

(c) (No change.)

(d) The system will transfer membership to any State-administered system as follows:

1. A member, desiring to transfer service credit and contributions from one State-administered retirement system to another shall file an Application of Interfund Transfer and an "Enrollment Application" in place of the customary "Application for Withdrawal." This application will void all possible claims against the former system and all rights and benefits under the former system when approved and the new membership is commenced in the new system.

2.-4. (No change.)

(e)-(g) (No change.)

(a)

DIVISION OF ADMINISTRATION

Disabled Veteran-Owned Business Set-Aside

Adopted New Rules: N.J.A.C. 17:14

Proposed: May 21, 2018, at 50 N.J.R. 1251(a).

Adopted: May 13, 2019, by Elizabeth Maher Muoio, State Treasurer.

Filed: May 13, 2019, as R.2019 d.060, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 52:18A-30(d) and 52:32-31.1 et seq.

Effective Date: June 17, 2019.

Expiration Date: June 17, 2026.

Summary of Public Comments and Agency Responses:

The official comment period ended July 20, 2018.

The Department of the Treasury ("Department" or "Treasury") received comments from:

1. Jeff Cantor, Colonel, US Army (Ret)

2. David Earp, President, Walker Diving Underwater Construction Co

3. Wahid Elnashfan, President of US Fresh.

1. COMMENT: All three commenters supported measuring contract awards as a percentage of total contract dollars as opposed to the number of contracts. (1, 2, and 3)

RESPONSE: As the Treasury implements this program, the State plans to regularly look at the methodology to be employed. At this juncture, the State plans to utilize the three percent of contracts, inclusive of subcontractors where appropriate. It is the State's hope that this will encourage successful attainment of work by disabled veterans.

2. COMMENT: A commenter would like the set-aside requirement to read three percent for goods and services and three percent for construction as opposed to the current three percent for both together. (1)

RESPONSE: The statute does not envision a set requirement to allow for flexibility in establishing the best criteria based upon facts and circumstances as they develop. Given this, while the State appreciates the intent of the commenter, and will continue to monitor the program, establishing the same standard for both goods and services versus construction, may not be advisable.

3. COMMENT: A commenter would like to add a prime contractor goal of three percent and a subcontracting goal of three percent. (1)

RESPONSE: While the statute affords some flexibility as it relates to goal setting, and the statute requires a three percent in total, operationalizing a hard requirement at both the prime contractor and subcontractor level might unduly limit procurement opportunities.

4. COMMENT: A commenter would like set-aside construction projects to include only those projects that allow satisfaction of the set-aside requirement by way of the award of a prime contractor. (1)

RESPONSE: As discussed in the Response to Comment 3 above, this would also require a statutory change.

5. COMMENT: Two commenters would like to change the bidding process from identifying three bidders in order to qualify a contract for set-aside to identifying just two bidders. (1 and 2)

RESPONSE: This would require a statutory change as the law specifies "at least three" qualified bidders (N.J.S.A. 52:32-31.4).

6. COMMENT: Two commenters would like the State to bid directly with subcontractors so that subcontractors would enjoy enhanced legal protection. (2 and 3)

RESPONSE: Direct bidding with subcontractors is not specified by the current statute. However, it is expected that in some instances, a bid could be structured to encourage the use of disabled veteran-owned businesses as subcontractors.

7. COMMENT: A commenter would like prime vendors to be required to set aside three percent of their open bids. (1)

RESPONSE: The State cannot require a private contractor to set aside a portion of its business, it can, however, encourage as part of a specific bid specification with the State, that disabled veteran-owned businesses be considered.

8. COMMENT: A commenter would like the application fee waived, as other entities such as the State of New York and the Veterans Administration do not require it. (1)

RESPONSE: Treasury appreciates the need to encourage registration on the part of the disabled veterans. To that end, Treasury has determined that the Division of Revenue and Enterprise Services (DORES) should not charge a fee. As such, Treasury will remove the specific fee requirement at N.J.A.C. 17:14-3.1(a)2iii and (e)1 and will not adopt the proposed language requiring a \$167.00 application fee.

9. COMMENT: A commenter would like the State to develop a working relationship with the Veterans Administration of Small and Disadvantaged Business Utilization to better inform disabled veterans how to register with the State. (1)

RESPONSE: Cooperative efforts that might expand the pool of potential bidders is always a desirable goal and something Treasury will certainly consider and explore further. However, it is not required to formalize this in the proposed new rules.

10. COMMENT: A commenter would like to see a central certification board created across all agencies to simplify the certification process. (1)

RESPONSE: While Treasury encourages efforts to simplify processes, it is limited in its individual ability to effectuate such a change. Other agencies, such as NJ Transit may have alternative criteria as to procurement. Treasury is in active conversation with other agencies to share information, including lists of qualified bidders. Moreover, where agencies use an existing Federal standard, some symmetry exists. However, these proposed new rules only reflect the authority of the Department of Treasury to effectuate the requirements specified in N.J.S.A. 52:32-31.1 et seq.

11. COMMENT: A commenter would like the name changed to the Service Disabled Veteran Owned Business from Disabled Veterans Owned Business to be consistent with the Federal designation. (1)

RESPONSE: The program name is derived directly from the statute's title, and various references in the Set-Aside Act for Disabled Veterans' Business (Act), N.J.S.A. 52:32-31.1 et seq., and, as such, the Division believes it is important to remain consistent with the statute where possible. Nonetheless, the intent of the statute, and corresponding rules, is to apply to service disabled veterans.

12. COMMENT: A commenter would like to allow disabled veterans to compete for bids under the set-aside program as they await certification (CVE) from the Veterans Administration. (1)

RESPONSE: The statute currently allows this as an option, as an individual has two different pathways, pursuant to N.J.S.A. 52:32-31.2 to qualify as a disabled veterans' business.

13. COMMENT: The commenters would like to change the requirement that the principal place of business be in New Jersey (as defined by 51 percent of its revenues or employees accrue to New Jersey) to a broader basis requiring only an office in New Jersey. (1 and 2)

RESPONSE: N.J.S.A. 52:32-31.2 has clearly delineated the requirement that the business be New Jersey based.

14. COMMENT: A commenter would like to eliminate the residency and citizenship requirements for veterans to bring it in line with the Minority, Women and Small Business Enterprise standards. (2)

RESPONSE: The authorizing statute, N.J.S.A. 52:32-31.2, provides limitation to options available to create enhanced flexibility, particularly as it relates to the citizenship requirements. However, the statute's

definition of “disabled veterans’ business” does allow some flexibility as it relates to residency, which is reflected in the rules.

15. COMMENT: A commenter would like to tighten the fraudulent penalties by increasing the penalties to five years and adding prosecution under the Federal Stolen Valor Act. (1)

RESPONSE: The proposed penalties are consistent with the statute and are already stringent. Increased penalties would require a statutory change.

16. COMMENT: A commenter would like agencies to adhere to the law and “develop a plan” rather than “attempt to develop a plan.” (2)

RESPONSE: The commenter’s concern refers to the proposed language in N.J.A.C. 17:14-5.1, Planning and reporting. Treasury agrees the use of the words “attempt to” is not required and that omitting the words creates no substantive change regarding the requirement. N.J.A.C. 17:14-5.1(a) will be changed upon adoption to not include “attempt to.”

17. COMMENT: A commenter would like to identify a deadline for submitting the annual report to the Governor and the Legislature to “120 days after the end of the fiscal year.” (2)

RESPONSE: The statute does not specify a specific timeframe for submitting the annual report. While 120 days seems reasonable, Treasury is in the process of implementing this program and prefers to set the deadline at 180 days to allow the program to flourish prior to the first reporting cycle. As such, the Department will change N.J.A.C. 17:14-5.1(b) to include 180 calendar days.

Summary of Agency-Initiated Changes:

1. The Department will change N.J.A.C. 17:14-1.1(a) to specify that the three percent set-aside of State contracts includes subcontracts.

2. The Department will change the definition of “consultant” at N.J.A.C. 17:14-1.2 to delete “in support of the design or construction project” to ensure the definition is not inadvertently limited to design and construction procurements.

3. The Department will add a definition for “Department” meaning the Department of the Treasury at N.J.A.C. 17:14-1.2 to provide clarity when the term is used.

4. The Department will add a complete, self-contained definition of “disabled veteran-owned business” at N.J.A.C. 17:14-1.2, rather than cross-referencing to N.J.A.C. 17:14-2.1, in order to provide ease in use of the chapter.

5. The Department will update the definition of “disabled veteran business database” at N.J.A.C. 17:14-1.2 to provide the website of the database.

6. The Department will change the definition of “Invitation for Bids” at N.J.A.C. 17:14-1.2 to delete the reference to “Requests for Quotations” as that term is no longer used and clarify that Requests for Proposals are currently used for procurements.

7. The Department will change the definition of “Premier Business Services” at N.J.A.C. 17:14-1.2 to include a reference to the business portal and its website address.

8. The Department will add a definition for “principal place of business” at N.J.A.C. 17:14-1.2 and delete the corresponding language in N.J.A.C. 17:14-2.1 to streamline the rule.

9. The Department will change the definition of “registration” at N.J.A.C. 17:14-1.2 to specify that this is a Department of the Treasury initiative, not a Division of Revenue and Enterprise Services initiative.

10. The Department will change the definition of “set-aside contract” at N.J.A.C. 17:14-1.2 to clarify that a use of a subcontractor may satisfy a set-aside contract requirement.

11. The Department will not adopt the proposed definition of “target” at N.J.A.C. 17:14-1.2, and replace any instance of the word “target” with “goal” at N.J.A.C. 17:14-3.2 and 4.2, as it better reflects the intent of the Department.

12. The Department will change the definition of “Vendor Registration Form” at N.J.A.C. 17:14-1.2 to update the website address to the form on the Division’s webpage to a more specific link.

13. The Department will change N.J.A.C. 17:14-2.2(b)3 to modify the time that a business is ineligible to transact business with a State contracting agency to reflect the statutory requirement from “one year” to “between three months and one year.”

14. The Department will change N.J.A.C. 17:14-2.2(b)4, (d), and (e) so that, while a business may be disqualified for a period of time for a failure to provide complete information, and in turn, be required to reapply as a disabled veteran-owned business, it will not have its registration revoked. At paragraph (b)4 and subsection (e), “revoke” is updated to “disallow” and at subsection (d) “and the Division will revoke the registration of the business as a disabled veteran-owned business from the State’s database” is not adopted.

15. The Department will change N.J.A.C. 17:14-3.1(a)2ii to include a cross-reference to the provision that affords the Division the authority to remove an applicant from the disabled veteran-owned business database.

16. The Department will change N.J.A.C. 17:14-3.1(a)2, (a)2i, and (e) to provide additional clarity as to where to find the relevant forms and additional requirements for registration and annual verification, including providing an updated website address.

17. The Department will change N.J.A.C. 17:14-3.3(b) to specify that the disabled veteran-owned business set-aside unit is tasked with conducting a hearing on a challenge to a registration and removing “of the Director.”

18. The Department will change the heading of N.J.A.C. 17:14-3.4 and subsection (a) to specify that the procedures for denial and revocation also apply to “non-conferral” of a registration.

19. The Department will change N.J.A.C. 17:14-4.1(a) to specify that the set-aside goal applies to all types of contracting, regardless of whether it relates to goods and services or construction.

20. The Department will change N.J.A.C. 17:14-4.1(a)1 to clarify that the percentage of set-aside contracts shall include, for measurement purposes, any subcontract where relevant.

21. The Department will change N.J.A.C. 17:14-4.1(b) to clarify that any contract shall be executed under the entity’s bidding threshold; as an entity’s bidding threshold may not be established by N.J.S.A. 52:34-7 et seq., the statutory reference is not adopted.

22. The Department will change N.J.A.C. 17:14-4.2(d)1 to include the missing word “form.”

23. The Department will change N.J.A.C. 17:14-4.3(a)2 to direct a bidder to consult the disabled veteran-owned businesses database and paragraph (a)3 to direct a bidder to retain documentation of good faith efforts to solicit and award subcontracts to disabled veteran-owned businesses. The Department will not adopt paragraph (a)5, as well as subsection (b), as both are unnecessary in light of the clarifications at subsection (a), particularly since the provision as proposed might prove difficult to monitor and is beyond the purview of the regulating entity.

24. The Department will change N.J.A.C. 17:14-5.1(c) to clarify that the disabled veteran-owned business set-aside unit is responsible for receipt and analysis of agency reports, as well as issuance of the annual report to the Governor and Legislature, not the Department of the Treasury.

Federal Standards Statement

A Federal standards analysis is not required because the adopted new rules relate generally to the State of New Jersey and its disabled veteran-owned business registration process and set-aside process. In circumstances where Federal law or regulation are required to be used for a specific procurement procedure, the adopted new rules would be superseded by Federal procedures, provided that the State contracting agency issues a written declaration that such Federal laws or regulations are in effect.

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

CHAPTER 14

DISABLED VETERAN-OWNED BUSINESS REGISTRATION

SUBCHAPTER 1. GENERAL PROVISIONS

17:14-1.1 Purpose and scope

(a) The rules in this chapter are promulgated by the Department of the Treasury to implement N.J.S.A. 52:32-31.1 et seq. (P.L. 2015, c. 116), to establish a set-aside program that requires State agencies with contracting

authority to set a goal to award three percent of State contracts *[and]**, **including*** subcontracts*,* to eligible disabled veteran-owned businesses.

(b) The rules in this chapter apply to both State contracts for goods and services awarded by any State contracting agency and to the award of State contracts for construction and construction-related services, unless unique rules for a specific contract type are specified.

(c) Applications and questions regarding eligibility as a disabled veteran-owned business should be addressed to:

Department of the Treasury
Division of Revenue and Enterprise Services
33 West State St., 5th Floor
PO Box 026
Trenton, NJ 08625-0026

(d) Questions concerning the award of contracts under this chapter should be directed to the State contracting agency issuing the particular solicitation or contract award.

17:14-1.2 Definitions

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

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

“Bidding threshold” means the dollar limit placed on all public contracting agencies pursuant to N.J.S.A. 52:34-7 or 52:25-23 to establish when public advertisement of bids is required.

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

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

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

“Delegated purchasing authority” means the authority of a State agency to award contracts below the bid threshold amount pursuant to authority delegated by the Director, Division of Purchase and Property (See N.J.S.A. 52:25-23) or for design and construction contracts pursuant to the authority delegated by the Director, Division of Property Management and Construction (see N.J.S.A. 52:34-7).

“Department” means the Department of the Treasury.

“Director” means the head of the Division of Revenue and Enterprise Services in the Department of the Treasury.

“Disabled veteran-owned business” means a business that has its principal place of business in the State, is independently owned and operated, and *[meets the criteria set forth in N.J.A.C. 17:14-2.1]* ***at least 51 percent of which is owned and controlled by persons who are disabled veterans or a business that has its principal place of business in this State and has been officially verified by the United States Department of Veterans’ Affairs as a service disabled veteran-owned business for the purposes of Federal department contracts pursuant to Federal law*.**

“Disabled veteran business database” means the State database that ***is accessible via a link on the Division’s webpage at www.nj.gov/njbgs; the database*** lists disabled veteran-owned businesses and is available for use by State contracting agencies and others in confirming eligibility for set-aside contracts and subcontracts and in reporting progress toward established contract award goals.

“Disabled veteran-owned business set-aside unit” or “Unit” means the section in the Department of the Treasury that provides oversight and direction for the disabled veteran-owned business set-aside program for the State of New Jersey.

“Division of Property Management and Construction” or “DPMC” means the division within the Department of the Treasury that provides a

centralized design and construction contract procurement and administration service for other State agencies pursuant to N.J.S.A. 52:18A-151 et seq.

“Division of Purchase and Property” means the division within the Department of the Treasury that provides centralized procurement of goods and services for Executive Branch State agencies pursuant to N.J.S.A. 52:27B-56.

“Division of Revenue and Enterprise Services” or “Division” means the division in the Department of the Treasury that administers the registration of disabled veteran-owned business enterprises.

“Goal” means the statutorily determined percentage of contracting dollars awarded by each State contracting agency to disabled veteran-owned businesses in order to comply with the statutory set-aside provisions. It includes the percentage of State contracting dollars that the State contracting agency makes a good faith effort to award to disabled veteran-owned businesses.

“Invitation for Bids” or “IFB” means the document issued by a State contracting agency to initiate an advertised bidding and contract award process, and includes Requests for Proposals (RFPs) *[and Requests for Quotations (RFQs)]*. The IFB establishes the contract’s terms and conditions, the product and/or service specifications, and the bidding eligibility to businesses approved as disabled veteran-owned business entities.

“Premier Business Services” means online business services provided via the State’s business *[website]* ***portal*** at www.newjerseybusiness.gov* ***www.nj.gov/njbusiness/home/pbs/***, which include tax filing and payment services for which a business must register as part of its disabled veteran-owned business application.

“Principal place of business” means the location where 51 percent or more of a business’ employees work, as evidenced by the payment of unemployment taxes, or the location where 51 percent or more of business operations occur, as supported by income or business tax returns.

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

“Request for Proposals” or “RFP” means the document issued by a State contracting agency to initiate an advertised bidding and contract award process.

“Set-Aside Act” means the New Jersey Set-Aside Act for Disabled Veteran’s Businesses, N.J.S.A. 52:32-31.1 et seq. (P.L. 2015, c. 116).

“Set-aside contract,” for the purposes of construing and applying the rules in this chapter only, means a contract, specifically designated by a contracting agency, in whole or in part, for award to a disabled veteran-owned business, *[either at a prime or subcontract level]* ***which may include a component allowing the use of subcontractors to satisfy the requirements of a set-aside*.**

“State contracting agency” or “contracting agency” means any board, commission, committee, authority, division, department, college, or university of the State that possesses the legal authority to enter into or award contracts for goods and services or design and construction contracts.

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

[“Target” means the numerical objectives that a State contracting agency establishes, on a contract-by-contract basis, in order to meet its disabled veteran-owned business goal.]

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

1. Establishes a fixed unit price, hourly rate, or discount for items or services to be purchased thereunder;
2. Provides for some estimated dollar volume or minimum quantities to be purchased; or
3. Provides for the rebidding of any single purchase that exceeds a specified maximum amount.

“Treasurer” means the Treasurer of the State of New Jersey or his or her designee.

“Vendor Registration Form” means the form available *via a link* on the *[State’s]* *Division’s* website^{*}, <https://www.njportal.com/DOR/SBERegistry/> *at www.nj.gov/njbg*, that a business completes when applying to *[the Division to]* register as a disabled veteran-owned business under this chapter.

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

SUBCHAPTER 2. STANDARDS OF ELIGIBILITY AND REQUIRED INFORMATION

17:14-2.1 Standards of eligibility for disabled veteran-owned businesses for goods and services and for State construction contracts

(a) In order to be eligible as a disabled veteran-owned business, a business must satisfy the following criteria:

1. The business must be independently owned and operated, as evidenced by its management being responsible for both its daily and long-term operation, and its management owning and controlling at least 51 percent interest in the business;
2. The business must be incorporated or registered to do business in the State and have its principal place of business in New Jersey^{*}, defined as such when either 51 percent or more of its employees work in New Jersey, as evidenced by the payment of New Jersey unemployment taxes, or 51 percent or more of its business activities take place in New Jersey, as evidenced by its payment of income or business taxes^{*}; and
3. The business owner must have Federal certification from the Department of Veteran’s Affairs as having a service-connected disability.

17:14-2.2 Obligation to provide information; penalties for failure to provide complete and accurate information

(a) Applicants under this chapter shall accurately and honestly supply all information required by the Division.

(b) When a business has been approved as a disabled veteran-owned business on the basis of false information knowingly supplied by the business, and the business has been awarded a State contract, or a subcontract thereto, the Unit, after notice and opportunity for a contested case hearing pursuant to N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and N.J.A.C. 17:14-2.2, shall:

1. Assess the business any difference between the contract amount and what the State’s cost would have been if the contract had not been awarded in accordance with the provisions of N.J.S.A. 52:32-31 et seq.;
2. Assess the business a penalty in the amount of 10 percent of the amount of the contract or subcontract involved;
3. Order the business ineligible to transact any business with a State contracting agency for a period *[of]* **between three months and** one year; and
4. Order the Division to *[revoke]* **disallow** the registration of the business as a disabled veteran-owned business for a period of one year from the State’s database.

(c) Any business approved by the Division as a disabled veteran-owned business shall immediately apprise the Division of any circumstances that might affect the eligibility of the business under this chapter.

(d) The failure of a business to report any such changed circumstances, or the intentional and/or knowing reporting of false information, shall disqualify the business for inclusion in the database under this chapter *[and the Division will revoke the registration of the business as a disabled veteran-owned business from the State’s database]* for a period of one year.

(e) When a business has been registered as a disabled veteran-owned business on the basis of false information knowingly supplied by the business, but the business has not been awarded a State contract, the Unit, after notice and opportunity for a contested case hearing pursuant to N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and N.J.A.C. 17:14-2.2, shall order the Division to *[revoke]* **disallow** the registration of the business as a disabled veteran-owned business from the State’s database for a period of one year.

SUBCHAPTER 3. REGISTRATION PROCEDURES

17:14-3.1 Registration procedures for disabled veteran-owned businesses

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

1. The business shall register at www.newjerseybusiness.gov, for Premier Business Services; and
2. The business shall apply to the Division by completing the Vendor Registration Form, available online at *[www.newjerseybusiness.gov]* **www.nj.gov/njbg**.

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

ii. If an applicant knowingly supplies inaccurate or false information, the application shall be denied under this chapter, the business shall be disqualified from inclusion in the disabled veteran-owned business database **pursuant to N.J.A.C. 17:14-2.2**, and the business may be subject to adverse action, including, but not limited to, debarment, suspension, or disqualification by contracting agencies, the Attorney General, or other enforcement agencies.

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

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

(c) The disabled veteran-owned business database shall be used by State contracting agencies to confirm eligibility of a business for set-aside contracts and subcontracts and in reporting progress toward established contract award goals.

(d) Every five years, no later than 20 days prior to expiration of the disabled veteran-owned business’s registration, and not earlier than 60 days prior to the expiration of such registration, a business interested in remaining registered as a disabled veteran-owned business shall comply with the registration procedures under (a) above.

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

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

2. If the business submits the annual verification statement by the anniversary date of the original registration notice, but either the verification statement or other information received by the Division indicates that the business is no longer eligible for registration as a disabled veteran-owned business, the Division shall revoke the registration pursuant to this chapter and following revocation, the business shall be deemed revoked from the State’s disabled veteran-owned business database. The business may appeal this revocation pursuant to the procedures set forth at N.J.A.C. 17:14-3.4.

17:14-3.2 Time for application to register as a disabled veteran-owned business

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

(b) If a business is to be eligible to bid on a specific set-aside contract or participate in the subcontracting *[target]* **goal** programs for purposes of this chapter, it must be validly registered as a disabled

veteran-owned business by the Division on or before the date the bid or proposal is due at the State contracting agency.

17:14-3.3 Procedures for challenging a business registered as a disabled veteran-owned business

(a) The qualification under this chapter of a business as a disabled veteran-owned business may be challenged by any third-party.

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

2. A registration challenge to the Unit may concern only the qualification of the business under this chapter as a disabled veteran-owned business. Any challenge to a business's qualifications to perform a contract shall be referred to the appropriate State contracting agency.

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

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

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

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

4. At the discretion of the Unit Manager or his or her designee, participants at the hearing may be permitted to file written exceptions to the report no later than five working days after the date on which the report is made available to the business.

5. If no exceptions are filed, or permitted to be filed, under (b)4 above, the decision shall be final. If exceptions are filed under (b)4 above, after reviewing the exceptions, the Unit Manager will issue a final decision on the challenge and notify the parties by letter.

6. A challenge to a business's eligibility shall not stay the contract award process.

17:14-3.4 Procedures for denial*, **non-conferral***, or revocation of registration as a disabled veteran-owned business

(a) If the Division *[either denies]* ***chooses to not confer or deny*** an application for a disabled veteran-owned business registration*,* or revokes a registration as a disabled veteran-owned business, the Division shall so notify the business. The denial or revocation is effective as of the date of the Division's notice to the business of its denial or revocation determination.

(b) When a business has been denied registration or has had its registration revoked, the business has the right to an appeal. The appeal procedures in this section govern denials and revocations, except for revocations on the basis of false information knowingly supplied by the business or failure to submit the annual verification statement. Revocation based on false information knowingly supplied by the business is addressed by the procedures at N.J.A.C. 17:14-2.2.

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

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

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

3. The burden of proof lies with the appealing business to show that the denial or revocation of the business registration was in error and that the

appealing business meets all of the requisite qualifications under this chapter to be registered as a disabled veteran-owned business.

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

5. At the discretion of the Unit Manager or his or her designee, the business may be permitted to file written exceptions to the report no later than five working days after the date on which the report is made available to the business.

6. If no exceptions are filed, or permitted to be filed, under (c)5 above, the decision shall be final. If exceptions are filed under (c)5 above, after reviewing the exceptions, the Unit Manager shall issue a decision on the appeal and notify the business by fax (or other electronic means) and letter.

SUBCHAPTER 4. SET-ASIDE PROGRAM PROCEDURES

17:14-4.1 Set-aside program goals and procedures

(a) Each State contracting agency, consistent with its contracting authority, shall establish and administer a set-aside program that provides*[with regard to goods and services contracts,]* a goal toward at least three percent of the contracts awarded to eligible disabled veteran owned businesses. *[With regard to design and construction contracts, the goal is to award three percent of the total contract value to either prime or subcontractors that qualify as disabled veteran-owned businesses.]*

1. Percentages shall be measured by the total number of all such set-aside contracts*, **including any subcontracts, where relevant***, in comparison to the total number of all publicly advertised contracts awarded by the agency within a fiscal year.

2. The State contracting agencies shall designate specific contracts for set-aside.

(b) Each State contracting agency shall establish written procedures and maintain records as necessary to define, document, and report its good faith efforts to attain the established set-aside contracting goals, including contracts executed under its bidding threshold*[as established by N.J.S.A. 52:34-7 et seq]*. The set-aside procedures shall include the following provisions:

1. The State contracting agency shall review its schedule of contracting opportunities and establish a method of determining which upcoming contracts will be offered as part of the agency's set-aside program.

i. A contract may be considered suitable for set-aside whenever the contracting agency can establish a reasonable expectation that bids may be obtained from at least three qualified eligible businesses capable of furnishing the specified products or services.

ii. The designation as a set-aside contract shall be made prior to public advertisement for bids.

(c) When a State contracting agency has made a determination that a contract is suitable for set-aside purposes, the following provisions apply:

1. Public advertisement of the set-aside contracting opportunity shall be consistent with the contracting agency's standard bidding procedures and may be supplemented by special notification efforts to maximize participation;

2. Invitations for bids, or a portion thereof, shall be specifically set aside for disabled veteran-owned businesses and bids from other bidders may be rejected;

3. The State contracting agency shall reject all bids and withdraw the designation as a set-aside contract when the agency determines that acceptance of the lowest responsive bid would result in the payment of an unreasonable price or in a contract that is otherwise unacceptable pursuant to that agency's contracting statutes and rules;

4. The State contracting agency shall notify all participating bidders of the bid cancellation, stating the reasons for the cancellation and the agency's intent to re-solicit bids on an unrestricted basis; and

5. The award of any contract designated as a set-aside contract shall be made in accordance with the agency's contracting statutes, rules, and procedures.

17:14-4.2 Subcontracting *[target]* ***goal*** program and procedures

(a) When deemed appropriate, any State contracting agency, consistent with its contracting authority, may establish and administer a

subcontracting **[target]* *goal** program in lieu of, or as a supplement to, the set-aside program.

(b) Each State contracting agency shall maintain records regarding subcontracts awarded pursuant to this program. The procedures shall include the following provisions:

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

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

ii. The designation of a particular RFP as a disabled veteran-owned business set-aside subcontracting opportunity shall be made prior to the public advertisement.

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

1. The disabled veteran-owned business enterprise goal for construction projects set-aside can be reached either at the prime or subcontractor level.

2. The public advertisement shall include a notice to prospective bidders disclosing the disabled veteran-owned business goal for the contract.

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

(d) In the event that a goods and services RFP is designated as a disabled veteran-owned business set-aside subcontracting opportunity, the RFP shall contain a detailed notice to bidders advising of the following:

1. The bidding package includes a disabled veteran-owned business subcontractor utilization **form** that must be completed and included as part of the bidder's proposal if the bidder intends to subcontract; and

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

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

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

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

(e) Each bidder awarded a contract for a procurement that contains the set-aside subcontracting goal requirement shall fully cooperate in any

studies or surveys that may be conducted by the State contracting agency to determine the extent of the bidder's compliance with this chapter.

17:14-4.3 Good faith efforts of bidders; requirements

(a) The following actions shall be taken by a bidder in establishing a good faith effort to solicit and award subcontracts to eligible disabled veteran-owned businesses, as established in the RFP:

1. The bidder shall attempt to locate qualified potential disabled veteran-owned business subcontractors;

2. The bidder shall **[request a listing of disabled veteran-owned businesses from the Division]* *consult the disabled veteran business database** if none are known to the bidder;

3. The bidder shall keep a record of its efforts, including the names of businesses contacted and the means and results of such contacts, **as well as documentation on any good faith efforts to solicit and award any subcontract to an eligible disabled veteran-owned business**; ***and***

4. The bidder shall provide all potential subcontractors with detailed information regarding the specifications^[; and] **.**

^{[5.} The bidder shall attempt, wherever possible, to negotiate prices with potential subcontractors submitting higher than acceptable price quotes.

(b) Bidders shall maintain adequate records to document their good faith efforts to solicit and award subcontracts to eligible disabled veteran-owned businesses, as established in the RFP, including those specific actions set forth in (a) above.]^{*}

17:14-4.4 Exemptions from set-aside program

In those circumstances where Federal law, rules, or regulations permit or require a procurement procedure other than those prescribed in this chapter, the State contracting agency shall follow the Federal procedures notwithstanding the provisions of this chapter, provided that the State contracting agency issues a written declaration that such Federal laws, rules, or regulations are in effect.

SUBCHAPTER 5. PLANNING AND REPORTING

17:14-5.1 Planning and reporting

(a) All agencies shall **[attempt to]** develop a plan for the coming fiscal year to comply with the programs established by this chapter.

(b) Annually, within **[60]* *180** calendar days of the end of each State fiscal year, the agency shall file with the Unit, a report containing the following information:

1. The total number of all contracts awarded to disabled veteran-owned businesses, including a separate listing of set-aside contracts, and the percentage of the procurements by the agency;

2. The types and sizes of businesses receiving set-aside awards and the nature of the purchases and contracts; and

3. The efforts made to publicize the program.

(c) The **[New Jersey Department of the Treasury]* *Unit** shall receive and analyze agency reports and submit an annual report to the Governor and the Legislature showing progress made toward the objectives of N.J.S.A. 52:32-31.1 et seq. (P.L. 2015, c. 116), during the preceding fiscal year.