

## STATE OF NEW JERSEY

### EEO PROVISIONS FOR CONSTRUCTION CONTRACTS

#### I. BID REQUIREMENTS

This contract is subject to the provisions of N.J.S.A. 10:2-1 through 10:2-4 and N.J.S.A. 10:5-31 et seq. (P.L. 1975, c.127), and in accordance with the rules and regulations promulgated pursuant thereto, the bidder agrees to comply with the following:

At the time the signed contract is returned to NJ TRANSIT, the said bidder (contractor) shall submit to NJ TRANSIT and the New Jersey Department of Treasury, Division of Public Contracts Equal Employment Opportunity Compliance an Initial Project Workforce Report (Form AA-201) consisting of forms provided by NJ TRANSIT and completed by the bidder (contractor) in accordance with Subchapter 7 of the regulations promulgated by the Treasurer pursuant to P.L. 1975, c.127.

#### II. EXECUTIVE ORDER 151 MANDATORY EEO AND AFFIRMATIVE ACTION REQUIREMENTS

It is the policy of the New Jersey Transit Corporation that its contracts should create a workforce that reflects the diversity of the State of New Jersey. Therefore, contractors engaged by the New Jersey Transit Corporation 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 New Jersey Transit Corporation'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 New Jersey Transit Corporation'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 State Job bank website, managed by the Department of Labor and Workforce Development, available online at <http://NJ.gov/JobCentralNJ>.
2. The Contractor shall keep specific records 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 New Jersey Transit Corporation 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 New Jersey Transit Corporation no less frequently than once every 12 months.
5. The Contractor shall comply with the requirements set forth at N.J.A.C. 17:27.

### III. SUBCONTRACTS; EQUAL EMPLOYMENT GOALS

The contractor agrees to incorporate these State of New Jersey EEO Provisions for Construction Contracts in its construction subcontracts.

The New Jersey Department of Treasury, Division of Public Contracts Equal Employment Opportunity Compliance (hereinafter "Division") shall individually establish the targeted minority and women employment goals for determining good faith equal employment opportunity efforts by each construction contractor and subcontractor for each trade on each contract. The Division shall review the trades to be utilized during the completion of the work as reported on the Initial Project Workforce Report and determine the targeted employment goals based upon the number of qualified minorities and women available as reported by the New Jersey Department of Labor, Division of Planning and Research in its report, EEO Tabulations—Detailed Occupations by Race/Hispanic Groups.

In accordance with N.J.A.C. 17:27, Contractors and subcontractors are required to make a good faith effort to provide equal employment opportunity for minorities and women. Failure to make good faith efforts to provide equal employment opportunity for minorities and women may result in sanctions including fines/penalties, withholding of payment, termination of the contract, suspension/debarment or such other action as provided by law.

The contractor shall obtain the targeted employment goals from the Division's website at [www.state.nj.us/treasury/contract\\_compliance](http://www.state.nj.us/treasury/contract_compliance) or request the employment goals from the Division of Public Contracts Equal Employment Opportunity Compliance after submitting the initial project workforce report to the Division of Public Contracts Equal Employment Opportunity Compliance.

The contractor shall then be responsible for the completion and submittal of a Monthly Project Workforce Report (Form AA-202) for the duration of this contract.

**(NOTE: FOR THE PURPOSE OF THIS CONTRACT THE "PUBLIC AGENCY COMPLIANCE OFFICER" REFERENCED BELOW IS NJ TRANSIT'S VICE PRESIDENT OF DIVERSITY PROGRAMS AND THE "PUBLIC AGENCY" IS NJ TRANSIT.)**

### IV. MANDATORY CONTRACT LANGUAGE

N.J.S.A. 10:5-31 et seq. (P.L.1975,c.127) and N.J.A.C. 17:27-1.1 et seq. MANDATORY AFFIRMATIVE ACTION LANGUAGE FOR CONSTRUCTION CONTRACTS

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

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. 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.

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.

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.

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.

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 New Jersey Department of Labor and Workforce Development (Dept. of L.W.D.), 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 Dept. of L.W.D., 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 Dept. of L.W.D., 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 subcontractor agrees to afford equal employment opportunities to 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 Dept. of L.W.D., 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 Dept. of L.W.D., 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 paragraph (i) above, whenever vacancies occur. At the request of the Dept. of L.W.D., 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 Dept. of L.W.D., 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 Dept. of L.W.D., Construction EEO

Monitoring Program and submitted promptly to the Dept. of L.W.D. 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.

After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Dept. of L.W.D., Construction EEO Monitoring Program an initial project workforce report (Form AA 201) electronically provided to the public agency by the Dept. of L.W.D., Construction EEO Monitoring Program through its website for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7. The contractor also agrees to submit a copy of the Monthly Project Workforce Report (Form AA202) once a month thereafter for the duration of this contract to the Dept. of L.W.D., Construction EEO Monitoring Program and to the public agency compliance officer.

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.

(D). The contractor and its subcontractors shall furnish such reports or other documents to the Dept. of L.W.D., Construction EEO Monitoring Program as may be requested by the Dept. of L.W.D., 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 Dept. of L.W.D. Construction EEO Monitoring Program for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code at N.J.A.C. 17:27-1.1 et seq.