith efforts to solicit and award subcontracts to eligible small businesses, as established in the RFP, including those specific actions set forth in this subchapter.**

17:13-4.4 Exemptions from set-aside program

In those circumstances where Federal law or regulations permit or require a procurement procedure other than those prescribed [herein] in

this chapter, the State contracting agency may follow the Federal procedures notwithstanding the provisions of [these regulations] **this chapter**, provided that the State contracting agency issues a written declaration that such Federal laws or regulations are in effect.

SUBCHAPTER 5. (RESERVED)

SUBCHAPTER 6. VETERAN-OWNED BUSINESS

17:13-6.1 Veteran-owned business

(a) To register as a veteran-owned business, the business must:

1. Register at www.newjerseybusiness.gov, for premier business services; and

2. Apply to the Division by completing the Veteran-Owned Business (VOB) Registration Application, available online at www.newjerseybusiness.gov.

3. Provide a copy of Discharge Form DD-214, and a \$167.00 non-refundable application fee (check or money order) payable to “NJ Division of Revenue and Enterprise Services” and return to:

NJ Division of Revenue and Enterprise Services
PO Box 455

Trenton, NJ 08648

(b) If an applicant knowingly supplies inaccurate or false information, the application shall be denied under this chapter, the business shall be disqualified from inclusion in the small business database, and the business may be subject to adverse action by contracting agencies, the Attorney General, or other enforcement agencies.

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

OTHER AGENCIES

(a)

NEW JERSEY TURNPIKE AUTHORITY

New Jersey Turnpike Authority Rules

Proposed Redoction with Amendments: N.J.A.C. 19:9

Proposed Recodification with Amendments:

N.J.A.C. 19:9-1.23 as 5.7; 2.9, 2.10, and 2.11 as 5.2, 5.3, and 5.5; and 3.4 as 5.9, Respectively

Proposed Repeals and New Rules: N.J.A.C. 19:9-1.32 and 19:9 Appendix A

Proposed New Rules: N.J.A.C. 19:9-1.33, 2.9, 5.4, 5.6, 5.8, 5.10, and 7.2

Proposed Repeals: N.J.A.C. 19:9-1.26 through 1.29, 5.1, and 7.3

Authorized By: New Jersey Turnpike Authority, Executive Director Joseph W. Mrozek.

Authority: N.J.S.A. 27:23-1 et seq.

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

Proposal Number: PRN 2017-076.

Comments may be submitted through August 4, 2017, by e-mail to bharris@turnpike.state.nj.us, or by facsimile or regular mail to:

General Counsel
New Jersey Turnpike Authority
PO Box 5042
Woodbridge, New Jersey 07095-5042
Fax: 732-750-5384

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1, N.J.A.C. 19:9 was scheduled to expire on April 27, 2017. As the New Jersey Turnpike Authority

(Authority) filed this notice of reoption with the Office of Administrative Law prior to that date, the expiration date is extended 180 days to October 24, 2017, pursuant to N.J.S.A. 52:14B-5.1.c(2). The Authority has reviewed the rules set forth in N.J.A.C. 19:9 and, with the exception of the proposed changes as described below, has determined that they continue to be necessary, reasonable, efficient, understandable, and responsive for the purposes for which they were originally promulgated. The rules augment the provisions of the Authority’s enabling legislation and provide an efficient and effective mechanism for the regulation and safe and efficient use of the New Jersey Turnpike and the Garden State Parkway by the traveling public, as well as the Authority’s employees, contractors, and vendors. The rules also provide an effective means for the proper administration of the Authority, so as to fulfill the mandate of its enabling legislation.

In the course of its review of the chapter, the Authority identified in its rules stylistic and grammatical inconsistencies and outdated references, such as references to departments whose titles need to be changed, references to the Authority’s former headquarters address, and outdated references to its website address. Technical amendments are not specifically discussed in this Summary unless such an amendment would cause a substantive change to the rules. The Authority solicits comments regarding whether any of the proposed technical amendments would cause a substantive change that should be considered by the Authority before adoption.

A 60-day comment period on this notice of proposal is provided. Therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, this notice is excepted from the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

A summary of the rules proposed for reoption with amendments, repeals, new rules, and recodifications follows:

The heading of Subchapter 1, Traffic Control on New Jersey Turnpike, is proposed for amendment to “Traffic Control and Use of New Jersey Turnpike Authority Property” in order to reflect the full scope of the subchapter, which deals with issues beyond just traffic control on the New Jersey Turnpike.

Various minor corrections are being made to the definitions contained in N.J.A.C. 19:9-1.1. The terms “abandoned vehicle,” “camper,” “car,” “gross combination weight rating,” “heavy truck,” “omnibus,” and “Telegraph Hill Nature Area” are proposed for deletion as they are unnecessary and/or unhelpful (references to these terms in other definitions are also proposed for deletion). Definitions for the terms “Board,” “bus,” “Commissioner” and “day” are proposed. The classifications of B-2 and B-3 as set forth in the definition of “vehicle classifications” are proposed for amendment to comport with the new definition of “bus.” The term “motorcycles” is proposed for amendment to more closely comport with the definition set forth N.J.S.A. 39:1-1, with the term “minibike” being deleted as an exclusion, as minibikes are included within the definition of “motorized scooters,” which are already excluded from the definition of permitted motorcycles.

N.J.A.C. 19:9-1.2, Speed limits, is proposed for amendment to create separate speed limit rules for the Turnpike (subsection (a)) and the Parkway (subsection (b)). Speed limits on the Roadway have been updated, including removal of the 50 miles per hour (MPH) restriction in Middle Township, Cape May County, as a result of the Authority’s recent improvement project in that area, which included the construction of grade separation structures and the elimination of signalized crossings of the Parkway. Existing N.J.A.C. 19:9-1.2(g) is relocated with amendments as N.J.A.C. 19:9-1.33(d), as discussed below. Proposed new N.J.A.C. 19:9-1.2(g) sets a 15 MPH speed limit for entering/exiting exact change lanes and non-express E-ZPass lanes.

N.J.A.C. 19:9-1.3 and 1.4, pertaining to traffic control and uniform direction of traffic, are proposed without change.

N.J.A.C. 19:9-1.5 generally prohibits U-turns, but existing N.J.A.C. 19:9-1.5(d) allows such turns when done under the direction and supervision of toll plaza personnel and is proposed for amendment to also allow U-turns to be made under the direction and supervision of the New Jersey State Police.

N.J.A.C. 19:9-1.6, 1.7, and 1.8, pertaining to the prohibition to parking, stopping, or standing on the Roadway, use of the medial strip, and load limit of structures, are proposed for reoption without change.