

17:19-2.12 Classification change

(a) A firm shall notify DPMC in writing during a classification period, when the financial, bonding and/or corporate status of a firm changes substantially as to warrant a change of classification or rating. The firm shall provide said notice to DPMC within 10 days of the change(s) and shall submit a revised DPMC-27, or applicable portions thereof, as required. Examples of substantial change include, but are not limited to, insolvency, decreases in bonding capacity, changes in ownership, or any of the factors affecting the firm's responsibility, as described in N.J.A.C. 17:19-2.4(b).

(b) A firm may request an increase in its aggregate rating for the remainder of the firm's existing classification period by submitting to DPMC an updated financial statement for a period of at least six months from the ending date of the financial statement submitted with the prior DPMC-27 in conformance with the provisions found in N.J.A.C. 17:19-2.1(b). However, a firm that has an aggregate rating of more than \$15,000,000 may request an increase in its aggregate rating by submitting a CPA reviewed financial statement.

(c) DPMC shall review all submissions in accordance with this section and issue a decision no later than the 20 business days from the date of the firm's submission. Any change of classification shall be effective only for the remainder of the original classification period.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).
In (a), added the last sentence.

Case Notes

Bidder that acted in good faith in calculating work on hand by cost-to-complete method and complying with aggregate rating limit was not precluded from proving after the fact that it qualified, based on clear and convincing evidence that outstanding balance of contracts would be within aggregate limit by bid project's scheduled start date. In re DBC Project No. A0716-00. 303 N.J.Super. 384, 697 A.2d 131 (A.D. 1997).

17:19-2.13 Award of contracts exceeding aggregate rating

(a) A firm shall include with each bid a statement of the current value and status of its backlog of uncompleted construction work (not to include "non-at-risk" construction management contracts) as of the bid due date and a certification that the award of the subject contract would not cause the firm to exceed its aggregate rating.

(b) If at the time of a bid opening a question arises as to whether a bid for a project is within a firm's existing classification or aggregate rating, the bid shall be opened, and if the bid is at variance with the firm's trade classification or aggregate rating, the bid shall be rejected.

(c) A firm shall not be awarded a contract which, when added to the backlog of uncompleted construction work, as shown on Form DPMC 701, would exceed the firm's aggregate rating. The backlog of uncompleted construction work shall be the total contract value of unbilled work, as evi-

denced by the most recent approved invoice (or other similar documentation) received by the bidder before or on the date of the bid. The firm may deduct 85 percent of the total contract value of the work performed by principal trades, as described in (e) below, on such uncompleted work.

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

1. Contracts shall be considered in the chronological order of the bid due dates.
2. Where a given contract award would exceed the firm's aggregate rating, the firm shall not be eligible for that award.
3. However, if a firm provides with its bid clear and convincing evidence that its outstanding balance of contracts will be within its aggregate rating by the time the bid project is scheduled to begin, the Director may determine to accept the bid if it is in the best interest of the State.

(e) On any project where a firm is awarded a single prime contract which encompasses work to be performed by a subcontractor in a principal trade, as defined in N.J.S.A. 52:32-2, including plumbing and gas fitting, steam and hot water heating and ventilation, electrical, structural steel and ornamental iron work, and general construction, and where the work to be performed by the subcontractors is specifically identified in the bid, the firm shall calculate the value of the awarded contract (for purposes of determining how much the contract will contribute toward determining the firm's backlog) by deducting 85 percent of the actual subcontract price of the work to be performed by principal trades from the actual price of the contract awarded to it. The firm will have the burden of proving that the work is encompassed by the principal trades and the value of the amount of the work performed by those principal trades.

SUBCHAPTER 3. DEBARMENT, SUSPENSION AND DISQUALIFICATION OF FIRM(S) AND INDIVIDUAL(S)

17:19-3.1 Causes for debarment of a firm(s) or an individual(s)

(a) In the public interest, DPMC may debar a firm or an individual for any of the following causes:

1. Commission of a criminal offense incident to obtaining or attempting to obtain a public or private con-

tract, or subcontract thereunder, or in the performance of such contract or subcontract;

2. Civil or criminal violation of the Federal Organized Crime Control Act of 1970 or the New Jersey Racketeer Influenced and Corrupt Organizations Act, N.J.S.A. 2C:41-1 et seq., or the 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 any state antitrust statutes, or of the Federal Anti-Kickback Act (18 U.S.C. § 874, 40 U.S.C. § 276c);

4. Violations of any of the laws governing the conduct of elections of the Federal government, any state or 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 work 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 individuals 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 Federal or state laws that 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 firm or the individual 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 DPMC to warrant debarment, including such conduct as may be prescribed by the laws or contracts enumerated in this section even if such conduct has not been or may not be prosecuted as violations of such laws or contracts;

13. Debarment or disqualification by any other agency of government;

14. Making any offer or agreement to pay or 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 of an agency of government 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 of an agency of government, 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 officer or employee of any State agency of government or special State officer or employee as defined by N.J.S.A. 52:13D-13;

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 of any State agency of government or special State officer or employee as defined by N.J.S.A. 52:13D-13, having duties or responsibilities connected with the purchase, acquisition or sale of any property or services by or to any State agency of government or any instrumentality thereof; or

ii. Any firm or entity with which the State officer or employee of an State agency of government 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 officer or employee of any agency of government, in that officer's or employee's 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 of any State agency of government or special State officer or employee as defined by N.J.S.A. 52:13D-13, to use, or attempt to use, that officer or employee's official position to secure unwarranted privileges or advantages for the vendor or any other firm or individual; and/or

19. Agreeing with any agency of government to refrain from bidding on public works projects for reasons that, in the discretion of the Director, warrant debarment.

Amended by R.2000 d.76, effective February 22, 2000.