

CHAPTER 4
DEPARTMENT CONTRACTS

Authority

N.J.S.A. 52:27D-3.

Source and Effective Date

R.1997 d.375, effective August 15, 1997.
See: 29 N.J.R. 2734(a), 29 N.J.R. 4101(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 4, Department Contracts, expires on February 11, 2003. See: 34 N.J.R. 350(a).

Chapter Historical Note

Chapter 4, Rules of Administration, was adopted as R.1969 d.31, effective December 17, 1969. See: 2 N.J.R. 2. New rules for Subchapter 2, Debarment and Suspension From Contracting, were adopted by R.1987 d.389, effective October 5, 1987. See: 19 N.J.R. 1261(b), 19 N.J.R. 1791(b). Subchapter 1, Contract Approval, was repealed by R.1991 d.164, effective February 26, 1991. See: 23 N.J.R. 1026(a).

Pursuant to Executive Order No. 66(1978), Chapter 4 was readopted by R.1992 d.389, effective September 11, 1992. See: 24 N.J.R. 2322(a), 24 N.J.R. 3515(a). As a part of R.1992 d.389, effective October 5, 1992, Chapter 4, Rules of Administration, was renamed Chapter 4, Department Contracts.

Pursuant to Executive Order No. 66(1978), Chapter 4, Department Contracts, was readopted by R.1997 d.375, effective August 15, 1997. See: Source and Effective Date. As a part of R.1997 d.375, effective September 15, 1997, Subchapter 2, Debarment and Suspension From Contracting, was recodified as Subchapter 1, Debarment and Suspension From Contracting. See, also, section annotations.

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SUBCHAPTER 1. DEBARMENT AND SUSPENSION FROM CONTRACTING

5:4-1.1 Definitions

When used in this subchapter, the following terms shall have the following meanings:

“Affiliates” means persons having an overt or covert relationship such that any one of them directly or indirectly controls or has the power to control another.

“DCA” means the Department of Community Affairs.

“Debarment” means an exclusion from DCA contracting for reason of a demonstrated lack of responsibility as evidenced by one or more incidents involving an offense or failure or inadequacy of performance within a period of time that is reasonable in light of the seriousness of the offense or the failure or inadequacy of performance.

“DCA contracting” means any arrangement giving rise to an obligation to supply anything to, or perform any service for, DCA or any public or private entity or person purchasing the supply or service with funds provided by DCA where DCA retains the right to approve or disapprove the nature or quality of the supplies or services or the persons who may provide or perform the same.

“Person” means any natural person, company, firm, association, corporation or other entity.

“Suspension” means an exclusion from DCA contracting for a temporary period of time, pending the completion of an investigation or legal proceedings.

5:4-1.2 Causes for debarment

(a) In the public interest, DCA may debar a person for any of the following causes:

1. Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract.
2. Violation of the Federal Organized Crime Control Act of 1970, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice, or any other offense indicating a lack of business integrity or honesty.
3. Violation of Federal or State antitrust statutes, or of the Federal Anti-Kickback Act (18 U.S.C. 874, 40 U.S.C. 276b and c).
4. Violation of any Federal or State law governing the conduct of elections.
5. Violation of the Law Against Discrimination (P.L. 1945, c.169, as supplemented by P.L. 1975, c.127) or of any other Federal or State law against discrimination in employment.
6. Violation of any law governing hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages, or child labor.

7. Violation of any law governing the conduct of an occupation, profession or regulated industry.

8. Violation of any other law which may bear upon a lack of responsibility or moral integrity.

9. Willful failure to perform in accordance with contract specifications or within contractual time limits.

10. A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that such failure or unsatisfactory performance has occurred within a reasonable time preceding the determination to debar and was caused by acts within the control of the person debarred.

11. Violation of contractual or statutory provisions regulating contingent fees.

12. Any other cause affecting responsibility as a DCA contractor of such serious and compelling nature as may be determined by DCA to warrant debarment, even if such conduct has not been or may not be prosecuted as being a violation of such laws or contract.

13. Debarment by some other department or agency in the Executive branch.

14. Debarment by any department, agency or instrumentality of any other state or territory or of the United States of America.

5:4-1.3 Conditions affecting debarment

(a) Debarment pursuant to this subchapter shall be made only upon approval by the Commissioner.

(b) The existence of any of the causes set forth in N.J.A.C. 5:4-1.2 shall not necessarily require that a person be debarred. In each instance, the decision to debar shall be made within the discretion of the Commissioner and shall be rendered in accordance with the best interests of the State.

(c) In determining the seriousness of the offense or failure or inadequacy of performance, and whether disbarment is warranted, the Commissioner shall give consideration to any mitigating factors.

(d) The existence of a cause set forth in N.J.A.C. 5:4-1.2(a)1 through 8 shall be established upon the rendering of a final judgment of conviction by, or the entry of a plea of guilty or nolo contendere in, a court of competent jurisdiction or an administrative agency empowered to render such judgment. In the event of a successful appeal of a judgment of conviction, the debarment shall be removed unless other cause for debarment exists.

(e) The existence of a cause set forth in N.J.A.C. 5:4-1.2(a)9 through 12 shall be established by evidence which the Commissioner determines to be clear and convincing in nature.

(f) Debarment for one of the causes set forth in N.J.A.C. 5:4-1.2(a)13 and 14 shall be proper, provided that one of the causes set forth in N.J.A.C. 5:4-1.2(a), or an equivalent cause under the law of another jurisdiction, was the basis for debarment by the original debarring agency. Such debarment may be based entirely upon the record of facts obtained by the original debarring agency, or upon a combination of such facts and additional facts.

Amended by R.1997 d.375, effective September 15, 1997.

See: 29 N.J.R. 2734(a), 29 N.J.R. 4101(a).

Amended N.J.A.C. references throughout.

5:4-1.4 Procedures; period of debarment; scope of debarment

(a) Any division within DCA seeking to debar a person or his affiliates shall furnish such person with a written notice which shall:

1. State that debarment is being proposed;

2. Set forth the reasons for the proposed debarment;

3. Indicate that the person is entitled to contest the proposed action in an administrative hearing to be conducted by the Office of Administrative Law in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq. provided that a request for such a hearing is made within 15 days of receipt by the person of notice of the proposed debarment, and that hearing requests are to be sent to the Hearing Coordinator, Department of Community Affairs, CN 800, Trenton, New Jersey 08625.

(b) Debarment shall be for a reasonable, definitely stated period of time which shall not, without good cause, exceed five years. Debarment for an additional period of time shall be permitted, provided that notice of the intention to impose an additional period of debarment is provided to the person and the person is afforded an opportunity to contest the proposed further debarment in accordance with the Administrative Procedure Act in the manner set forth in (a) above.

(c) Except as may otherwise be provided by law, a debarment may be removed, or the period of debarment reduced, by the Commissioner upon submission of a good faith application under oath, supported by documentary evidence, setting forth substantial and appropriate grounds for the granting of relief, such as newly discovered material evidence, reversal of a conviction or judgment, actual change of ownership, management or control, or the elimination of the cause(s) for which debarment was imposed.

(d) A debarment may include all known affiliates of a person, provided that each affiliated person shall have the right to contest a proposed debarment in accordance with the Administrative Procedure Act in the manner set forth in (a) above.

5:4-1.5 Causes for suspension

In the public interest, the Commissioner, after consultation with the Division of Law, may suspend a person for any cause set forth in N.J.A.C. 5:4-1.2, or upon a reasonable suspicion that such cause exists.

Amended by R.1997 d.375, effective September 15, 1997.
See: 29 N.J.R. 2734(a), 29 N.J.R. 4101(a).

5:4-1.6 Conditions for suspension

(a) Suspension shall be imposed only by the Commissioner after consultation with the Division of Law, except as may otherwise be provided by law.

(b) The existence of any cause for suspension shall not require that suspension be imposed. A decision to suspend shall be made at the discretion of the Commissioner and shall be rendered in the best interests of the State.

(c) Suspension shall be based only upon adequate evidence that cause exists or upon evidence adequate to create a reasonable suspicion that cause exists and shall not be based upon any unsupported accusation. In assessing whether adequate evidence exists, consideration shall be given to the amount of credible evidence that is available, to the existence or absence of corroboration as to important allegations, and to inferences which may properly be drawn from the existence or absence of affirmative facts.

(d) Reasonable suspicion of the existence of a cause described in N.J.A.C. 5:4-1.2(a)1 through 8 may be established by the rendering of a final judgment or conviction by a court or administrative agency of competent jurisdiction, by grand jury indictment, or by evidence that such violations of civil or criminal law did, in fact, occur.

(e) A suspension imposed by another agency for any of the causes described in N.J.A.C. 5:4-1.2 may be the basis for the imposition of a concurrent suspension by DCA, which suspension may be imposed when found to be in the best interest of the State.

Amended by R.1997 d.375, effective September 15, 1997.
See: 29 N.J.R. 2734(a), 29 N.J.R. 4101(a).
Amended N.J.A.C. references throughout.

5:4-1.7 Procedures; period of suspension; scope of suspension

(a) The Commissioner, after consultation with the Division of Law, may suspend a person or his affiliates, provided that within 10 days after the effective date of the suspension, the Commissioner provides each affected person with a written notice which shall:

1. State that a suspension has been imposed and set forth its effective date;
2. Set forth the reasons for the suspension to the extent that the Division of Law determines that such reasons may properly be disclosed;

3. State that the suspension is for a temporary period of time pending the completion of an investigation and such legal proceedings as may ensue; and

4. Indicate that, if such legal proceedings are not commenced or the suspension removed within 60 days of the date of such notice, the person will be given an opportunity to contest the suspension in accordance with the Administrative Procedure Act in the manner set forth in N.J.A.C. 5:4-1.4(a).

(b) A suspension shall not continue beyond 18 months from its effective date unless civil or criminal action regarding the alleged violation shall have been initiated within that period or unless debarment action shall have been initiated. Whenever civil or criminal prosecution or debarment action shall have been initiated, the suspension may be continued until all legal proceedings shall have been completed.

(c) A suspension may include all known affiliates of a person, provided that each affected person shall have the right after 60 days from the date of the notice of suspension to contest the suspension in accordance with the Administrative Procedure Act in the manner set forth in N.J.A.C. 5:4-1.4(a).

Amended by R.1997 d.375, effective September 15, 1997.
See: 29 N.J.R. 2734(a), 29 N.J.R. 4101(a).
Amended N.J.A.C. references throughout.

5:4-1.8 Extent of debarment and suspension

Exclusion from DCA contracting by virtue of debarment or suspension shall extend to all contracting and subcontracting within the control or jurisdiction of DCA, including any contracts which utilize funds granted or loaned by DCA. When determined by the Commissioner, after consultation with the Division of Law, to be essential to the public interest, an exemption from total exclusion may be made with respect to a particular contract.

5:4-1.9 Lists of debarred and suspended persons

(a) DCA shall supply to the State Treasurer a monthly list of all persons who are currently debarred or suspended, including the effective date and term, if determined, of such debarment or suspension. Such list shall at all times be available for public inspection.

(b) Insofar as may be practicable, prior notice shall be given to the Attorney General and to the Treasurer of any proposed debarment or suspension.

5:4-1.10 Discretion

Nothing contained in this subchapter shall be construed to limit the authority of DCA to contract or to refrain from contracting within the discretion allowed by law.

5:4-1.11 Lists of other agencies

Notwithstanding the failure of DCA to debar or suspend any person pursuant to this subchapter, whenever DCA shall participate in any program financed, regulated or established by any department, agency, or instrumentality of the United States of America, it may rely on and distribute lists of persons suspended or debarred by such department, agency, or instrumentality and prevent any listed person from participating in that program.

5:4-1.12 Information concerning criminal conduct and records

To the extent permitted by State and Federal law, as determined by the Attorney General, DCA may seek to obtain, use and disclose information concerning the criminal conduct or criminal record of any person engaged in, or seeking to be engaged in, DCA contracting.