

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the rules proposed for readoption impose requirements on convicted offenders to provide a DNA sample and on governmental agencies that perform collection and analysis of the DNA samples. The rules proposed for readoption do not impose reporting, recordkeeping, or other compliance requirements on small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Housing Affordability Impact Analysis

The rules proposed for readoption do not impact on the affordability of housing in New Jersey. Additionally, the rules proposed for readoption do not change the average costs associated with housing because the rulemaking concerns the collection and use of DNA from convicted offenders in the criminal justice system.

Smart Growth Development Impact Analysis

The rules proposed for readoption do not have an impact on housing production in Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan because the rulemaking concerns the collection and use of DNA from convicted offenders in the criminal justice system.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The rules proposed for readoption do not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. The rules proposed for readoption simply govern the methods of obtaining DNA Act information from the State database and CODIS and procedures for verification of the identity and authority of the requester. Accordingly, no further analysis is required.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:81.

OTHER AGENCIES**(a)****NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY****Equal Employment Opportunity and Affirmative Action Rules****Proposed Readoption with Amendments: N.J.A.C. 19:39****Proposed New Rules: N.J.A.C. 19:39-2.6 and 2.8**

Authorized By: New Jersey Schools Development Authority,
Manuel M. Da Silva, 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 2022-089.

Submit written comments by September 3, 2022, to:

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The agency proposal follows:

Summary

The New Jersey Schools Development Authority (“Authority” or “SDA”) proposes to readopt, with amendments N.J.A.C. 19:39, Equal Employment Opportunity and Affirmative Action Rules (Rules). Chapter 39, which governs the SDA’s equal opportunity and affirmative action program, was previously readopted by the SDA with amendments

effective May 12, 2015, and was scheduled to expire on May 12, 2022. As the SDA submitted this notice of proposal to the Office of Administrative Law prior to that date, the expiration date was extended 180 days to November 8, 2022, 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 and new rules, 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 goal obligations 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 proposed substantive amendments and new rules follows.

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

This section, which sets forth the purpose of this chapter, has been proposed for readoption with amendments to implement N.J.S.A. 52:32-31.1 et seq., which requires the Authority to set aside three percent of its total contracts for construction and goods and services for contracts or subcontracts to disabled veteran-owned businesses.

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 a definition rendered obsolete by the proposed amendments, as set forth below:

The following new terms have been added “affirmative action,” “affirmative action plan,” “affirmative action program,” “Certificate of Employee Information Report,” “contractor,” “Department,” “disabled veteran-owned business,” “disabled veterans’ business set-aside contract,” and “subcontractor.”

The following terms are proposed for amendment: “Division,” which is proposed for amendment to correctly identify the Division of Purchase and Property Contract Compliance Audit Unit, Equal Employment Opportunity/Affirmative Action Monitoring Program, established in the State of New Jersey, Department of the Treasury, or successor entity, as the entity responsible for monitoring the EEO/AA compliance of goods and services (including professional services) vendors and public agencies, respectively. “Employee Information Report,” which is proposed for amendment to clarify that the form is issued by the Division and to delete reference to the Division’s form number. “Good faith,” which is proposed for amendment to reference the contractors’ obligations to provide contracting opportunities for disabled veteran-owned business (DVOB) entities, pursuant to N.J.A.C. 19:39-2.7. “Initial Project Workforce Report,” which means SDA’s Form AA-201, and is proposed for amendment to change the title of the document from “Report” to “Form” in order to correctly reference the document that provides a projected breakdown of the number of all workers per trade and of minorities and women on a construction project. “Monthly Project Workforce Report,” which means SDA’s Form AA-202, and which is proposed for amendment to change the title of the document to “Monthly Workforce Tracking Report,” in order to correctly reference the name of the document that provides an analysis of a contractor’s and its subcontractors’ workforce. “SBE Form A-Schedule of Participation,” which refers to SDA’s form that is to be completed by a contractor awarded a contract by the Authority and requires the listing of all of the small business enterprises (SBEs) that will participate in the contract, is proposed for amendment to change the name of the document to “SBE DVOB Participation Form” and to require the identification of all SBE and DVOB firms that will participate in the contract, in order to reference the DVOB participation obligations of the contractor. “SBE Form C-Confirmation of SBE Status,” which refers to the SDA’s form that is to be completed by a proposed subcontractor or goods and services provider that has been named in a construction or goods and services contractor’s SBE DVOB Participation Form, and which identifies the subcontractor or goods and services provider as a proposed SBE or DVOB on said school

facilities project and which is proposed for amendment to change the name of the document to “SBE DVOB Confirmation Form,” which refers to 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 SBE DVOB Participation Form, to reference the DVOB participation obligations of the contractor.

“SBE Form B-Schedule of Participation,” which referred to a form used to indicate SBE participation only in the context of a goods and services contract, is proposed for deletion as the form referred to, which was only utilized for goods and services contracts, has been rendered obsolete in favor of using the “SBE DVOB Participation Form” to indicate SBE and DVOB entity participation in either goods and services contracts or construction contracts.

N.J.A.C. 19:39-1.3 Application

This section, regarding application of this chapter, has been proposed for readoption without amendment.

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

This section is proposed for readoption with amendments to reflect inclusion of set-aside requirements for disabled veteran-owned businesses pursuant to N.J.S.A. 52:32-31.1 et seq. Amendments are proposed to reflect DVOB participation in construction and goods and services contracts, and to update the titles of various forms.

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

This section, which concerns mandatory affirmative action and employment goal compliance language for goods and services contracts and construction contracts, is proposed for readoption without amendment.

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, which concerns county affirmative action employment goals for goods and services contracts is proposed for readoption with amendments to correctly specify the website address for the published county employment goals.

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

This section, which concerns county affirmative action employment goals for construction contracts is proposed for readoption with amendments to correctly specify the State entity responsible for developing and publishing the employment goals and the website address for the published county employment goals.

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

This section, which concerns the set-aside and subcontracting requirements for contracts relating to school facilities projects, is proposed for readoption without amendment.

Proposed New N.J.A.C. 19:39-2.6 Set-Asides and Goals for DVOB Contractors on School Facilities Projects

This new section is proposed to recognize and implement the DVOB set-aside and subcontracting requirements to be applied to SDA construction contracts and goods and services contracts pursuant to N.J.S.A. 52:32-31.1 et seq.

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

This section is proposed for readoption with amendments to recodify the section and change the heading of the section to “good faith efforts with respect to SBE goals” and to make changes in the text throughout the section to specifically reference the actions and activities that constitute good faith efforts to comply with small business set-asides and subcontracting goals on school facilities projects, as distinguished from efforts to comply with DVOB goals, which will be addressed at proposed new N.J.A.C. 19:39-2.8.

Proposed new N.J.A.C. 19:39-2.8 Good Faith Efforts with Respect to DVOB Goals

This proposed new section addresses the actions and activities that constitute good faith efforts to comply with DVOB set-asides and subcontracting goals on school facilities projects.

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

This section, which addresses the procedures for monitoring vendor compliance with workforce affirmative action goals, is proposed for readoption with amendments. Subsection (b) is proposed for amendment to indicate that SDA compliance officers may “request to” enter a contractor’s business or manufacturing facility or construction site, as distinguished from exercising authority to enter such sites at will. Subsection (c) is proposed for amendment to make SDA, as a whole, responsible for undertaking investigations of contractor compliance, rather than resting this obligation solely on the SDA compliance officer. Subsections (d) and (e) are proposed for amendment to insert the word “alleged” before the term “violation” and “violation,” respectively, to acknowledge that determination of non-compliance with EEO/AA employment goals is subject to investigation and dependent on evidence of failure to make good faith efforts towards compliance.

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

This section, which addresses available actions that may be taken as sanctions or penalties for failure to make good faith efforts to comply with the affirmative action and equal employment opportunity goals and small business and disabled veteran-owned business set-asides and subcontracting goals required pursuant to this chapter, is proposed for readoption with amendments. Proposed amendments include adding the words “as applicable” before the list of actions available as sanctions for failure to demonstrate good faith compliance with the requirements of this chapter, and changing the language at paragraph (a)3 from “may” to “will,” to indicate that the imposition of a reduction in the contractor’s compensation will only be implemented through withholding future payment amounts otherwise payable to the contractor or retention of retainage amounts, and through no other methods.

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

This section, which prohibits the replacement of subcontractors named to satisfy a set-aside or subcontracting goal, is proposed for readoption with amendments to implement the DVOB set-aside and subcontracting goals at N.J.S.A. 52:32-31.1 et seq.

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

This section, which addresses the funding of training programs pursuant to N.J.S.A. 52:38-7 for training and scholarship programs for minority group members and women in preparation for construction trade occupations or other occupations, including engineering and construction management profession, is proposed for readoption with amendments to align the language of the section with the specific funding parameters at N.J.S.A. 52:38-7 (clarifying applicability to contracts in excess of \$1,000,000), and to incorporate DVOB firms into the other training programs to be developed and undertaken by the SDA pursuant to this section.

Social Impact

The SDA believes that the rules proposed for readoption with amendments and new rules will have a positive social impact and that no negative impact will result. Small business enterprises and disabled veteran-owned businesses 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 and new rules will have a positive economic impact on the long-term economic growth of the State of New Jersey because the training opportunities provided for pursuant to this chapter for minorities and women will help ameliorate the shortage of skilled workers in the construction industry. The rules

proposed for readoption with amendments and new rules are also expected to improve the health and vitality of disabled veteran-owned businesses and small businesses by increasing their opportunities to qualify for set-aside contracting and increasing the opportunity for them to compete for State contracts. Monetary sanctions are also available as an option in the event of a contractor's noncompliance with its good faith obligations and/or with the requirements set forth in the rules proposed for readoption with amendments and new rules.

The requirements of this chapter do not impose additional administrative and substantive compliance requirements on contractors and subcontractors beyond existing requirements of the affirmative action rules promulgated by the Department of the Treasury, Division of Contract Compliance and Equal Employment Opportunity in Public Contracts, N.J.A.C. 17:27.

Federal Standards Statement

The rules proposed for readoption with amendments and new rules implement State statutes, specifically N.J.S.A. 18A:7G-1 et seq., 52:18A-235 et seq., and 52:32-31.1 et seq. There are no Federal standards or requirements applicable to the rules proposed for readoption with amendments and new rules. A Federal standards analysis, therefore, is not required.

Jobs Impact

The rules proposed for readoption with amendments and new rules establish the SDA's affirmative action and small-business participation and disabled veteran-owned business participation 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 and new rules, more New Jersey citizens and businesses will become eligible to participate in State contracting opportunities. Thus, to the extent that the rules proposed for readoption with amendments and new rules 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 and new rules will have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The compliance, reporting, and recordkeeping requirements set forth throughout Subchapter 2 of these rules proposed for readoption with amendments and new rules and discussed in the Summary above, which are imposed on construction and goods and services contractors, some of which are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., are the minimum requirements in order to comply with the Department of the Treasury rules and Executive Order No. 71 (2003), and are the same requirements that apply to all contractors in connection with a project managed by the SDA. The costs required to comply with the reporting, recordkeeping, and compliance requirements are discussed in the Economic Impact above. There are no initial capital costs required to comply with the rules proposed for readoption with amendments and new rules. The SDA does not believe it will be necessary to use professional services to comply with the rules proposed for readoption with amendments and new rules.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments and new rules address the affirmative action requirements for the SDA's contracting and, therefore, will not have an impact on the affordability of housing or evoke a change in the average costs associated with housing in the State of New Jersey because the rules proposed for readoption with amendments and new rules concern contracting with disabled veteran-owned businesses and contracting with businesses employing women and other minorities.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments and new rules govern the SDA's affirmative action requirements for the schools' construction program. The rules proposed for readoption with amendments and new rules will have no impact on smart growth

development because the scope of the regulation is minimal, and because it is extremely unlikely that the readoption of the rules with amendments and new rules 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 and new rules would in any way affect new construction in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because the rules proposed for readoption with amendments and new rules concern contracting with disabled veteran-owned businesses and contracting with businesses employing women and other minorities.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

As the rules proposed for readoption with amendments with new rules govern the small business participation, disabled veteran-owned business participation, equal employment opportunity, and affirmative action requirements applicable to construction contractors and goods and services contractors engaged by SDA in furtherance of SDA's school construction program, the rules proposed for readoption with amendments and new rules will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

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 and new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

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), 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; **N.J.S.A. 52:32-31.1 et seq., which requires the Authority to set aside three percent of its total contracts for construction and goods and services for disabled veteran-owned businesses**; 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:

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

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

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

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

...

“Contractor” means a firm that enters into, or offers to enter into, a construction or goods and services contract with the Authority. The term also includes consultants, non-profits, and providers of professional services.

“Department” means the Department of Labor and Workforce Development, Construction Equal Opportunity Monitoring Program. The Department is responsible for monitoring the EEO/AA compliance of construction contractors.

“Disabled veteran-owned business” or “DVOB” means a business that has its principal place of business in the State, is independently owned and operated, and at least 51 percent of which is owned and controlled by persons who are disabled veterans or a business that has its principal place of business in this State and has been officially verified by the United States Department of Veterans’ Affairs as a service disabled veteran-owned business for the purposes of Federal contracts pursuant to Federal law.

“Disabled veterans’ business set-aside contract” means a contract for goods, equipment, construction, or services that is designated as a contract with respect to which bids are invited and accepted only from disabled veterans’ businesses, or a portion of a contract when that portion has been so designated.

“Division” means the Division of [Public] Purchase and Property Contracts [Equal Employment Opportunity] Compliance Audit Unit, Equal Employment Opportunity/Affirmative Action Monitoring Program, established in the State of New Jersey, Department of the Treasury, or successor entity. The Division is responsible for monitoring the EEO/AA compliance of goods and services (including professional services) vendors and public agencies, respectively.

“Employee Information Report” means [Form AA302, or successor form, which] the Division form that provides a breakdown of the goods and services contractor’s workforce.

“Firm” means any association, company, contractor, corporation, joint stock company, limited liability company, partnership, sole proprietorship, or other business entity, including their assignees, lessees, receivers, or trustees.

“Good faith” means with respect to goods and services contractors’ obligations pursuant to N.J.A.C. 19:39-2.3, the actions set forth [in] at N.J.A.C. 19:39-2.3(c); with respect to construction contractors’ obligations pursuant to N.J.A.C. 19:39-2.4, the actions set forth [in] at N.J.A.C. 19:39-2.4(b); [and,] with respect to contractors’ obligations pursuant to N.J.A.C. 19:39-2.5, the actions set forth [in] at N.J.A.C. 19:39-[2.6]2.7; and, with respect to contractors’ obligations pursuant to N.J.A.C. 19:39-2.6, the actions set forth at N.J.A.C. 19:39-2.8.

...
 “Initial Project Workforce [Report] Form” means SDA’s Form 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.

...
 “Monthly [Project] Workforce Tracking Report” means SDA’s Form AA-202, which provides an analysis of a contractor’s and its subcontractors’ workforce.

...
 “SBE DVOB Participation Form [A--Schedule of Participation” or “Form A”] means the SDA form completed by [the construction] a contractor awarded a contract by the Authority that lists all of the SBEs and DVOBs that will participate in the contract, including scope of work, actual dollar amount, and percent of total contract to be performed.

[“SBE Form B--Schedule of Participation” or “Form B” means the form completed by a goods and services contractor awarded a contract by the Authority that lists all of the SBEs that will participate in the contract, including the scope of work, actual dollar amount and percent of total contract to be performed.]

“SBE DVOB Confirmation Form” [C--Confirmation Statement of SBE Status” or “Form C”] means the SDA form completed by a proposed subcontractor or goods and services provider that has been named in a construction or goods and services contractor’s SBE DVOB Participation Form [A or Form B, respectively], which identifies the subcontractor or goods and services provider as a proposed SBE or DVOB 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 or DVOB registration form issued by the Department of the Treasury, Division of Revenue and Enterprise Services, or successor agency.

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

“Subcontractor Projection [Report] Form” or “Form [201A] AA201a” means the SDA form completed by the construction contractor awarded a contract by the Authority that provides information concerning each of the subcontractors that will participate in the contract, including a Federal identification number and status as an MBE, WBE, and/or SBE.

...
 19:39-2.1 Affirmative action, [and] small business, and disabled veteran-owned business compliance

(a) (No change.)
 (b) Every construction contractor shall complete and submit the following forms at the times specified by the SDA in the procurement or contract documents for the construction contract:

1. An SBE DVOB Participation Form [A], together with all SBE DVOB Confirmation Forms [C];
2. An [initial project workforce report] Initial Project Work Force form, Form AA-201;
3. A [subcontractor projection report] Subcontractor Projection form, Form [AA-201A] AA-201a;
4. A [monthly project workforce report] Monthly Workforce Tracking Report, Form AA-202; and
5. (No change.)

(c) Every goods and services contractor shall submit to the Authority an SBE DVOB Participation Form [B] and an SBE DVOB Confirmation Form [C], at the times specified by the SDA, as well as one of the following documents:

1. A [Letter] letter of approval that the contractor is operating under an existing [Federally-approved] Federally approved or sanctioned affirmative action program;
- 2.-3. (No change.)
- (d) If a contractor fails to satisfy the requirements at (b)1 or (c) above, as applicable, the Authority shall rescind the award of contract to the firm.
- (e) (No change.)

19:39-2.2 Contract provisions
 (a)-(b) (No change.)
 (c) Notwithstanding the mandatory subcontract language required [in] at (b)1 above, if a subcontractor has a total workforce of four or fewer employees or is performing under an existing [Federally-approved] Federally approved or sanctioned affirmative action program, the subcontract need only include the mandatory language set forth [in] at N.J.A.C. 17:27-3.6(a)2iv.

19:39-2.3 Compliance with affirmative action employment goals for minority and women workers by goods and services contractors
 (a) (No change.)

(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] the State website at www.state.nj.us/treasury/contract-compliance/pdf/procurement_targets.pdf www.nj.gov/treasury/contract-compliance/documents/pdf/guidelines/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] at N.J.A.C. 17:27-

[7.3]7.2, as updated from time to time by the [Division] **Department of the Treasury** and posted [at its] **on the State** website at [www.state.nj.us/treasury/contract-compliance/goals_construction_contractors.pdf] www.nj.gov/treasury/contract-compliance/documents/pdf/guide_lines/construction_targets.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 may, in its discretion, exempt a contractor from compliance with the good faith procedures prescribed [by] **at** (b)1, 2, and 3 above, as long as the 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]7.2 and the contractor agrees to otherwise comply with the procedures set forth in this chapter.

19:39-2.6 Set-asides and goals for DVOB contractors on school facilities projects

(a) **At the time of each school facilities project advertisement, the Authority shall announce the DVOB requirements for the contract, and a construction contractor or goods and services contractor shall be required to make a good faith effort to comply fully with the DVOB subcontracting goals.**

(b) **The SDA may set aside a school facilities construction or goods and services contract for a DVOB contractor, whenever there is a reasonable expectation that bids or proposals may be obtained from at least three qualified DVOB firms capable of providing the desired services. The designation shall be made prior to advertisement for bids.**

(c) **When practicable, the SDA will issue several smaller contracts, in place of one large contract, in order to increase the ability of DVOBs to bid on school facilities projects.**

19:39-[2.6]2.7 Good faith efforts with respect to SBE goals

(a) The good faith efforts of contractors to meet the 25 percent SBE **subcontracting** 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 Division of Revenue and Enterprise Services and to pre-qualified SBE firms on [a list that is available from] the SDA’s [website] **vendor directory accessible at www.njsda.gov;**

2. Making follow-up telephone calls to firms solicited [in (a)] **at (a)1** above, and keeping a log of such calls and responses;

3. (No change.)

4. Contacting **small business groups and** community groups[, including, but not limited to, groups listed by the SDA for this purpose,] for assistance in identifying SBE firms;

5.-7. (No change.)

(b) (No change.)

19:39-2.8 Good faith efforts with respect to DVOB goals

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

1. Sending solicitation letters to DVOB firms registered with the Division of Revenue and Enterprise Services and DVOB firms listed in the SDA vendor directory accessible at www.njsda.gov;

2. Making follow-up telephone calls to firms solicited at (a)1 above, and keeping a log of such calls and responses;

3. **Breaking the work into smaller subcontracts, to make it easier for DVOB firms to compete;**

4. **Contacting relevant veterans’ groups and other community groups for assistance in identifying DVOB firms;**

5. **Placing advertisements in local newspapers, construction trade letters, magazines, or special publications aimed at DVOB firms;**

6. **Negotiating in good faith with interested DVOB subcontractors, so as not to disqualify a prospective subcontractor without good cause; and**

7. Assisting potential DVOB subcontractor firms by acting as a reference for the subcontractor, or by referring the subcontractor to the surety agent or bank officer of the contractor or consultant to satisfy bonding, insurance, or credit requirements.

SUBCHAPTER 3. ENFORCEMENT

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

(a) (No change.)

(b) The SDA’s compliance inspector shall conduct on-site visits and/or attend project meetings and, at reasonable times and in a reasonable manner, **may request** to enter the contractor’s business facility or construction project site for the purpose of determining whether the contractor is complying with its affirmative action plan and is otherwise in compliance with the procedures set forth in this chapter.

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

(d) (No change.)

(e) After SDA’s issuance of a notice of violation, the alleged violator 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 SDA** shall review the written statement, and if the SDA determines that the **alleged** violator has not adequately explained why it is not in violation or determines that the violation is continuing to occur, then 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 conference may involve interviews of relevant parties and **the 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 SDA determines that either a goods and services or construction contractor is in violation of this chapter or its affirmative action plan, SDA shall enforce the obligations of this chapter and the requirements of the affirmative action plan by any or all of the following actions, **as applicable:**

1.-2. (No change.)

3. Reduce the contractor’s compensation by a maximum of one and one-half percent of the contract price if the contractor is found not to have in good faith satisfied the hiring requirements set forth in the contract, because the SDA cannot and will not pay for contractual services that are not performed or contractual obligations that are not met. This reduction in the contract price [may] **will** be effectuated either by the withholding of all or part of future payments to the contractor or by a reduction in the amount of retainage otherwise due for release to the contractor under the contract;

4.-5. (No change.)

SUBCHAPTER 4. SUBCONTRACTOR REPLACEMENT

19:39-4.1 Subcontractor replacement on school facilities projects

(a) A construction or goods and services contractor shall not replace an SBE **or DVOB** 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.

(b) (No change.)

(c) The contractor shall make a good faith effort to find another SBE **or DVOB firm, as applicable**, to perform at least the same amount of work as had been allocated to the original SBE **or DVOB** subcontractor.

SUBCHAPTER 5. WORKFORCE TRAINING

19:39-5.1 Training programs

(a) Pursuant to P.L. 2009, c. 313 (N.J.S.A. 52:38-7), the SDA shall allocate **an amount equal to** one half of one percent of [capital funds for approved] **the value of school facilities contracts in excess of \$1,000,000 that are pertinent to construction, design, and management of school facilities** projects, to fund 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].

(b) (No change.)

(c) The SDA shall further utilize the funds pursuant to (a) above to create an [SBE/WBE/MBE] **SBE/WBE/MBE/DVOB** training program to assist existing New Jersey [SBE/WBE/MBE] **SBE/WBE/MBE/DVOB** 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.

(d) To the extent practicable, the services provided pursuant to this section shall be coordinated with apprenticeship training provided [under] **pursuant to N.J.S.A. 18A:7G-38.**
