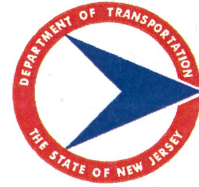


**New Jersey Department of Transportation**  
1035 Parkway Avenue, PO Box 600, Trenton, New Jersey 08625-0600



## **Baseline Document Change Announcement**

**ANNOUNCEMENT: BDC21S-16**

**DATE: March 04, 2022**

**SUBJECT: State Funded Project Attachment 1, 2 & 3**  
**- Revision to the 2019 Standard Inputs, State Funded Project Attachments 1, 2 & 3**

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State Funded Project Attachment 1, 2 & 3 of the 2019 Standard Inputs for Road and Bridge Construction have been revised in order to update various N.J.A.C. references, hyperlink updates, and typographical revisions.

**The attached State Funded Project Attachments 1, 2 & 3 have been incorporated into the Standard Inputs, SI2019:**

**Implementation Code R (ROUTINE)**

Changes must be implemented in all applicable Department projects scheduled for Final Design Submission at least one month after the date of the BDC announcement. This will allow designers to make necessary plan, specifications, and estimate/proposal changes without requiring the need for addenda or postponement of advertisement or receipt of bids.

**Recommended By:**

Handwritten signature of Paul F. Schneider in blue ink.

Paul F. Schneider  
Director  
Capital Program Support

**Approved By:**

Handwritten signature of Snehal Patel in blue ink.

Snehal Patel, P.E., PMP  
Assistant Commissioner  
Capital Program Management  
and State Transportation Engineer

Attachment: State Funded Project Attachments 1, 2 & 3

PS: NE: HP

## STATE FUNDED PROJECT ATTACHMENT 1

### SMALL BUSINESS ENTERPRISE UTILIZATION ON WHOLLY STATE FUNDED PROJECTS

- A. Utilization of Small Business Enterprises Businesses as Subcontractors, Transaction Expeditors, Regular Dealers, Manufacturers and Truckers.** The Department advises the Contractor and subcontractor that failure to carry out the requirements set forth in this attachment constitutes a material breach of Contract and, after notification to the applicable State agency, may result in termination of the agreement or Contract by the Department or such remedy as the Department deems appropriate. Requirements set forth in this section shall also be physically included in all subcontract agreements in accordance with State of New Jersey requirements.
- B. Policy.** It is the policy of the Department that small businesses, as defined in N.J.A.C. 17:13-1.2 et seq. comprising a Small Business Enterprise (SBE) shall have the maximum opportunity to participate in the performance of contracts financed wholly with State funds. In this regard, the Department and all Contractors shall take all necessary and reasonable steps to ensure that registered Small Business Enterprises are utilized on, compete for, and perform on NJDOT construction contracts.
- C. Definitions**
- 1. Small Business Enterprise.** A business which has its principal place of business in the State of New Jersey; is independently owned and operated; has no more than 100 full-time employees; has gross revenues that do not exceed the applicable Federal revenue standards referenced at N.J.A.C. 17:13-2.1 and satisfies any additional eligibility standards under this chapter.  
  
Small businesses with no more than 100 full-time employees will be registered in one of the following three categories:
    - a. Small business with gross revenues that do not exceed \$3 million.
    - b. Small businesses with gross revenues that do not exceed 50 percent of the applicable annual revenue standards set forth in federal regulation at 13 CFR 121.201, incorporated herein by reference, and as may be adjusted periodically.
    - c. Small business with gross revenues that do not exceed the applicable annual revenue standards set forth in federal regulation at 13 CFR 121.201, incorporated herein by reference, as may be adjusted periodically.  
The business must be independently owned and operated, with management being responsible for both its daily and long-term operation, as well as owning at least 51 percent interest in the business.  
  
Businesses must be incorporated or registered with the Division of Revenue & Enterprise Services to do business in the State and have its principal place of business in New Jersey, defined when:
    - a. 51 percent or more of its employees work in New Jersey supported by paid New Jersey unemployment taxes or;
    - b. 51 percent or more of its business operations/activities occur in New Jersey supported by income and/or business tax returns.
    - c. The business must be a sole proprietorship, partnership, limited liability company or corporation with 100 or fewer employees in full-time positions, not including:
      1. Seasonal and part-time employees employed for less than 90 days, if seasonal and casual part-time employment are common to that industry and
      2. Consultants employed under contracts for which the business wants to be eligible as a small business.
  - 2. Commercially Useful Function (CUF).** A SBE performs a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibility by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the SBE must also be responsible, with respect to materials and

supplies used on the contract, for preparing the estimate, negotiating price, determining quality and quantity, ordering the material, arranging delivery, installing (where applicable), and paying for the material and supplies itself for the project.

3. **Transaction expeditor (broker).** A SBE who arranges or expedites transactions and who arranges for material drop shipments.
  4. **SBE regular dealers.** A firm that must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. In addition, a regular dealer must own, operate, or maintain a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment required under this Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
  5. **SBE manufacturer.** A firm that operates or maintains a factory or establishment that produces on the premises, the materials, supplies, articles, or equipment required for the Contract.
  6. **Good faith effort (GFE).** Efforts to achieve a SBE goal or other requirement of N.J.A.C. 17:13 et seq. which by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement. Efforts to include firms not certified as SBEs in the state where the contract is being let are consequently not good faith efforts to meet a SBE contract goal.
- D. Compliance.** The Contractor is responsible for compliance as specified in Section 105.
- E Contractor SBE Goal Obligations.** Ensure that SBEs have an equal opportunity to receive and participate in contracts and subcontracts financed in whole with State funds in performing work with the Department. Take all necessary and reasonable steps in accordance with the Contract to ensure that SBEs are given equal opportunity to compete for and to perform on the Department's wholly State funded projects. Do not discriminate in the award and performance of any Contract obligation including, but not limited to, performance of obligations on wholly State funded contracts, as specified in Section 107.
1. Post Award Obligations
    - a. Give SBEs equal consideration with non-small business firms in negotiation for any subcontracts, purchase orders or leases.
    - b. Attempt to obtain qualified SBEs to perform the work. A directory of registered Small Businesses Enterprise firms can be found in the New Jersey Selective Assistance Vendor Information (NJSAVI) database online at: [https://www20.state.nj.us/TYTR\\_SAVI/vendorSearch.jsp](https://www20.state.nj.us/TYTR_SAVI/vendorSearch.jsp)
  2. Affirmative Action After Award of the Contract
    - a. **Subletting.** If at any time following the award of the Contract, the Contractor intends to sublet any portion(s) of the work under said Contract, or intends to purchase material or lease equipment not contemplated during preparation of bids, take affirmative action:
      - (1) Notify the RE, in writing, of the type and approximate value of the work which the Contractor intends to accomplish by such subcontract, purchase order or lease.
      - (2) Submit the Post-Award SBE Certification Form to the Regional Supervising Engineer with the application to sublet, or prior to purchasing material or leasing equipment. Obtain Post Award SBE Certification forms from the RE.
      - (3) Efforts made to identify and retain a SBE as a replacement subcontractor, lower tier subcontractor, transaction expeditor, regular dealer, supplier, manufacturer, or trucker when the arrangements with the original SBE prove unsuccessful, shall be followed as specified for SBE subcontractors in Section 108. Work in the category concerned shall not begin until such approval is granted in writing by the Department.
      - (4) Notification of a SBE subcontractor's termination will be the same as for SBE subcontractors, specified in Section 108. Send notice in writing to the Department through the RE, with a copy to DCR/AA. Said termination notice will include the firm's ethnic classification, whether the firm is a SBE and the detailed reason(s) for termination.
    - b. **Selection and Retention of Subcontractors.** Do not discriminate in the selection and retention of subcontractors, including procurement of materials and leases of equipment as specified in 108.01. Provide the RE with a listing of firms, organizations or enterprises solicited and those

utilized as subcontractors on the proposed project. Such listing shall clearly delineate which firms are classified as SBEs. Provide the RE with subcontract agreements for all subcontractors performing work on the Contract as specified in Section 108.

- (1) Efforts made to identify and retain a SBE as a replacement subcontractor, lower tier subcontractor, transaction expeditor, regular dealer, supplier, manufacturer, or trucker when the arrangements with the original SBE prove unsuccessful, shall be the same as for SBE subcontractors and submitted as specified in Section 108. Work in the category concerned shall not begin until such approval is granted in writing by the Department.
  - (2) Notification of a SBE firm's termination will be as specified in Subsection 108.01. Send notice in writing to the Department through the RE. Said termination notice will include the firm's ethnic classification, whether the firm is a SBE and the detailed reason(s) for termination.
- c. Meeting Contract SBE Goal.** Report attainment toward meeting the Contract SBE goal by submitting monthly, all SBE participation, to the Department's RE and DCR/AA Contract Compliance Unit using the CR-267 – Monthly Report of Utilization of DBE/ESBE or SBE form. The form is due by the 5th of the month and must list all SBEs used on the Contract to meet the Contract goal, the specific Contract work items each SBE is performing, whether the SBE is performing full or partial work on the items, and the amount paid to each SBE each month. Failure to report the information, and accurately report it may result in payment being delayed or withheld as specified in Section 105, assessing sanctions, or termination of the Contract as specified in Section 108.
- d. Termination, Substitution or Replacement of SBEs.** Make good faith efforts to replace a SBE that is terminated or has otherwise failed to complete its work on the Contract with another registered SBE, to the extent needed to meet the Contract SBE goal. Notify the DCR/AA immediately of the SBE's inability or unwillingness to perform and provide reasonable documented evidence. Prior to termination, substitution, or replacement of a SBE subcontractor, lower-tier subcontractor, transaction expeditor, regular dealer, supplier, manufacturer, or trucker, submit a Revised CR-266 – Schedule of DBE/ESBE/SBE Participation form to the Department naming the replacement SBE firm(s), type of work performed, specific Contract work items, whether the SBE is performing full or partial work on the items, dollar value and percent of total Contract for each SBE firm. Submit detailed written explanation of why each change is being made, including documented evidence of good faith effort(s) with the submission of the revised Form CR- 266. Submit along with the revised CR-266: 1) a completed Confirmation of SBE Firm (Form CR-273) to demonstrate direct written confirmation from each SBE firm participating on the Contract, confirming the kind and amount of work that was provided on the Contractor's CR-266, and if applicable; 2) a completed SBE Regular Dealer/Supplier Verification (Form CR-272) for all SBE Regular Dealers/Suppliers listed on the revised CR-266; and if applicable, 3) a completed SBE Trucking Verification (Form CR-274) for all SBE truckers listed on the revised CR-266 form. The Contractor is not permitted to complete any portion of the CR-273, CR-272 or CR-274 forms. Termination, substitution, or replacement of SBEs shall be made as specified in Section 108. Termination or replacement of SBE cannot be made without prior written approval of the Department as per Section 108.
- e. Submission of Good Faith Effort Documentation.** If the Contractor is unable to meet the Contract goal for SBE participation, submit to the DCR/AA for review and approval, documented evidence of good faith efforts along with the monthly CR-267 form. This submission must include written details addressing each of the good faith efforts outlined in the Contract. Submittal of such information does not imply DCR/AA approval.
- F. SBE Goals for this Contract.** This Contract includes a goal of awarding \_\_\_\_\_ percentage of the Total Contract Price to subcontractors qualifying as SBEs.

**NOTE: SUBCONTRACTING GOALS ARE NOT APPLICABLE IF THE PRIME CONTRACTOR IS A REGISTERED SMALL BUSINESS ENTERPRISE (SBE) FIRM.**

The Department's DCR/AA has sole authority to determine whether the Contractor met the Contract goal or made adequate good faith efforts to do so. If the DCR/AA determines that the Contractor has failed to meet the Contract SBE goal or made adequate good faith efforts to do so, the Department will follow Section 105.

#### **G. Counting SBE Participation.**

1. Each SBE is subject to a registration procedure to ensure its SBE eligibility status prior to the award of Contract. All SBEs working on the Contract must be registered SBEs. Only Small Business Enterprises registered prior to the date of bid, or prospective Small Business Enterprises that have submitted to the New Jersey Commerce and Economic Growth Commission on or before the day of bid, a completed "State of New Jersey Small Business Vendor Registration Form" and all the required support documentation, will be considered in determining whether the Contractor has met the established Contract SBE goal. Early submission of required documentation is encouraged.
2. The Department determines the percentage of SBE participation that will be counted toward the Contract SBE goal. Once a firm is determined to be a bona fide SBE by the New Jersey Commerce and Growth Commission, the total dollar value of the contract awarded to the SBE is counted toward the applicable goal.
3. The Contractor will count SBE participation toward the Contract SBE goal only the value of the work actually performed by a SBE when that SBE performs a commercially useful function in the work of a contract as per Section H of this Special Provision Attachment.
4. If a Contractor is part of a Joint Venture and one or more of the Sole Proprietorships, Partnerships, Limited Liability companies or Corporations comprising the Joint Venture is a registered SBE, the actual payments made to the Joint Venture for work performed by the SBE member, will be applied toward the Contract SBE goal. Payments made to the Joint Venture for work performed by a non-small business firm will not be applied toward the Contract SBE goal.
5. If the Contractor is a registered SBE, payments made to the Contractor for work that the Contractor is registered to perform and performed by the Contractor will be applied toward the Contract SBE goal. Payments made to the Contractor for work performed by non-SBEs will not be applied toward the Contract SBE goal.
6. When a SBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted towards the SBE goal only if the subcontractor itself is an SBE. Work that a SBE subcontracts to a non-SBE firm does not count toward the Contract SBE goal.

#### **H. Commercially Useful Function**

1. **Performance of Work.** The SBE must perform the work with their own permanent employees, or employees recruited through traditional recruitment and/or employment centers. SBEs must employ and control their own workforce, and cannot share employees with the Contractor, other subcontractors on the present project, or the renter-lessor of equipment being used on the present project. The SBE firm must be responsible for all payroll and labor compliance requirements for all of their employees performing work on the Contract. Direct or indirect payments by any other contractor are not allowed.
2. **Managing Work.** The SBE must manage the work themselves including the scheduling of work operations, ordering of equipment and materials, hiring/firing of employees, including supervisory employees, and preparing and submitting certified payrolls. The SBE must supervise their portion of daily work operations of the project. With respect to materials and supplies used on the Contract, the SBE must be responsible for preparing the estimate, negotiating price, determining quantity and quality, ordering the material, arranging delivery, installing, (where applicable), and paying for the material and supplies for the project.
3. **Responsibility of Work.** A SBE must perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own workforce. The SBE must not subcontract a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved.
4. **Equipment of SBE.** The SBE must perform the work stated in the subcontract with their own equipment, whether owned or leased and operated on a long-term agreement, not an ad hoc or

contract by contract agreement. The equipment must be owned by the SBE firm or leased/rented from traditional equipment lease/rental sources. The equipment will not belong to the Contractor, any other subcontractor or lower tier subcontractors on the current project, or supplier of materials being installed by the SBE firm.

5. **Lease of Equipment.** A SBE firm may lease specialized equipment from a contractor, but not from the Contractor, if it is consistent with normal industry practices and at rates competitive for the area. Rental agreements must be for short periods of time, specify the terms of the agreement and involve specialty equipment to be used at the job site. The lease may allow the operator to remain on the lessor's payroll if it is the generally accepted industry practice, but the operation of the equipment must be subject to full control by the SBE. The SBE shall provide the operator for non-specialized equipment and is responsible for all payroll and labor compliance requirements. A separate lease agreement is required.
6. **SBE Trucking.** SBE trucking companies must perform a commercially useful function. Contrived arrangements for the purpose of meeting SBE goals will not be allowed. The SBE must be responsible for the management and supervision of the entire trucking operation on a contract-by-contract basis, and must own and operate at least one fully, licensed, insured, and operational truck used on the Contract.

The SBE trucking firm is not permitted to obtain trucks from the Contractor to perform work on the project. The SBE may lease trucks from a subcontractor working on the project, provided the trucks are obtained from the subcontractor prior to the project letting. Bona fide lease agreements must be for the length of time needed by the SBE on the Contract and signed by both the SBE and the firm(s), either certified SBE or non-SBE, from which the trucks will be leased. Leases must indicate that the SBE has exclusive use and control over the truck. All leased trucks must display the name and USDOT identification number issued for interstate commerce, of the SBE firm, on the outside of the truck. SBE firms are expected to use the same trucks for SBE credit on all projects so use of leased vehicles on a project-by-project basis is not permitted.

The Contractor shall have signed Hiring Agreements. Submit copies of these signed Hiring Agreements, and copies of all signed lease agreements to the RE prior to the trucking firm's commencing work on the project. Prior to the SBE trucking firm beginning work on the Contract, SBE Trucking firms will be required to complete the SBE Trucking Verification (Form CR-274). The SBE and Contractor must sign the form and the Contractor submit the original CR-274 form directly to the Department's RE, with a copy submitted to the DCR/AA. The Contractor is not permitted to complete any portion of the CR-274 form. The Contractor must prepare, sign and submit along with the CR-267 – Monthly Report of Utilization of DBE/ESBE or SBE form, a Monthly Trucking Verification form (CR-271), identifying each truck owner, SBE Certification number, company name and address, truck number, and commission or amount paid for all SBE and non-SBE truckers performing work on the project. Also, submit the form to the Department as per Section E of this Special Provision for the DCR/AA's review, approval, and determination of credit toward the Contract goal. Failure to submit the forms may result in denial or limit of credit toward the Contract SBE goal, payment being delayed or withheld as specified in Section 105, assessing sanctions or termination of the Contract as specified in Section 108.

7. **SBE Regular Dealers.** SBE regular dealers must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. In addition, a regular dealer must own, operate, or maintain a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under this Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
8. **SBE Manufacturers.** SBE manufacturers must be a firm that operates or maintains a factory or establishment that produces on the premises, the materials, supplies, articles, or equipment required for this Contract.

9. The Contractor shall not use a SBE solely for the purpose of acting as an extra participant in a transaction, a contract or the Contract through which funds are passed in order to obtain the appearance of SBE participation.

I. **Good Faith Effort.** To demonstrate good faith efforts to meet the Contract SBE goal, a Contractor shall, on an ongoing basis, adequately document the steps it takes to obtain SBE participation, including but not limited to the following:

1. Conducting market research to identify qualified potential small business subcontractors and suppliers and soliciting through all reasonable and available means, the interest of registered SBEs that have the capability to perform the work of the Contract. This may include attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices, or emails to all registered SBEs listed in the New Jersey Selective Assistance Vendor Information (NJSAVI) database that specialize in the areas of work desired (as noted in SAVI) and which are located in the area or surrounding areas of the project.

Solicit this interest as early in the acquisition process as practicable to allow the SBEs to respond to the solicitation and submit a timely offer for the subcontract. Determine with certainty if the SBEs are interested by taking appropriate steps to follow up initial solicitations.

Request a listing of small businesses from the New Jersey Department of the Treasury, Division of Property Management and Construction if none are known to the Contractor

2. Selecting portions of the work to be performed by SBEs in order to increase the likelihood that the SBE goals will be achieved. This includes, where appropriate, breaking out Contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate SBE participation, even when the Contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates SBE participation.
3. Providing all potential SBE subcontractors with detailed information about the plans, specifications, and requirements of the Contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract. Attempt to contact all potential subcontractors on the same day and use similar methods to contact them.
4. Negotiating in good faith with interested SBEs. Make a portion of the work available to SBE subcontractors and suppliers and select those portions of the work or material needs consistent with the available SBE subcontractors and suppliers, so as to facilitate SBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of SBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional Agreements could not be reached for SBEs to perform the work.

Consider a number of factors in negotiating with subcontractors, including SBE subcontractors. Take a firm's price and capabilities as well as Contract goals into consideration. The fact that there may be some additional costs involved in finding and using SBEs is not in itself sufficient reason for failure to meet the Contract SBE goal, as long as such costs are reasonable. The ability or desire of a Contractor to perform the work of a Contract with its own organization does not relieve the responsibility to make good faith efforts. Contractors are not, however, required to accept higher quotes from SBEs if the price difference is excessive or unreasonable.

5. Not rejecting SBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the Contractor's efforts to meet the Contract SBE goal. Another practice considered an insufficient good faith effort is the rejection of the SBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the Bidder to accept unreasonable quotes in order to satisfy the Contract SBE goal.

Inability to find a replacement SBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original SBE. The fact that the Contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the Contractor of the obligation to make good faith efforts to find a replacement SBE, and it is not a sound basis for rejecting a prospective replacement SBE's reasonable quote. Attempt, wherever possible, to negotiate prices with potential subcontractors which submitted higher than acceptable price quotes.

Keep a record of efforts, including the names of businesses contacted and the means and results of such contacts.

6. Making efforts to assist interested SBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Contractor.
7. Making efforts to assist interested SBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

If the Contractor fails to meet the Contract SBE goal, they must submit documented evidence of good faith effort(s) to meet the goal with the CR-268 final SBE Report to the DCR/AA for review and approval. Submittal of such information does not imply DCR/AA approval. The Department's DCR/AA has sole authority to determine whether the Contractor met the Contract SBE goal or made adequate good faith efforts to do so. If the DCR/AA determines that the Contractor has failed to meet the Contract SBE goal or made adequate good faith effort to do so, the Department will follow Section 105.

#### **J. Submission of Affirmative Action Program**

Contractors, subcontractors, and professional service firms performing work for the Department are required to submit their company's Affirmative Action Program annually to the DCR/AA. Contractors must have an **approved** Affirmative Action Program on file in the DCR/AA no later than seven (7) State business days after the date of bid opening. No recommendations to award will be made without an approved Affirmative Action Program on file in the DCR/AA. Ensure subcontractors and professional service firms have an approved Affirmative Action Plan on file in the DCR/AA prior to their beginning work on a particular project.

The Annual Affirmative Action Program will include, but is not limited to the following:

1. Copy of company's comprehensive EEO/Affirmative Action Plan, with a cover page that includes the company name and address, and signature of the Chief Executive or EEO Officer.
2. Copy of document designating the company's corporate EEO Officer, including the name, address and contact telephone number for the officer, and signature of the Chief Executive or President, on company letterhead.
3. Copy of the company's EEO Policy Statement on company letterhead, dated and signed by the Chief Executive and the EEO Officer.
4. Copy of the company's Sexual Harassment Policy on company letterhead.
5. EEO Legend such as letterhead, envelope, or published advertisement showing the company is an equal opportunity employer.
6. Copy of document designating the company's SBE Liaison Officer to administer the firm's Small Business Program.
7. SBE Affirmative Action Plan which is an explanation of affirmative action methods intended to be used to seek out and consider SBEs as subcontractors, material suppliers or equipment lessors. This refers to the Contractor's ongoing responsibility, i.e., Small Business Enterprise/Affirmative Action activities after the award of the Contract and for the duration of the Contract.

**K. SBE Liaison Officer.** Designate a SBE Liaison Officer who shall be responsible for the administration of your SBE program in accordance with the Contract and ensuring that the Contractor complies with all provisions of the SBE Program.

**L. Consent by Department to Subletting.** The Department will not approve any subcontract proposed by the Contractor unless and until said Contractor has complied with the terms of the Contract.

**M. Conciliation.** In cases of alleged discrimination regarding these and all equal employment opportunity provisions and guidelines, investigations and conciliation will be undertaken by the DCR/AA.



## **N. Documentation**

- 1. Requiring of Information.** The Department or the State funding agencies may at any time require information as specified in Subsection 107.02 and deemed necessary in the judgment of the Department to ascertain the compliance of any Bidder, Contractor, or subcontractor with the terms of the Contract.
  - 2. Record and Reports.** The Contractor, subcontractors and other sub-recipients will keep such records as are necessary to determine compliance with its SBE obligations. These records kept will be designed to indicate:
    - a. The names of SBE contractors, subcontractors, transaction expeditors and material suppliers contacted for work on the Contract, including when and how contacted, and the specific Contract work items and other information provided to each.
    - b. Work, services, and materials which are not performed or supplied by the Contractor.
    - c. The actual dollar value of work subcontracted and awarded to SBEs, including specific Contract work items and cost of each work item.
    - d. The progress being made, and efforts taken in seeking out and utilizing SBEs to include: solicitations, specific Contract work items and the quotes and bids regarding those specific Contract work items, supplies, leases, or other contract items, etc.
    - e. Detailed written documentation of all correspondence, contacts, telephone calls, etc., including names and dates/times, to obtain the services of SBEs on the Contract.
    - f. Records of all SBEs and non-SBEs who have submitted quotes/bids to the Contractor on the Contract.
    - g. Monthly CR-267 – Monthly Report, Utilization of DBE/ESBE or SBE, and other reports required for submission to the Department, hiring agreements, subcontracts, lease agreements, equipment rental agreements, supply tickets, delivery slips, payment information, and other records documenting SBE utilization on the Contract.
    - h. Documentation outlining EEO workforce information for the Contract.
    - i. Documentation outlining EEO and Affirmative Action efforts made in the administration and performance of the Contract.
  - 3. Submission of Reports, Forms and Documentation.** Submit reports, forms, and documentation, as required by the Department, on those contracts and other business transactions executed with SBEs in such form and manner as may be prescribed by the Department. Failure to submit the required forms, reports or other documentation as required may result in payment being delayed or withheld as specified in Section 105, assessing sanctions, or termination of the contract as specified in Section 108. Submission of falsified forms, reports, or other required documentation may result in termination of the Contract as specified in Section 108, investigation by the Department's Inspector General, and prosecution by the State Attorney General's Office.
  - 4. Maintaining Records.** All records must be maintained for a period of three (3) years following acceptance of final payment and will be available for inspection by the Department, or the State funding agencies.
- O. Prompt Payment to Subcontractors.** Payment to subcontractors, equipment lessors, suppliers, and manufacturers is made in accordance with Section 109.
- P. Non-Compliance.** Failure by the Contractor to comply with the SBE program, rules, and regulations in the administration of the Contract may result in denial or limit of credit toward the Contract SBE goal, payment being delayed or withheld as specified in Section 105, assessing sanctions, liquidated damages as specified in Section 108, default as specified in Section 108, debarment, or termination of the Contract as specified in Section 108. The Contractor may further be declared ineligible for future Department contracts.

## STATE FUNDED PROJECT ATTACHMENT 2

### STATE OF NEW JERSEY EQUAL EMPLOYMENT OPPORTUNITY SPECIAL PROVISIONS FOR WHOLLY STATE FUNDED PROJECTS

- A. General.** It is the policy of the New Jersey Department of Transportation (hereafter "NJDOT") that its contracts should create a workforce that reflects the diversity of the State of New Jersey. Therefore, contractors engaged by the Department to perform under a construction contract shall put forth a good faith effort to engage in recruitment and employment practices that further the goal of fostering equal opportunities to minorities and women.

The Contractor must demonstrate to the Department's satisfaction that a good faith effort was made to ensure that minorities and women have been afforded equal opportunity to gain employment under the Department's contract with the Contractor. Payment may be withheld from a Contractor's contract for failure to comply with these provisions.

Evidence of a "good faith effort" includes, but is not limited to:

1. The Contractor shall recruit prospective employees through the New Jersey career connections website, managed by the Department of Labor and Workforce Development, available online at [http://careerconnections.nj.gov/careerconnections/for\\_businesses.shtml](http://careerconnections.nj.gov/careerconnections/for_businesses.shtml)
2. The Contractor shall keep detailed documented evidence of its efforts, including records of all individuals interviewed and hired, including the specific numbers of minorities and women;
3. The Contractor shall actively solicit and shall provide the Department with proof of solicitations for employment, including but not limited to advertisements in general circulation media, professional service publications and electronic media;
4. The Contractor shall provide evidence of efforts described at 2 above to the Department no less frequently than once every 12 months; and
5. The Contractor shall comply with the requirements set forth at N.J.A.C. 17:27-1.1 et seq.

The Contractor is required to implement and maintain a specific Affirmative Action Compliance Program of Equal Employment Opportunity in support of the New Jersey "Law Against Discrimination", N.J.S.A. 10:5-31 et seq., and according to the Affirmative Action Regulations set forth at N.J.A.C. 17:27-1.1 et seq.

The provisions of N.J.S.A. 10:2-1 through 10:2-4 and N.J.S.A. 10:5-31 et seq., as amended and supplemented) dealing with discrimination in employment on public contracts, and the rules and regulations promulgated pursuant thereunto, are hereby made a part of this contract and are binding upon the Contractor.

Noncompliance by the Contractor with the requirements of the Affirmative Action program for Equal Employment Opportunity may be cause for delaying or withholding monthly and final payments pending corrective and appropriate measures by the Contractor to the satisfaction of the Department.

The Contractor will cooperate with the State agencies in carrying out its Equal Employment Opportunity obligations and in their review of its activities under the contract.

The Contractor and all its subcontractors, not including material suppliers, holding subcontracts of \$2,500 or more, will comply with the following minimum specific requirement activities of Equal Opportunity and Affirmative Action set forth in these special provisions. The Contractor will include the following mandatory equal employment opportunity language in every subcontract of \$2,500 or more with such modification of language in the provisions of such contracts as is necessary to make them binding on the subcontractor.

During the performance of this Contract, the contractor agrees as follows:

1. The Contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, or sex. The

Contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, veteran's status, disability, nationality, or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

2. The Contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.
3. The Contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.
5. When hiring or scheduling workers in each construction trade, the Contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the targeted employment goal prescribed by N.J.A.C. 17:27-7.2; provided, however, that the NJ Department of Labor and Workforce Development, Construction EEO Monitoring Program, may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, a, b, and c, as long as the NJ Department of Labor and Workforce Development, Construction EEO Monitoring Program is satisfied that the Contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the NJ Department of Labor and Workforce Development, Construction EEO Monitoring Program, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the targeted employment goal established in accordance with N.J.A.C. 17:27-7.2. The Contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:
  - a. If the Contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the Contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the Contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et. seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the Contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the Contractor or sub-contractor agrees to afford equal employment opportunities minority and women workers directly, consistent with this chapter. If the Contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the Contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the hiring or scheduling procedures prescribed under (B) below; and the Contractor or subcontractor further agrees to take said action immediately if it determines that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.
  - b. If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (a.) above, or if the Contractor does not have

a referral agreement or arrangement with a union for a construction trade, the Contractor or subcontractor agrees to take the following actions:

- (1) To notify the public agency compliance officer, the NJ Department of Labor and Workforce Development, Construction EEO Monitoring Program, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;
  - (2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;
  - (3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the Contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;
  - (4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the Contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area;
  - (5) If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and non-discrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions;
  - (6) To adhere to the following procedure when minority and women workers apply or are referred to the Contractor or subcontractor:
    - i. The Contractor or subcontractor shall interview the referred minority or women worker.
    - ii. If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the Contractor or subcontractor shall in good faith determine the qualifications of such individuals. The Contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a Contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the NJ Department of Labor and Workforce Development, Construction EEO Monitoring Program. If necessary, the Contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (c) below.
    - iii. The name of any interested women or minority individual shall be maintained on a waiting list and shall be considered for employment as described in 6(i) above, whenever vacancies occur. At the request of the NJ Department of Labor and Workforce Development, Construction EEO Monitoring Program, the Contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.
    - iv. If, for any reason, said Contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the Contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the NJ Department of Labor and Workforce Development, Construction EEO Monitoring Program.
  - (7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the NJ Department of Labor and Workforce Development, Construction EEO Monitoring Program and submitted promptly to the NJ Department of Labor and Workforce Development, Construction EEO Monitoring Program upon request.
- c. The Contractor or subcontractor agrees that nothing contained in (b.) above shall preclude the Contractor or subcontractor from complying with the union hiring hall or apprenticeship policies

in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the targeted county employment goal, the Contractor or subcontractor shall consider for employment persons referred pursuant to (b) above without regard to such agreement or arrangement; provided further, however, that the Contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the Contractor or subcontractor agrees that, in implementing the procedures of (b) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

The Contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on-the-job and/or off-the-job programs for outreach and training of minorities and women.

The Contractor and its subcontractors shall furnish such reports or other documents to the NJ Department of Labor and Workforce Development, Construction EEO Monitoring Program as may be requested by the NJ Department of Labor and Workforce Development, Construction EEO Monitoring Program from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the NJ Department of Labor and Workforce Development, Construction EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq..

The Contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on-the-job and off-the-job programs for outreach and training of minority and female trainees employed on the construction projects.

- B. Equal Employment Opportunity Policy.** The Contractor agrees that it will accept and implement during the performance of this contract as its operating policy the following statement which is designed to further the provision of Equal Employment Opportunity to all persons without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex and to promote the full realization of Equal Employment Opportunity through a positive continuing program:

“It is the policy of this company that it will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex and that it will take Affirmative Action to ensure that applicants are recruited and employed and that employees are treated during employment without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.”

- C. Equal Employment Opportunity Officer.** Designate and make known to the Department's contracting officers, an Equal Employment Opportunity Officer (hereafter “EEO Officer”) who will have the responsibility for and must be capable of effectively administering and promoting an active Equal Employment Opportunity program and be assigned adequate authority and responsibility to do so.

**D. Dissemination of Policy.**

- 1. Implementation.** All members of the Contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, will be made fully cognizant of, and will implement, the Contractor's Equal Employment Opportunity Policy and contractual

responsibilities to provide Equal Employment Opportunity in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

- a. **Initial Project Site Meeting.** Conduct an initial project site meeting with supervisory and personnel office employees before the start of work and then not less often than once every 6 months, at which time the Contractor's Equal Employment Opportunity Policy and its implementation will be reviewed and explained. The EEO Officer will conduct the meetings.
  - b. **EEO Obligations.** Give all new supervisory or personnel office employees a thorough indoctrination by the EEO Officer covering all major aspects of the Contractor's Equal Employment Opportunity obligations within 30 days following their reporting for duty with the Contractor.
  - c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the Contractor's procedures for locating and hiring minority and women workers.
2. Take the following actions in order to make the Contractor's Equal Employment Opportunity Policy known to all employees, prospective employees, and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc.
    - a. Place notices and posters setting forth in the Contractor's Equal Employment Opportunity policy, as set forth in Section 2 of these Equal Employment Opportunity Special Provisions in conspicuous places readily accessible to employees, applicants for employment and potential employees.
    - b. Bring the Contractor's Equal Employment Opportunity Policy and the procedures to implement such policy to the attention of employees by means of meetings, employee handbooks, or other appropriate channels.

#### **E. Recruitment**

1. In all solicitations and advertisements for employees placed by or on behalf of the Contractor, the Contractor will state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, veteran's status, disability, nationality, or sex. All such advertisements will be published in newspapers or other publications having a large circulation among minorities and women in the area from which the project workforce would normally be derived.
2. Unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority and women applicants, including, but not limited to state employment agencies, schools, colleges and minority and women organizations. Through their EEO Officer, identify sources of potential minority and women employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the Contractor for employment consideration.
3. In the event the Contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the Contractor's compliance with Equal Employment Opportunity contract provisions. (The US Department of Labor has held that where implementations of such agreements have the effect of discriminating against minorities or women, or obligates the Contractor to do the same; such implementation violates Executive Order 11246, as amended).
4. In the event that the process of referrals established by such a bargaining agreement fails to provide the Contractor with a sufficient number of minority and women referrals within the time period set forth in such an agreement, the Contractor shall comply with the provisions of "Section I Unions" of this "State Of New Jersey Equal Employment Opportunity Special Provisions for Wholly State Funded Projects" Attachment.

- F. Personnel Actions.** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to age, race, color, creed, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, veterans' status, disability, nationality, or sex. The following procedures shall be followed:

1. Conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
2. Periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
3. Periodically review selected personnel actions in-depth to determine whether there is evidence of discrimination. Where evidence is found, the Contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
4. Promptly investigate all complaints of alleged discrimination made to the Contractor in connection with his/her obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the Contractor will inform every complainant of all of their avenues of appeal.

**G. Training and Promotions.**

1. Assist in locating, qualifying, and increasing the skills of minority group and women workers, and applicants for employment.
2. Consistent with the Contractor's workforce requirements and as permissible under State regulations, make full use of training programs, i.e., apprenticeship, and on-the-job training programs, for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.
3. Advise employees and applicants for employment of available training programs and entrance requirements for each.
4. Periodically review the training and promotion potential of minority group and women workers and encourage eligible employees to apply for such training and promotion.

**H. Unions.** If the Contractor relies in whole or in part upon unions as a source of employees, the Contractor will use their good faith efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and women workers. Actions by the Contractor either directly or through a Contractor's association acting, as agent will include the procedures set forth below:

1. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract of understanding, a notice advising the labor union or workers' representative of the Contractor's commitments under both the law against discrimination and this contract and shall post copies of the notice in conspicuous places readily accessible to employees and applicants for employment. Further, the notice will request assurance from the union or worker's representative that such union or worker's representative will cooperate with the Contractor in complying with the Contractor's Equal Employment Opportunity and Affirmative Action obligations.
2. The Contractor will use their best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
3. The Contractor will use their best efforts to incorporate an Equal Employment Opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their age, race, color, creed, sex, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, or nationality.
4. The Contractor is to obtain information as to the referral practices and policies of the labor union except to the extent that such information is within the exclusive possession of the labor union and such labor unions refuse to furnish this information to the Contractor, certify to the Department and shall set forth what efforts have been made to obtain this information.
5. In the event the union is unable to provide the Contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the Contractor will, through independent recruitment efforts, fill the employment vacancies without regard to age, race, color, creed, sex, national origin, ancestry, marital status, affectional or sexual orientation,

gender identity or expression, disability, or nationality making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The US Department of Labor has held that it shall be no excuse that the union with which the Contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees). In the event the union referral practice prevents the Contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these Special Provisions, such Contractor shall immediately notify the Department.

- I. Subcontracting.** The Contractor will use his best efforts to solicit bids from and to utilize minority group and women subcontractors or subcontractors with meaningful minority group and women representation among their employees. Contractors may use lists of minority owned and women owned construction firms as issued by the NJDOT and/or the New Jersey Unified Certification Program (NJUCP).

Ensure subcontractor compliance with the Contract's Equal Employment Opportunity obligations.

**J. Records and Reports**

1. Keep such records as are necessary to determine compliance with the Contractor's Equal Employment Opportunity obligations. Records kept will be designed to indicate:
  - a. The work hours of minority and non-minority group members and women employed in each work classification on the project;
  - b. The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to Contractors who rely in whole or in part on unions as a source of their workforce);
  - c. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and women workers; and
  - d. The progress and efforts being made in securing the services of minority group and women subcontractors or subcontractors with meaningful minority and women representation among their employees.
2. All such records must be retained for a period of five (5) years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the NJDOT.
3. Submit monthly reports to the NJDOT after construction begins for the duration of the project, indicating the work hours of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on a form supplied by the NJDOT.



### STATE FUNDED PROJECT ATTACHMENT 3

#### REQUIREMENTS FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY ON WHOLLY STATE FUNDED PROJECTS

**A. Minority and Women Employment Goal Obligations.** The Department has established, pursuant to N.J.A.C. 17:27-7.2, the minority and women goals for each construction contractor and subcontractor based on availability statistics as reported by the New Jersey Department of Labor, Division of Planning and Research, in its report, "EEO Tabulation - Detailed Occupations by Race/Hispanic Groups." The goals for minority and women participation, in the covered area, expressed in percentage terms for the Contractor's aggregate work force in each trade, on all construction work are:

<b>Minority and Women Employment Goal Obligations for Construction Contractors and Subcontractors on Wholly State Funded Projects</b>		
<b>County</b>	<b>Minority % Participation Percent</b>	<b>Women % Participation Percent</b>
Atlantic	18	6.9
Bergen	22	6.9
Burlington	15	6.9
Camden	19	6.9
Cape May	5	6.9
Cumberland	27	6.9
Essex	53	6.9
Gloucester	9	6.9
Hudson	60	6.9
Hunterdon	3	6.9
Mercer	30	6.9
Middlesex	24	6.9
Monmouth	15	6.9
Morris	16	6.9
Ocean	7	6.9
Passaic	36	6.9
Salem	10	6.9
Somerset	20	6.9
Sussex	4	6.9
Union	45	6.9
Warren	5	6.9

The NJ Department of Labor and Workforce Development, Construction EEO Monitoring Program has interpreted Section 7.2 of the State of New Jersey Affirmative Action Regulations as applicable to work hour goals for minority and women participation.

If a project is located in more than one county, the minority work hour goal will be determined by the county which serves as the primary source of hiring or, if workers are obtained equally from one or more counties, the single minority goal shall be the average of the individual goal for the affected counties.

The NJ State Department of Labor and Workforce Development, Construction EEO Monitoring Program may designate a regional goal for minority membership for a union that has regional jurisdiction. No regional goals shall apply to this project unless specifically designated elsewhere herein.

When hiring workers in the construction trade, the Contractor and/or subcontractor agree to attempt, in good faith, to employ minority and women workers in each construction trade, consistent with the applicable county or, in special cases, regional goals.

It is understood that the goals are not quotas. If the Contractor or subcontractor has attempted, in good faith, to satisfy the applicable goals, they will have complied with their obligations under these EEO Special Provisions. It is further understood that if the Contractor shall fail to attain the goals applicable to this project, it will be the Contractor's obligation to establish to the satisfaction of the Department that it has made a good faith effort to satisfy such goals. The Contractor or subcontractor agrees that a good faith effort to achieve the goals set forth in these special provisions shall include compliance with the following procedures:

- B. Requests for Referrals from Unions to Meet Contract Workforce Goals.** Requests shall be made by the Contractor or subcontractor to each union or collective bargaining unit with which the Contractor or subcontractor has a referral agreement or arrangement for the referral of minority and women workers to fill job openings. Requests shall also be made for assurances for the referral of minority and women workers to fill job openings. Requests shall also be made for assurances from such unions or collective bargaining units that they will cooperate with the Contractor or subcontractor in fulfilling the Affirmative Action obligations of the Contractor or subcontractor under this contract. Such requests shall be made prior to the commencement of construction under the contract.
1. The Contractor and its subcontractors shall comply with Section I, Unions of these EEO Special Provisions and, in particular, with Section I, Paragraph D, if the referral process established in any collective bargaining arrangement is failing to provide the Contractor or subcontractor with a sufficient number of minority and women referrals.
  2. The Contractor and its subcontractors shall notify the Department's Compliance Officer, the NJ Department of Labor and Workforce Development, Construction EEO Monitoring Program and at least one approved minority referral organization of the Contractor's or subcontractors work force needs and of the Contractor's or subcontractor's desire for assistance in attaining the goals set forth herein. The notifications should include a request for referral of minority and women workers.
  3. The Contractor and its subcontractors shall notify the Department's Compliance Officer and the NJ Department of Labor and Workforce Development, Construction EEO Monitoring Program in the event that a union or collective bargaining unit is not making sufficient minority and women referrals to enable the Contractor or subcontractor to attain the workforce goals for the Contract.
  4. The Contractor and its subcontractors shall make standing requests to all local construction unions, the State's training and employment service and other approved referral sources for additional referrals of minority and women workers until such time as the project workforce is consistent with the work hour goals for the Contract.
- C.** In the event that it is necessary to lay off some of the workers in a given trade on the construction site, the Contractor and its subcontractors shall ensure that fair layoff practices are followed regarding minority, women and other workers.
- D.** Comply with the other requirements of these EEO Special Provisions.
- E.** Reporting Requirements.
1. Directly provide the NJ Department of Labor and Workforce Development, Office of Diversity Compliance, Construction Contract Compliance Unit with workforce data for the Contract.
    - a. After notification of award, but prior to signing the Contract, submit to the Department and the Department of Labor and Workforce Development, Construction EEO Monitoring Program an AA-201 – Initial Project Workforce Report Construction form in accordance with

N.J.A.C. 17:27-7. Also, submit the information within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the Contract. This form is available online at the New Jersey Department of the Treasury's website at:

[https://www.nj.gov/treasury/contract\\_compliance/documents/pdf/forms/aa202.pdf](https://www.nj.gov/treasury/contract_compliance/documents/pdf/forms/aa202.pdf).

Instructions for completing the form can be found online at:  
[https://www.nj.gov/treasury/contract\\_compliance/documents/pdf/forms/aa201ins.pdf](https://www.nj.gov/treasury/contract_compliance/documents/pdf/forms/aa201ins.pdf).

- b. Monthly, complete and submit an AA 202 - Monthly Project Workforce Report – Construction form for the duration of the Contract. This form may be completed:
  - (1) Manually and mailed to the Department of Labor & Workforce Development, Construction & EEO Monitoring Program, P.O. Box 209, Trenton, NJ 08625-0209, or:
  - (2) Input electronically directly onto the AA-202 form via the Department of the Treasury's Premier Business Services Online Forms web application. Information about how to register and access the Premier Business Services web application can be found at: [https://www.nj.gov/treasury/contract\\_compliance/documents/pdf/PBS-Introduction-Page.pdf](https://www.nj.gov/treasury/contract_compliance/documents/pdf/PBS-Introduction-Page.pdf). Follow all instructions to set up online access to the web application.
  - (3) Submit a printed copy of the AA-202 form to the Department along with the hard copy of the CC-257R and confirmation e-mail of the successful submission of Monthly Employment Utilization Report.
2. Directly provide the Department with employment workforce data of the number and work hours of minority and non-minority group members and women employed in each work classification for the Contract. The Contractor, subcontractors, professional service firms and others working on the project must submit this information via a web-based application through the New Jersey portal, Vendor Workforce Reporting Manager. Instructions on how to complete Form CC-257R are provided within the web application. Instructions for registering and receiving the authentication code to access the web based application can be found at the Contractor Manpower Project Reporting CC-257R website at: <https://www.nj.gov/transportation/business/civilrights/pdf/CC257R.pdf>.
  - a. On a monthly basis, submit Form CC-257R through the web-based application within 10 days following the end of each reporting month.
  - b. In addition to the above, submit a hard copy of the electronic Form CC-257R to the RE within 10 days following the end of each reporting month.
  - c. Submit a copy of the confirmation e-mail of the successful submission of Monthly Employment Utilization Report to the RE within 10 days following the end of each reporting month.
3. All employment data must be accurate and consistent with certified payroll records. The Contractor is responsible for ensuring compliance with these reporting requirements. Failure of the Contractor, subcontractors, professional service firms and others working on the Contract to report monthly employment and wage data may result in payments being delayed or withheld as per 105.01, or impact the Contractor's prequalification rating with the Department.