

1. In applying for an extension, the bidder shall submit a signed affidavit stating that the applicant's financial and bonding status has not so substantially changed since its last submission of a Questionnaire that a change of classification would be warranted. The Division of Building and Construction may verify this statement and request additional documentation before an extension is granted.

2. The Division shall grant or deny the extension no later than 10 calendar days following receipt of the written extension request.

3. No more than one extension may be granted per classification period. Thereafter, a bidder shall submit an updated Questionnaire in order to continue its classification.

4. The extension of a classification shall be effective for a period of seven months from the expiration date of the preceding rating period which was based upon the submission of a GSA-27.

(c) Where a bidder has not been granted an extension or where an extension period is expiring, the bidder shall file an updated Questionnaire with the DBC. Based on this Questionnaire, the DBC shall reclassify the bidder, as appropriate.

(d) Where, in the course of a classification period, the financial, bonding and/or corporate status of a contractor changes so substantially as to warrant a change of classification or rating, the contractor shall notify the Division, in writing, within 30 days of the change(s) and include the submission of revised Form GSA-27, or applicable portions thereof, as required. Examples of substantial change include, but are not limited to, insolvency, decreases in bonding capacity and changes in ownership.

1. With this notice, the contractor may also request a change of classification or rating.

2. The DBC shall review the request for revision and issue a decision not later than 20 days from the date of the request.

3. Any change of classification or rating shall be effective only for the remainder of the original classification period.

Case Notes

Unsuccessful bidder's omission of prequalification affidavit in bid for contract to add to and alter a school was a waivable, immaterial defect. *Tec Elec., Inc. v. Franklin Lakes Bd. of Educ.*, 284 N.J.Super. 480, 665 A.2d 803 (L.1995).

17:19-2.8 Trade classifications

(a) In order to be classified for a given trade, a contractor must have successfully completed at least two significant projects in that trade within the previous four years. These projects may have been either public projects or private

sector projects, or a combination of the two. Certified copies of contracts shall be submitted as proof.

(b) The trades for which an applicant may request classifications are as listed on the current issue of Form GSA-27.

17:19-2.9 Aggregate rating limit

(a) A contractor's aggregate rating shall limit the dollar value of State contracts which the contractor may perform at any given time. The aggregate rating limit shall be based on three factors:

1. The contractor's net current quick assets reported in its Financial Statement;
2. The contractor's bonding capacity, as described in N.J.A.C. 17:19-2.4; and
3. The contractor's performance rating as described in N.J.A.C. 17:19-2.6.

(b) Net current quick assets shall be determined according to generally accepted accounting principles, but shall not include:

1. Costs and estimated earnings in excess of billings on uncompleted contracts;
2. Any assets not in the name of the contractor;
3. Any past due accounts;
4. Any fixed assets or other assets which either are not liquid or are not readily convertible to cash such as assets in escrow;
5. Securities which are not readily saleable;
6. Securities which have been pledged;
7. The cash surrender value of a life insurance policy on the contractor unless that value is verified, in writing, from the insurance company; and
8. Any amounts due from related parties (affiliates, officers, employees, etc.).

(c) In no event shall a contractor's aggregate rating exceed the contractor's aggregate bonding capacity.

(d) The contractor's aggregate rating shall be calculated as follows:

1. Multiply the contractor's net current assets according to the following table:

<u>Net Current Assets</u>	<u>Multiplier</u>
\$1-20,000	6
\$20,001-40,000	8
\$40,001-80,000	10
\$80,001 or higher	12

2. Multiply the result of this calculation by the performance multiplier based upon at least three projects completed in last four years.

Average Performance Evaluations (APE)	Performance Multiplier
90.0 percent or higher	2.00
80.0 percent to 89.9 percent	1.00
70.0 percent to 79.9 percent	0.50
69.9 percent or lower	0.25

EXAMPLES: The following examples show the effect of a performance multiplier for a contractor (1) having an APE of 90.0 percent or higher and (2) an APE of 80.0 percent to 89.9 percent.

- A = Net Current Assets
 B = Asset Multiplier
 C = Calculated Classification Limit
 D = Performance Multiplier
 E = Final Classification Limit

(Formula) $A \times B = C \times D = E$

- $85,000 \times 12 = 1,020,000 \times 2.00 = 2,040,000$
- $85,000 \times 12 = 1,020,000 \times 1.00 = 1,020,000$

3. If a contractor has received no performance evaluations and/or has not completed a project for the DBC, a performance multiplier of 1.00 will be assigned to that contractor.

4. Where a contractor has not provided a bonding statement as required in N.J.A.C. 17:19-2.4, the contractor's aggregate rating shall be equal to the total obtained above but not greater than \$100,000. Further, the contractor may bid only on projects which do not require any bond.

5. When the contractor's APE is less than 0.25, the Director may reject the application or assign a classification rating less than that provided for in N.J.A.C. 17:19-2.9, based on all factors relevant to contractor's ability to perform.

17:19-2.10 Special classification requirements

(a) The Director may establish appropriate and special classification requirements for a given project as may be necessary in order to ensure competitive bidding for that project or as may be dictated by the unique or specialized nature of the work to be performed on that project.

(b) The Director may establish appropriate and special classification requirements for a given trade classification as may be necessary in order to ensure that bidders are in conformity with the latest technical or safety developments in that trade. Notice of any such special requirements will be duly given to all previously classified contractors via direct mail and/or published in major State newspapers and trade journals.

17:19-2.11 Effective dates of classifications and ratings

(a) A classification or rating resulting from the filing of a GSA-27 shall be effective eight days after receipt of all required and approved information in accordance with this subchapter, or the day following expiration of existing classification, whichever is later.

(b) A revision or amendment of a classification or rating, resulting from an administrative review or an application for revision, shall be effective 20 days from the date of the approved request but only for the unexpired remainder of the existing classification period.

(c) In order to be an eligible bidder for a project, a contractor must have been assigned by the DBC a valid classification and rating which is appropriate to the project and which is effective as of the date of the bid due date for the project. Any classification or rating which, as of the date of the bid due date, either has expired or has not yet been assigned, shall not be valid for that bid.

(d) If during a pre-bid review of a bidder's classification rating, a question arises as to whether a bid for a project is within a bidder's existing classification or rating limits, the bid shall be opened, and if it appears that the bid is at variance with the contractor's trade classification or dollar value ratings, the bid shall be rejected.

17:19-2.12 Award of contracts exceeding aggregate rating limits

(a) A contractor shall not be awarded a contract which, when added to the uncompleted portions of all other currently held contracts from whatever source (public or private) sources, would exceed the contractor's aggregate rating limit. For example, for purposes of determining the dollar value of currently held contracts, contracts from the State of New Jersey, from other governmental jurisdictions and from the private sector shall be counted.

(b) Where there is a question of whether a contractor's aggregate rating limit can accommodate a given award, the contractor's bid for the contract shall be opened in the normal course, and the contractor's eligibility shall thereafter be computed.

(c) A contractor shall include with each bid a statement of the current value and status of its uncompleted work, and whether the award of the given contract would exceed its aggregate rating limit. Whether a contract is eligible for a given award shall be determined based on the dollar value of the given contract, the contractor's aggregate rating limit as of the bid due date, and the dollar value of the contractor's uncompleted contract work as of the bid due date.

1. However, where a contractor provides with its bid clear and convincing evidence that its outstanding balance of contracts will be within its aggregate rating limit by the time the bid project is scheduled to begin, the Director shall base this determination on the complexity of the bid project, the duration of the bid project and the risk that the State will encounter if the bid is accepted.

(d) Where a contractor successfully bids for two or more contracts which, either in combination with each other or in combination with the uncompleted portions of other currently held contracts, would exceed the contractor's aggregate rating limit, the contractor shall be awarded only those contracts which in combination fall within the contractor's aggregate rating limit, as follows:

1. Contracts shall be considered for that contractor in chronological order of the bid due dates; and

2. Where a given contract award would exceed the contractor's aggregate limit, the contractor shall not be eligible for that award.

(e) As a contractor completes existing contracts or discrete portions thereof, the contractor's eligibility for new contracts within its existing aggregate rating shall be adjusted accordingly.

17:19-2.13 Removal of bidder from approved list

Where the Director determines that a prospective bidder is unqualified to submit bids on any public work, he/she shall so notify the prospective bidder of the proposed debarment, suspension or disqualification. In such circumstances, the contested case hearing provisions of N.J.A.C. 17:19-3 shall be followed.

SUBCHAPTER 3. DEBARMENT, SUSPENSION AND DISQUALIFICATION OF A PERSON(S)

17:19-3.1 Definitions

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

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

“DBC contracting” means any arrangement giving rise to an obligation to supply anything to or perform any service for a private or public person where the Division of Building and Construction (DBC) provides substantial financial assistance and retains the right to approve or disapprove the nature or quality of the goods or service, or the person(s) who may supply or perform the same.

“Debarment” means an exclusion from DBC contracting, on the basis of a lack of responsibility evidenced by an offense, failure or inadequacy of performance, for a reasonable period of time commensurate with the seriousness of the offense, failure or inadequacy of performance.

“Disqualification” means the denial or revocation of a qualification to bid or otherwise engage in DBC contracting, which has been granted or applied for pursuant to statute or rules and regulations.

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

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

17:19-3.2 Causes for debarment of a person(s)

(a) In the public interest, the Division of Building and Construction shall 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. Violations of the Federal or State antitrust statutes, or of the Federal Anti-Kickback Act (18 U.S.C. 874, 40 U.S.C. 276b, c);

4. Violations of any of the laws governing the conduct of elections of the Federal government, State of New Jersey or of its political subdivisions;

5. Violation of the “Law Against Discrimination” (P.L. 1945, c.169, N.J.S.A. 10:5-1 et seq., as supplemented by P.L. 1975, c.127), or of the act banning discrimination in public works employment (N.J.S.A. 10:2-1 et seq.), or of the act prohibiting discrimination by industries engaged in defense work in the employment of person therein (P.L. 1942, c.114, N.J.S.A. 10:1-10 et seq.);

6. Violations of any laws governing hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages or child labor;

7. Violations of any laws governing the conduct of occupations or professions or regulated industries;

8. Violations of any other laws 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 State contractor of such serious and compelling nature as may be determined by the Division of Building and Construction to warrant debarment, including such conduct as may be prescribed by the laws or contracts enumerated in this paragraph even if such conduct has not been or may not be prosecuted as violations of such laws or contracts;

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

14. Making any offer or agreement to pay or to make payment of, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b and e, in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family as defined by N.J.S.A. 52:13D-13i, of any such officer or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g;

15. Failure by a vendor to immediately report to the Attorney General and to the Executive Commission on Ethical Standards in writing the solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee;

16. Failure by a vendor to immediately report in writing, or obtain a waiver from the Executive Commission on Ethical Standards for, the direct or indirect undertaking of any private business, commercial or entrepreneurial relationship (including the selling of any interest in such vendor), regardless of whether the relationship is pursuant to employment, contract or other agreement, express or implied, with the following:

i. Any State officer or employee or special State officer or employee having duties or responsibilities connected with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof; or

ii. Any person, firm or entity with which the State officer or employee is employed or associated or has an interest in within the meaning of N.J.S.A. 52:13D-13g.

17. Influencing or attempting to influence or cause to be influenced, any State officer or employee or special State officer or employee in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee;

18. Causing or influencing or attempting to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his or her official position to secure unwarranted privileges or advantages for the vendor or any other person.

17:19-3.3 Conditions affecting the debarment of a person(s)

(a) The following conditions shall apply concerning debarment:

1. Debarment shall be made only upon approval of the Director, Division of Building and Construction, except as otherwise provided by law;

2. The existence of any of the causes set forth in N.J.A.C. 17:19-3.2 shall not necessarily require that a person be debarred. In each instance, the decision to debar shall be made within the discretion of the Director, Division of Building and Construction, unless otherwise required by law, and shall be rendered in the best interests of the State;

3. All mitigating factors shall be considered in determining the seriousness of the offense, failure or inadequacy of performance and in deciding whether debarment is warranted;

4. The existence of a cause set forth in N.J.A.C. 17:19-3.2(a)1 through 8 shall be established upon the rendering of a final judgment or conviction including a guilty plea or a plea of nolo contendere by a court of competent jurisdiction or by an administrative agency empowered to render such judgment. In the event an appeal taken from such judgment or conviction results in reversal thereof, the debarment shall be removed upon the request of the debarred person, unless other cause for debarment exists;

5. The existence of a cause set forth in N.J.A.C. 17:19-3.2(a)9 through 11 shall be established by evidence which the Division of Building and Construction determines to be clear and convincing in nature;

6. Debarment for the cause set forth in N.J.A.C. 17:19-3.2(a)12 shall be proper, provided that one of the causes set forth in N.J.A.C. 17:19-3.2(a)1 through 11 was the basis for debarment by the original debarring agency. Such debarment may be based entirely on the record of facts obtained by the original debarring agency.

17:19-3.4 Procedures, period of debarment and scope of debarment affecting the debarment of a person(s)

(a) The procedures, period of debarment and scope of debarment to be followed by the Division of Building and Construction are as follows:

1. The Division of Building and Construction seeking to debar a person or his/her affiliates shall furnish such party with a written notice stating that debarment is being considered, setting forth the reasons for the proposed debarment and indicating that such party will be afforded an opportunity for a hearing if he/she so requests within a stated period of time. All such hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. However, where another department or agency has imposed debarment upon a party, the Division of Building and Construction may also impose a similar debarment without affording an opportunity for a hearing, provided that the Division of Building and Construction furnishes notice of the proposed similar debarment to that party, and affords that party an opportunity to present information in its behalf to explain why the proposed similar debarment should not be imposed in whole or in part;