

OTHER AGENCIES

(a)

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

Affirmative Action Rules

Proposed Readoption with Amendments: N.J.A.C. 19:39

Authorized By: New Jersey Schools Development Authority, Charles B. McKenna, Chief Executive Officer.

Authority: P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.) and P.L. 2007, c. 137 (N.J.S.A. 52:18A-235 et seq., specifically 52:18A-238.k and 52:18A-240).

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

Proposal Number: PRN 2015-005.

Submit written comments via mail, e-mail, or facsimile by April 18, 2015, to:

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The agency proposal follows:

Summary

The New Jersey Schools Development Authority (“SDA” or “NJSDA”) proposes to readopt with amendments N.J.A.C. 19:39, Affirmative Action Rules, and to change the heading of the chapter to “Equal Employment Opportunity and Affirmative Action Rules.”

Chapter 39, which governs the SDA’s affirmative action program, was previously readopted by the SDA with amendments on November 14, 2007, and is scheduled to expire on November 14, 2014. Since this notice of proposed readoption with amendments has been filed with the Office of Administrative Law prior to November 14, 2014, the expiration date of this chapter is extended 180 days to May 13, 2015, pursuant to N.J.S.A. 52:14B-5.1.c(2). The SDA has reviewed Chapter 39 and has determined that, with the addition of the proposed amendments, this chapter remains adequate, reasonable, and necessary for the purposes for which it was originally promulgated, which is to ensure that construction contractors and goods and services contractors comply with affirmative action requirements and employment goals in connection with the SDA’s school facilities projects.

As the SDA 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.

A summary of the rule proposed for readoption and substantive amendments follows.

Chapter Heading

An amendment is proposed to change the name of the chapter from “Affirmative Action Rules” to “Equal Employment Opportunity and Affirmative Action Rules” to track the similar change made to the Department of Treasury’s analogous rules at N.J.A.C. 17:27.

N.J.A.C. 19:39-1.1 Purpose

N.J.A.C. 19:39-1.1, regarding the purpose of this chapter, to implement Section 6 (N.J.S.A. 18A:7G-6) of the Educational Facilities Construction and Financing Act (the Act), is proposed for readoption without amendment. The section sets forth that this chapter is intended to codify uniform rules and procedures to implement the Act’s mandate of an affirmative action program for the schools construction program. This section also sets forth that the intention of the rules is to implement the mandate of Executive Order No. 71 (2003), which requires the allocation of 25 percent of the SDA’s total purchases and contracts for construction and goods and services to small business enterprises (SBEs) and includes

a reference to Executive Order No. 34 (2006), in encouraging construction contractors and goods and services contractors that participate in the schools construction program to afford equal opportunity to minority- and women-owned business enterprises.

N.J.A.C. 19:39-1.2 Definitions

This section sets forth the meaning of the words and terms used throughout this chapter. Proposed amendments to the section include changes to previously defined terms, the addition of new terms, and the deletion of terms and definitions rendered obsolete by the proposed amendments, as set forth below.

The following new terms are proposed to be added: “Compliance inspector,” which means an employee of the SDA who is responsible for monitoring compliance with the chapter; and

“SDA district,” which refers to “a school district that received education opportunity aid or preschool expansion aid in the 2007-2008 school year” as defined at P.L. 2007, c. 260, § 39 (N.J.S.A. 18A:7G-3) and which replaces the former term “Abbott district” in accordance with a similar replacement of “SDA district” for “Abbott district” in the definition section of the Act (N.J.S.A. 18A:7G-3), as effected by the School Funding Reform Act of 2008, P.L. 2007, c. 260 § 39.

The following terms are proposed for modification:

“Act,” which refers to the Educational Facilities Construction and Financing Act, is amended to include a reference to a recent public law amending the original law;

“Authority” which refers to the SDA, is amended to include a reference to the SDA’s origination statute as codified, and to include a brief description of the mission of the SDA as an entity “statutorily charged with undertaking and funding school facilities projects, pursuant to the Act;”

“Construction contract” is amended to include references to statutory citations regarding the types of SDA construction contracts under various SDA rules, including price and other factors construction procurements under N.J.A.C. 19:38A, and design-build procurements under N.J.A.C. 19:36;

“Division” is amended to update the name of the relevant entity to the “Division of Public Contracts Equal Employment Opportunity Compliance” within the State of New Jersey Department of the Treasury;

“Goods and services contract” is amended to specify that the definition does not include construction services and materials in connection with a “construction” contract;

“Initial Project Workforce Report” is amended to add a hyphen to the form’s numerical document designation;

“Minority-owned business enterprise” is amended for clarity and to correctly identify the name of the State entity that performs certification and registration of minority owned business enterprises as the Division of Revenue and Enterprise Services within the State of New Jersey Department of the Treasury;

“Monthly Project Workforce Report” is amended to add “AA” and a hyphen to the form’s now alpha-numerical document designation;

“SBE Form C—Confirmation Statement of SBE Status” is amended to correctly identify the name of the State entity that performs certification and registration of small business enterprises as the Division of Revenue and Enterprise Services within the State of New Jersey Department of the Treasury;

“School construction program” is amended to conform the definition to that used in other recent SDA regulatory proposals;

“Small business enterprise” is amended for clarity and to correctly identify the name of the State entity that performs certification and registration of small business enterprises as the Division of Revenue and Enterprise Services within the State of New Jersey Department of the Treasury; and

“Women-owned business enterprise” is amended for clarity and to correctly identify the name of the State entity that performs certification and registration of women-owned business enterprises as the Division of Revenue and Enterprise Services within the State of New Jersey Department of the Treasury.

The following terms are proposed for deletion:

“Abbott district,” which term is proposed for replacement by the term “SDA district,” as described above;

“Director” which referred to SDA’s former Director of Contractor and Workforce Compliance, a position that no longer exists within SDA; and “Workforce compliance inspector,” which is deleted in favor of the new term “compliance inspector,” in recognition that SDA field inspectors perform both safety compliance and workforce compliance inspection duties.

N.J.A.C. 19:39-2.1 Affirmative Action and Small Business Compliance

This section sets forth the requirements for compliance by construction and goods and services contractors, including the designation of an employee to serve as a liaison with the SDA’s compliance officers, and further provides that non-compliance with the requirements of this section shall result in the Authority’s rescission of the award of contract. The section is proposed for readoption with amendments to delete previously-specified deadlines for the submission of various cited forms in favor of requiring submission of such forms “as specified” by the SDA. This change is proposed to recognize that the increased diversity in types of project delivery methodologies and in the procurements managed by SDA, including pool contracts and design-build contracts, may require the submission of forms at different times in the procurement process than had been previously identified in the rule. An amendment is also proposed to correct the designation of the subcontractor projection report as form AA-201A.

N.J.A.C. 19:39-2.2 Contract Provisions

This section, which defines required language to be included in subcontracts for construction contracts and goods and services contracts, is proposed for readoption with an amendment to correct cross-references to Treasury rules at N.J.A.C. 17:27 that had been updated since this chapter was last readopted.

N.J.A.C. 19:39-2.3 Compliance with Affirmative Action Employment Goals for Minority and Women Workers by Goods and Services Contractors

This section sets forth the specific actions that constitute “good faith” compliance by a goods and services contractor with affirmative action hiring goals and specifically provides that these requirements shall not apply to any goods and services contractor performing under an existing Federally approved or sanctioned affirmative action program. An amendment to this section is proposed to correct the website address for the applicable county employment goals published by the Division of Public Contracts Equal Opportunity Compliance within the State of New Jersey Department of the Treasury.

N.J.A.C. 19:39-2.4 Compliance with Affirmative Action Employment Goals for Minority and Women Workers by Construction Contractors

This section sets forth the specific actions that constitute a construction contractor’s “good faith” compliance with affirmative action hiring goals and specifically provides that a contractor may be exempted from the good faith procedures enumerated therein, if the SDA is satisfied that the contractor is employing workers provided by a union, which produces evidence that its members who are minority and women workers are equal to or greater than the applicable county employment goals established pursuant to N.J.A.C. 17:27-7.3. An amendment is proposed to correct the website address for the applicable county employment goals published by the Division of Public Contracts Equal Opportunity Compliance within the State of New Jersey Department of the Treasury, and to replace references to the SDA’s workforce compliance inspector as the person determining exemption of a contractor from good faith compliance, in favor of a more general reference to SDA as the deciding entity, in order to support a more centralized and consistent decision making process.

N.J.A.C. 19:39-2.5 Set Asides and Goals for SBE Contractors on School Facilities Projects

This section sets forth that at the time a school facilities project is bid, the Authority shall announce the SBE requirements for the contract, and bidders shall be expected to make good faith efforts to comply fully with the SBE subcontracting goals. This section further provides that the Authority may set aside a contract for bid as an SBE contract, and when

practicable, may bid several smaller contracts, in place of one large contract, in order to increase the ability of SBEs to bid on school facilities contracts. This section is proposed for readoption without amendment.

N.J.A.C. 19:39-2.6 Good Faith Efforts

This section sets forth the specific actions that constitute “good faith” compliance by contractors to meet the 25 percent SBE hiring goal on school facilities projects. An amendment is proposed to correctly identify the name of the State entity that performs certification and registration of small business enterprises as the Division of Revenue and Enterprise Services, rather than the Commerce, Economic Growth and Tourism Commission, and to replace a reference to the former SDA Director of Contractor and Workforce Compliance with a reference to SDA generally as the entity that decides whether a contractor has met its good faith obligation to meet the 25 percent SBE subcontracting goal.

N.J.A.C. 19:39-3.1 Monitoring Workforce Affirmative Action Compliance and Procedures

This section codifies the implementation of the SDA’s independent statutory authority, pursuant to N.J.S.A. 52:18A-240, to establish and enforce an affirmative action program for the hiring of minority and woman workers employed in the performance of construction contracts on school facilities projects, and further sets forth that the SDA’s compliance officers shall make field inspections of school construction project worksites and undertake other activities necessary to monitor the compliance of construction contractors with their affirmative action plans and the obligations of these rules, and further sets forth the process for determining if a construction contractor is in violation of its affirmative action plan or these rules. This section is proposed for readoption with amendments throughout to replace references to the “workforce compliance inspector” with references to the “compliance inspector.” An amendment is proposed in subsection (a) to refer to other SDA representatives, in addition to, or in place of, the compliance inspector, as participants in meetings to ensure contractor compliance with this chapter.

An amendment is proposed in subsection (c) to modify the reference to a “construction contractor’s affirmative action plan” to the more general “contractor’s affirmative action plan,” which can also refer to the plan of a goods and services contractor. A further amendment is proposed for this subsection to make the SDA responsible for determining whether a violation has occurred regarding this chapter or a contractor’s affirmative action plan, and for issuing the notice of violation, rather than placing the decision-making and notice issuing responsibility on the compliance inspector. This amendment is proposed in order to support a more centralized and consistent decision-making and notification process. Finally, an amendment is proposed to delete the requirement that the written alert notice “explain in sufficient detail” the alleged violation, and add a description that the alert notice “provide details of” the alleged violation, as this change avoids subjective judgments as to the sufficiency of the details of the alleged violation.

Subsection (d) is similarly proposed for amendment to eliminate references to “construction contractor” in favor of references to “contractor” in order to extend application to goods and services contractors. A further amendment is proposed to eliminate a requirement that a contractor’s corrective efforts must be satisfactory to the individual compliance inspector, in order to conform to other amendments that make SDA as a whole responsible for determining the occurrence of violations and the efficacy of corrective measures, rather than placing that responsibility on the compliance inspector. Additional amendments are proposed to clarify that a reference to “it” refers to the alert notice, to delete language making the compliance inspector responsible for issuing the violation notice, to language making the SDA as a whole responsible for issuance of the violation notice, and to replace the requirement that the written violation notice “explain in sufficient detail” the alleged violation, with a description that the alert notice “provide details of” the continuing violation, in order to avoid subjective judgments as to the sufficiency of the detail of the alleged violation.

Subsection (e) is proposed for amendment to delete references to the former SDA Director of Contractor and Workforce Compliance, a position that no longer exists within the SDA organization, and to make

SDA as a whole responsible for determining the occurrence of violations rather than placing that responsibility on the compliance inspector, in order to support a more centralized and consistent decision making process. Finally, amendments are proposed to specify that the investigatory conference called for by the rules may involve interviews of relevant parties.

N.J.A.C. 19:39-3.2 Sanctions

This section defines the specific sanctions that can be imposed on a contractor if the SDA determines that the contractor is in violation of its obligations under this chapter or is in violation of its affirmative action plan. This section is proposed for amendment to delete references to the Director of Contractor and Workforce Compliance, and to make SDA as a whole responsible for determining the occurrence of violations and deciding the sanctions for such violations, rather than placing that responsibility on the compliance inspector, in order to support a more centralized and consistent decision making process.

N.J.A.C. 19:39-4.1 Subcontractor Replacement on School Facilities Projects

The section sets forth requirements governing subcontractor replacement on school facilities projects, and requires that a construction or goods and services contractor shall not replace an SBE subcontractor, except where such contractor is in breach of its subcontract and the SDA has provided the contractor its prior written consent to the replacement. This section is proposed for readoption with amendments to delete references to the former SDA Director of Contractor and Workforce Compliance, a position that no longer exists within the SDA, and to make SDA as a whole responsible for considering and approving a subcontractor replacement request, rather than placing that responsibility on the compliance inspector, in order to support a more centralized and consistent decision making process.

N.J.A.C. 19:39-5.1 Training

This section, which provides for the allocation of one-half of one percent of capital funds for approved school facilities projects to fund training for women and minority workers in life skills, pre-apprenticeship, and construction trades apprenticeship training, is proposed for readoption with amendments to add references to the outreach and training programs mandated by P.L. 2009, c. 313 (N.J.S.A. 52:38-7), and to amend categorization of SDA-sponsored outreach and training opportunities so as to conform to the programs and activities currently undertaken or contemplated by SDA at this time. An amendment is proposed to subsection (a) to replace "training for women and minority workers in life skills, pre-apprenticeship, and construction trades apprenticeship programs that are pertinent to school facilities projects construction" with "training and scholarship programs for minority group members and women in preparation for construction trade occupations or other occupations, including engineering and construction management occupations, that are pertinent to construction, design, and management of school facilities projects." This change is proposed to track the description of the outreach and training opportunities described in P.L. 2009, c. 313 (N.J.S.A. 52:38-7), and to reflect the SDA's development, in conjunction with the State Higher Education Student Assistance Authority, of a targeted scholarship program for women and minority group members directed toward fields of study relevant to occupations involved in school facilities project construction, management, and design.

Existing subsection (b), which provides that the SDA "may designate the Department of Labor and Workforce Development to administer and coordinate pre-apprenticeship and apprenticeship training programs and other construction related employment opportunities," and existing subsection (c), which defines the "pre-apprenticeship training" administered by the Department of Labor and Workforce Development, are proposed for deletion. SDA currently administers its own training and outreach programs for minority workers and women, in the form of a targeted scholarship program for minority group members and women involved or interested in construction related fields, and in the form of a small business enterprise/woman-owned business enterprise/minority-owned business enterprise (SBE/WBE/MBE) business development

training program to encourage SBE/WBE/MBE participation in the SDA prequalification program.

Existing subsection (d) is proposed for amendment and recodification as subsection (b), and includes proposed amendments to change the language of the section from "SDA shall work with the State Apprenticeship Policy Committee established under N.J.S.A. 34:15E-1 et seq." to develop a comprehensive plan to "increase the numbers of women and minorities in the State's construction trades" to "SDA shall utilize such funds to work with the State Higher Education Student Assistance Authority to develop a targeted scholarship program for New Jersey women and minority group members, directed toward fields of study relevant to occupations pertinent to schools facility project construction, management and design." A further amendment regarding the intention "to increase the numbers of women and minorities in the State's construction trades" is proposed to add "and related professions." These proposed changes reflect SDA's current efforts to expand training opportunities to include higher education opportunities in support of increased participation of women and minority group members in professions that support schools facility construction, design, and construction management.

New subsection (c) is proposed to reflect SDA's commitment to mentoring and development of existing small business enterprises, women-owned business enterprises, and minority-owned business enterprises, by referencing SDA's use of training and outreach funds to create "an SBE/WBE/MBE training program to assist existing New Jersey SBE/WBE/MBE entities in trades or professions related to school facilities project design, management, and construction to further develop their business practices, become familiar with SDA contracting and procurement requirements, and to secure SDA prequalification to participate in SDA procurements."

Existing subsection (f) is proposed for readoption and recodification as new subsection (d) without change to the text of the rule.

Subsection (g), which described a list of optional additional uses for outreach and training funds, is proposed for deletion. SDA has eliminated this description of optional uses in favor of a definitive description of SDA's current funding of outreach and training programs.

Existing subsection (h) is proposed for deletion, as the expressed preference for location of training programs in the former Abbott districts (now SDA districts) is deemed no longer of primary importance, as the goals of increasing participation of women and minority group members in the construction trades and related professions is thought to be better served by siting training programs based upon economic and demographic data.

Existing subsection (i), which provides that SDA shall facilitate the placement of graduates of the life skills, pre-apprenticeship, and apprenticeship training previously described in subsection (a) into registered apprenticeship programs is proposed for deletion, as the underlying language regarding pre-apprenticeship and apprenticeship training has been proposed for deletion from subsection (a).

Existing subsection (j), which provides that SDA or its State partners shall undertake outreach to recruit trainees for apprenticeship programs and to inform residents of former Abbott districts (now SDA districts) of upcoming construction employment opportunities is proposed for deletion, as SDA is no longer pursuing such outreach efforts, in favor of funding and supporting the scholarship and SBE/WBE/MBE training efforts described in other amendments to N.J.A.C. 19:39-5.1.

Social Impact

The SDA believes that the rules proposed for readoption with amendments will have a positive social impact and that no negative impact will result. Small business enterprises will benefit through the enhancement of State contracting opportunities. Women and minority group members will benefit from equal employment opportunities in contracts for school facilities projects.

Economic Impact

The rules proposed for readoption with amendments will have a positive economic impact on the long-term economic growth of the State of New Jersey because the training opportunities provided under this chapter for minorities and women will help ameliorate the shortage of skilled workers in the construction industry. Thus, while the main

economic impact of the rules proposed for readoption has not changed since the original promulgation of the rules, the new higher education scholarship program described in the amendments proposed to the training section (N.J.A.C. 19:39-5.1) is anticipated to increase the pool of workers in more highly-skilled roles in the construction industry and related fields, such as engineering and design. This will provide contractors, professional services consultants, and other construction industry entities with a pool of qualified skilled minorities and women tradespersons and assist them in fulfilling their equal employment opportunity obligations. Also, in addition to providing a much needed skilled workforce for construction contractors as noted above, the rules proposed for readoption with amendments will enable minorities and women to obtain training that qualifies them for high skill/high wage positions and enables them to sustain themselves and their families.

The rules proposed for readoption with amendments are also expected to improve the health and vitality of small businesses by increasing their opportunities to qualify for set-aside contracting and increasing the opportunity for them to compete for State contracts through participation of small businesses, women-owned businesses and minority-owned businesses in the new SBE/WBE/MBE training initiative described in the proposed amendments to the training section of the rules. Finally, the rules proposed for readoption with amendments continue to permit the imposition of monetary sanctions in the event of a contractor's noncompliance with its good faith obligations and/or with the requirements set forth in these rules.

Federal Standards Statement

The rules proposed for readoption with amendments implement State statutes, specifically P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.) and P.L. 2007, c. 137 (N.J.S.A. 52:18A-235 et seq.). A Federal standards analysis is not required since there are no Federal standards or requirements governing the subject matter of these rules, in as much as the rules proposed for readoption with amendments apply only to contractors and vendors who are awarded contracts by the New Jersey Schools Development Authority, to be performed within the State of New Jersey.

Nevertheless, the rules proposed for readoption with amendments do not exceed analogous equal employment opportunity and affirmative action standards or requirements imposed by Federal law, such as the obligations of Executive Order 11246 (1965) and 41 CFR 60-1. It is noted that those contractors and vendors who contract with SDA but who have a Federally approved affirmative action program are exempted from certain of the requirements set forth in these rules. See N.J.A.C. 19:39-2.2(c) and 2.3.

Jobs Impact

The rules proposed for readoption with amendments establish the SDA's affirmative action requirements for contracting, and detail the SDA's training efforts to increase participation by small businesses, women, and minority group members in contracting trades and related professions. As a result of the rules proposed for readoption with amendments, more New Jersey citizens and businesses will become eligible to participate in State contracting opportunities. Thus, to the extent the rules proposed for readoption with amendments have an effect on jobs, it will be to create jobs in New Jersey, primarily in the construction, consulting, and service sectors, rather than eliminate positions.

Agriculture Industry Impact

The rules proposed for readoption with amendments will have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments affect construction contractors and goods and services contractors and subcontractors who are awarded contracts by the NJSDA, some of which may be small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments do not impose new reporting or recordkeeping requirements but rather continue existing reporting and recordkeeping requirements that are either mandated by N.J.S.A. 10:5-31 et seq., and necessary to ensure equal employment opportunity in public contracts, or small business enterprise participation

reporting requirements that are necessary to comply with the small business participation goals of Executive Order No. 71 (2003).

All construction contractors desiring a contract with NJSDA are required to complete an Initial Project Workforce Report, Form AA-201, which indicates the number of workers per trade anticipated for minorities and women on the construction project. Construction contractors are also required to submit an SBE Form A listing all small business entities that will participate in the construction contract, as well as an SBE Form C, which provides proof of the subcontract values and SBE status of the firms named as SBE subcontractors on the SBE Form A. The contractor is then required to submit Monthly Project Workforce Reports, Form AA-202, to NJSDA indicating the actual number of work hours per trade actually worked by minorities and women on the construction project.

Similarly, all goods and services vendors who desire to sell goods and/or services to NJSDA are required to complete an Employee Information Report, Form AA-302, which indicates a breakdown of the goods and services vendor's workforce identifying women and minority employees. Additionally, goods and services vendors are required to submit an SBE Form B listing all small business entities that will participate in the goods and services contract, and an SBE Form C, which provides proof of the subcontract values and SBE status of the firms named as SBE subcontractors or subconsultants on the SBE Form B.

The compliance, reporting, and recordkeeping requirements set forth are necessary to comply with the obligations of N.J.S.A. 10:5-31 et seq. and Executive Order No. 71 (2003). Due to the need for equity, fairness, and consistency in the affirmative action program, no differentiation in the compliance, reporting, or recordkeeping requirements based on business size can be proposed. It is not anticipated that a construction contractor, goods and services vendor, or any of their subcontractors will be required to employ any professional consultants or contractors in order to meet the requirements of these rules proposed for readoption with amendments. Moreover, it is not anticipated that a construction contractor, goods and services vendor, or any of their subcontractors will incur any significant capital costs in complying with the rules proposed for readoption with amendments.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments address the affirmative action requirements for the SDA's contracting and, therefore, will not have an impact on affordable housing or evoke a change in the average costs of housing in the State of New Jersey.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments govern the SDA's affirmative action requirements for the schools construction program. The rules proposed for readoption with amendments will have no impact on smart growth development because it is extremely unlikely that adoption of the rules proposed for readoption with amendments would evoke a change in the average price or availability of housing in the State of New Jersey, and unlikely that the rules proposed for readoption with amendments would in any way affect new construction in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:39.

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

CHAPTER 39 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION RULES

SUBCHAPTER 1. GENERAL PROVISIONS

19:39-1.1 Purpose

The purpose of this chapter is to implement section 6 of the Act, which mandates the adoption of rules to establish and provide for the administration and enforcement of an affirmative action program for the schools construction program. In addition, this chapter implements

Executive Order No. 71[(2003)] (2003), which requires the Authority to set aside 25 percent of its total purchases and contracts for construction and goods and services for small business enterprises; and, in accordance with Executive Order No. 34 (2006), encourages every construction contractor and goods and services contractor to afford equal opportunity for minority- and women-owned business enterprises to participate in the purchasing and procurement opportunities available through the schools construction program.

19:39-1.2 Definitions

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

["Abbott district" means an Abbot district as defined in section 3 of P.L. 1996, c.138 (N.J.S.A. 18A:7F-3).]

"Act" means the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72[,] (N.J.S.A. 18A:7G-1[.1] et seq.) [as amended], **P.L. 2007, c. 137, and P.L. 2008, c. 39.**

"Authority" or "SDA" means the New Jersey Schools Development Authority, established pursuant to section 3 of P.L. 2007, c. 137 (N.J.S.A. 52:18A-235 et seq.), the successor entity to the New Jersey Schools Construction Corporation. **The Authority is statutorily charged with undertaking and funding school facilities projects, pursuant to the Act.**

...
"Compliance inspector" means an employee of the Authority who is responsible for monitoring compliance with this chapter.

"Construction contract" means any contract between a firm and the Authority for the construction of a school facilities project [in accordance with], **and includes contracts procured pursuant to N.J.A.C. 19:36, 19:38, or 19:38B.**

...
 ["Director" means the Authority's Director of Contractor and Workforce Compliance.]

"Division" means the Division of [Contract Compliance and] **Public Contracts Equal Employment Opportunity [in Public Contracts] Compliance** established in the State of New Jersey, Department of the Treasury, or successor entity.

...
 "Goods and services contract" means any contract entered into by the Authority for fixtures, furnishings, equipment, and any other tangible items, and/or professional, technical, or other types of services, in accordance with N.J.A.C. 19:38D and/or 19:38C. For purposes of this definition, "goods and services" shall not include construction services and materials in connection with a **construction** contract.

...
 "Initial Project Workforce Report" means Form [AA201] **AA-201**, which is filed by the construction contractor and provides a projected breakdown of the number of all workers per trade and of minorities and women on a construction project.

"Minority-owned business enterprise" or "MBE" means a business that is certified as a **minority-owned business enterprise** by the New Jersey [Commerce and Economic Growth and Tourism Commission] **Department of the Treasury, Division of Revenue and Enterprise Services** or successor entity[, as a minority-owned business enterprise].

...
 "Monthly Project Workforce Report" means Form AA-202, which provides an analysis of a contractor's and its subcontractors' workforce.

...
 "SBE Form C—Confirmation Statement of SBE Status" or "Form C" means the form completed by a proposed subcontractor or goods and services provider that has been named in a construction or goods and services contractor's Form A or Form B, respectively, which identifies the subcontractor or goods and services provider as a proposed SBE on said school facilities project, specifies the subcontract bid amount and attaches a current and valid copy of that subcontractor's or goods and services provider's SBE registration form issued by the Department of [Commerce and Economic Growth and Tourism] **the Treasury, Division of Revenue and Enterprise Services**, or successor agency.

"School construction program" [refers to the overall program mandated by the Act for the design, renovation, repair and new

construction of early childhood, primary and secondary public schools throughout the State, through the implementation of school facilities projects] **means the program of school facilities projects and related activities undertaken by the SDA pursuant to the Act.**

...
"SDA district" means a school district that received education opportunity aid or preschool expansion aid in the 2007-2008 school year, as defined at P.L. 2007, c. 260 (N.J.S.A. 18A:7G-3).

"Small business enterprise" or "SBE" means a business that is registered as a **small business enterprise** with the New Jersey [Commerce and Economic Growth and Tourism Commission (Commerce Commission) as a small business enterprise, or any other race and gender neutral business enterprise to be registered by the Commerce and Commission] **Department of the Treasury, Division of Revenue and Enterprise Services**, or successor entity.

...
 "Women-owned business enterprise" or "WBE" means a business that is certified as a **women-owned business enterprise** by the New Jersey [Commerce and Economic Growth and Tourism Commission] **Department of the Treasury, Division of Revenue and Enterprise Services**, or successor entity[, as a women-owned business enterprise].

["Workforce compliance inspector" means an employee of the Authority who is responsible for monitoring compliance with this chapter.]

SUBCHAPTER 2. REQUIREMENTS FOR CONTRACTOR COMPLIANCE

19:39-2.1 Affirmative action and small business compliance

(a) Each construction or goods and services contractor shall designate an employee who shall serve as a liaison with the Authority's [workforce] compliance inspector and who shall be responsible for coordinating the firm's affirmative action program, maintaining all records required by this chapter, and submitting the forms required by this chapter through the Authority's website, or as otherwise directed, to the SDA's designated employee or representative.

(b) Every construction contractor shall complete and submit the following forms at the times [indicated] **specified by the SDA in the procurement or contract documents for the construction contract:**

1. An SBE Form A, together with all SBE Forms C[, at the time of bid or at any other time prior to the Authority's execution of a construction contract, as specified by the Authority];

2. An initial project workforce report, Form AA-201[, upon notification of award, and prior to the Authority's execution of a construction contract];

3. A subcontractor projection report, Form AA-201A[, within seven business days of the Notice to Proceed issued to the construction contractor by the Authority, and as updated during the duration of the contract];

4. A monthly project workforce report, Form AA-202[, no later than the seventh business day of each month for the duration of the contract]; and

[5. A certified payroll report within 10 days of the end of each pay period.]

5. Certified payroll reports submitted with payment invoices as specified in the contract documents.

(c) Every goods and services contractor[, after notification of award, but prior to the Authority's execution of the goods and services contract,] shall submit to the Authority an SBE Form B and an SBE Form C, **at the times specified by the SDA**, as well as one of the following documents:

1.-3. (No change.)

(d)-(e) (No change.)

19:39-2.2 Contract provisions

(a) All goods and services contractors shall include in every subcontract the following mandatory language concerning affirmative action employment practices:

1. The affirmative action language set forth in N.J.A.C. 17:27-[3.4(a)2i through iv]**3.5(a)2i through iv**, as applicable; and

2. The employment goal compliance language set forth in N.J.A.C. 17:27-[3.6(a)2 through 4]**3.7(a)1 through 4**, as applicable.

(b) All construction contractors shall include in every subcontract the following mandatory language concerning affirmative action employment practices:

1. The affirmative action language set forth in N.J.A.C. 17:27-[3.5(a)2i through iv]**3.6(a)2i through iv**, as applicable; and

2. The employment goal compliance language set forth in N.J.A.C. 17:27-[3.7(a)1 through 3]**3.8(a)1 through 3**, as applicable.

(c) Notwithstanding the mandatory subcontract language required in (b)1 above, if a subcontractor has a total workforce of four or fewer employees or is performing under an existing Federally-approved or sanctioned affirmative action program, the subcontract need only include the mandatory language set forth in N.J.A.C. 17:27-[3.5(a)2iv]**3.6(a)2iv**.

19:39-2.3 Compliance with affirmative action employment goals for minority and women workers by goods and services contractors

(a) The requirements of this section shall not apply to any goods and services contractor performing under an existing [Federally-approved] **Federally approved** or sanctioned affirmative action program, which is exempted from the affirmative action plan requirements under N.J.A.C. 17:27-4.3(a).

(b) A goods and services contractor will be considered to be in compliance with this chapter only if the contractor has acted in good faith to employ minority and women workers in each of the equal employment occupational categories in which the contractor has employees, in accordance with the applicable county employment goals, as established by the Division in accordance with N.J.A.C. 17:27-5.2, as updated from time to time by the Division and posted on its website at [www.state.nj.us/treas/contract-compliance] www.state.nj.us/treasury/contract-compliance/pdf/procurement_targets.pdf.

(c) (No change.)

19:39-2.4 Compliance with affirmative action employment goals for minority and women workers by construction contractors

(a) A construction contractor shall make good faith efforts to employ minority and women workers in each construction trade consistent with the applicable employment goals prescribed by N.J.A.C. 17:27-7.3, as updated from time to time by the Division and posted at its website at [www.state.nj.us/treas/contract-compliance] www.state.nj.us/treasury/contract-compliance/goals_construction_contractors.pdf. The goals are expressed as percentages of the total hours worked on the school facilities project in each trade. The SDA will make these goals available as part of each construction contract.

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

(d) The [SDA's workforce compliance inspector] **SDA** may, in [his or her] **its** discretion, exempt a contractor from compliance with the good faith procedures prescribed by (b)1, 2, and 3 above, as long as the [workforce compliance inspector] **SDA** is satisfied that the contractor is employing workers provided by a union, which provides evidence, in accordance with standards prescribed by the Division, 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 pursuant to N.J.A.C. 17:27-7.3[, as amended and supplemented from time to time,] and the contractor agrees to otherwise comply with the procedures set forth in this chapter.

19:39-2.6 Good faith efforts

(a) The good faith efforts of contractors to meet the 25 percent SBE goal on school facilities projects shall include, but not be limited to, the following measures:

1. Sending solicitation letters to SBE firms registered with the [Commerce, Economic Growth and Tourism Commission] **Division of Revenue and Enterprise Services** and to pre-qualified SBE firms on a list that is available from the SDA's website at www.njsda.gov;

2.-7. (No change.)

(b) If the [SDA's Director of Contractor and Workforce Compliance] **SDA** determines that a contractor has failed to comply with its good faith obligations to meet the 25 percent SBE subcontracting goal, [he or she] **it** may pursue any of the sanctions available pursuant to N.J.A.C. 19:39-3.2.

SUBCHAPTER 3. ENFORCEMENT

19:39-3.1 Monitoring workforce affirmative action compliance and procedures

(a) A goods and services or construction contractor's employee liaison designated in accordance with N.J.A.C. 19:39-2.1(a) shall meet, when requested, with the SDA's [workforce] compliance inspector **and/or other SDA representatives** to ensure compliance with this chapter and the contractor's affirmative action plan.

(b) (No change.)

(c) The SDA's compliance inspector may investigate to determine if there is a violation of this subchapter or a [construction] contractor's affirmative action plan. If the [workforce compliance inspector] **SDA** determines there is substantial probability that a violation is occurring, [he or she] **SDA** may issue a written alert notice to a [construction] contractor. The written alert notice shall [explain in sufficient detail] **provide details** of the alleged violation.

(d) If the alleged violation explained in the alert notice has not been corrected [to the satisfaction of the SDA's workforce compliance inspector issuing the notice] within three business days after [it] **the alert notice** is received by the [construction] contractor, the [workforce compliance inspector] **SDA** shall issue a violation notice to the [construction] contractor. Said violation notice shall [explain, in sufficient detail, the facts] **provide details** of the continuing violation.

(e) After [issuing] **SDA's issuance of** a notice of violation, [the SDA's workforce compliance inspector 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 the affirmative action plan or an explanation of how it will correct any such violation. [The written statement shall be reviewed by the SDA's workforce compliance inspector and the Director. If the Director] **SDA shall review the written statement, and if the SDA** determines that the violator has not adequately explained why it is not in violation or determines that the violation is continuing to occur, then [said Director] **SDA** shall conduct an investigatory conference to determine whether there is a violation and/or if corrective measures must be taken. The conference may also be conducted to discuss and resolve issues before taking any action pursuant to N.J.A.C. 19:39-3.2. Such investigatory conference shall be conducted within 30 business days of the contractor's submission of its written statement. The [Director may conduct] **conference may involve interviews of relevant parties and SDA may** request from appropriate parties the submission of additional information as is considered necessary to determine whether the alleged violation has occurred.

19:39-3.2 Sanctions

(a) If the [Director] **SDA** determines that either a goods and services or construction contractor is in violation of this chapter or its affirmative action plan, [upon his or her recommendation to and approval by the Chief Executive Officer of the SDA, or his or her designee, he or she] **SDA** shall enforce the obligations of this chapter and the requirements of the affirmative action plan by any or all of the following actions:

1.-5. (No change.)

SUBCHAPTER 4. SUBCONTRACTOR REPLACEMENT

19:39-4.1 Subcontractor replacement on school facilities projects

(a) (No change.)

(b) A request for replacement shall be in writing, with complete justification for the request. The contractor must have the written approval of the [Director, or his or her designee,] **SDA** before such a replacement can be made, regardless of the reason for the replacement.

(c) (No change.)

SUBCHAPTER 5. WORKFORCE TRAINING

19:39-5.1 Training programs

(a) [The] **Pursuant to P.L. 2009, c. 313 (N.J.S.A. 52:38-7), the SDA** shall allocate one half of one percent of capital funds for approved school facilities projects to fund [training for women and minority workers in life skills, pre-apprenticeship, and construction trades apprenticeship programs] **training and scholarship programs for minority group members and women in preparation for construction trade**

occupations or other occupations, including engineering and construction management professions, that are pertinent to construction, design, and management of school facilities projects [construction].

[(b) The SDA may designate the Department of Labor and Workforce Development to administer and coordinate pre-apprenticeship and apprenticeship training programs and other construction related employment opportunities. The Department of Labor and Workforce Development may retain vendors to provide the necessary services or may utilize the services of county vocational schools, community colleges, community-based organizations, private training entities, and Local Workforce Investment Boards. All such training providers must be located in New Jersey.

(c) Pre-apprenticeship training may include, but is not limited to, literacy training, basic skills instruction, related academic or remedial education programs, English as a Second Language, vocational training and other types of training that will prepare individuals for apprenticeships and occupations pertinent to school facilities project construction.]

[(d)] (b) The SDA shall **utilize the funds pursuant to (a) above** to work with the State [Apprenticeship Policy Committee established under N.J.S.A. 34:15E-1 et seq.] **Higher Education Student Assistance Authority** to [assist with the design and implementation of a comprehensive plan] **develop a targeted scholarship program for New Jersey women and minority group members, directed toward fields of study relevant to occupations pertinent to school facilities project construction, management, and design**, to increase the numbers of women and minorities in the State's construction trades **and related professions**.

[(e) All organizations providing training under this section must be approved by the New Jersey Department of Education, as provided by N.J.S.A. 18:54-1 et seq. or 18A:69 et seq. All apprenticeship programs supported by the SDA must be registered with the New Jersey Department of Education and the U.S. Department of Labor's Bureau of Apprenticeship and Training.]

(c) The SDA shall further utilize the funds pursuant to (a) above to create an SBE/WBE/MBE training program to assist existing New Jersey SBE/WBE/MBE entities in trades or professions related to school facilities project design, management, and construction to further develop their business practices, become familiar with SDA contracting and procurement requirements, and to secure SDA prequalification to participate in SDA procurements.

[(f)] (d) (No change in text.)

[(g) In addition to pre-apprenticeship training, the SDA may authorize the use of training funds for the following purposes:

1. Outreach to and recruitment of potential trainees;
2. Ancillary expenses of trainees, such as transportation, child/parental care, tools, work clothes and shoes;
3. Monitoring of training program participants and graduates; and
4. Retention support services.

(h) In establishing sites for its training programs, the SDA through its State partners shall, wherever possible, exercise a preference for locations within Abbott school districts in order to maximize opportunities for unemployed and underemployed women and minorities in those communities most affected by the school construction program.

(i) The SDA, through its State partners, shall facilitate the placement of graduates of the programs described in (a) above in appropriate registered apprenticeship programs.

(j) The SDA, either directly or through its State partners, shall undertake outreach efforts to recruit trainees and inform Abbott district residents of upcoming construction job opportunities through:

1. Notices to school districts;
2. Public presentations to community based, and faith based organizations;
3. Local newspaper advertisements;
4. The Workforce Investment Boards; and
5. Other such means.]