

CHAPTER 4

POLICY AND PROCEDURE FOR CONTRACTS AND AGREEMENTS FOR THE PURCHASE OF GOODS AND SERVICES

Authority

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Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 4, Policy and Procedure for Contracts and Agreements for the Purchase of Goods and Services, expires on September 5, 2013. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 4, Policy and Procedure for Contracts and Agreements for the Purchase of Goods and Services, was adopted as R.2000 d.243, effective June 5, 2000. See: 32 N.J.R. 1142(a), 32 N.J.R. 2084(a).

Chapter 4, Policy and Procedure for Contracts and Agreements for the Purchase of Goods and Services, expired on June 5, 2005 and was adopted as new rules by R.2006 d.324, effective September 5, 2006. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS

12A:4-1.1 Purpose

This chapter describes the New Jersey Commerce, Economic Growth and Tourism Commission's policy and procedure for contracts and agreements for the purchase of goods and services. All purchases, contracts and agreements must comply with this chapter, unless a bidder is specifically instructed otherwise in the bid request.

12A:4-1.2 Definitions

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

“Award” means a written notification or purchase order that the Commission has determined that it shall contract with a particular vendor.

“Bid” means a vendor’s formal submission of a response to a bid request.

“Bid Notice” means a notice made available to potential vendors of goods and services that are sought by the Commission, through public advertisement.

“Bid Request” means a document issued to potential vendors that contains the specifications required for goods and services.

“Bid threshold” means the dollar amount set forth at N.J.S.A. 52:27C-76a, \$25,000, as adjusted by the Governor in consultation with the Department of Treasury (for example, \$29,400, effective as of State fiscal year 2007), pursuant to N.J.S.A. 52:27C-76b, above which the Commission shall advertise for bids in accordance with procedures set forth at N.J.S.A. 52:27C-76 and this chapter.

“Board of Directors” means the 11 voting members and two non-voting members of the Commission as set forth in N.J.S.A. 52:27C-68.

“Chief Executive Officer” means the person appointed by the Governor with the advice and consent of the Senate who shall serve at the pleasure of the Governor during the Governor’s term of office and until a successor is appointed and qualified.

“Commission” means the Commerce, Economic Growth and Tourism Commission.

“Goods or services being requested” means the subject matter of the contract or agreement.

SUBCHAPTER 2. THRESHOLD AMOUNT FOR ADVERTISEMENT

12A:4-2.1 Price exceeds bid threshold

All contracts or agreements for the purchase of goods and services, where the cost or contract price exceeds the bid threshold, as defined at N.J.A.C. 12A:4-1.2, shall, except as otherwise provided, be made, negotiated, or awarded only after public advertisement for bids therefore and shall be awarded to that responsible bidder whose bid, conforming to the invitation for bids, is most advantageous to the Commission in its judgment, upon consideration of price and other factors. Any or all bids may be rejected when the Commission determines that it is in the public interest to do so.

12A:4-2.2 Price is less than or equal to the bid threshold

All contracts or agreements for the purchase of goods and services, where the cost or contract price is less than or equal

to the bid threshold, shall be made, negotiated, or awarded without public advertisement, as provided in N.J.A.C. 12A:4-5.

12A:4-2.3 Price exceeds the bid threshold and advertisement has been waived

All contracts or agreements for the purchase of goods and services, where the cost or contract price exceeds the sum of the bid threshold, and where advertising has been waived pursuant to N.J.A.C. 12A:4-3, shall be made, negotiated or awarded without public advertisement, as provided in N.J.A.C. 12A:4-5.

SUBCHAPTER 3. WAIVER OF ADVERTISEMENT

12A:4-3.1 General information

Any contract or agreement for the purchase of goods and services, where the cost or contract price exceeds the bid threshold, may be made, negotiated, or awarded by the Commission without advertisement for bids, pursuant to the provisions in this subchapter.

12A:4-3.2 Requisite circumstances for waiver

(a) The waiver of advertisement is possible only under the following circumstances:

1. When the subject matter consists of:
 - i. Items or services supplied by a public utility subject to the jurisdiction of the Board of Public Utilities, and tariffs and schedules of the charges made, charged or extracted by the public utility for those items or services are filed with the Commission; or
 - ii. The purchase, rental, lease of such office space, office machinery, specialized equipment, buildings or real property as may be necessary for or incidental to the performance of the Commission’s duties and the exercise of its powers under N.J.S.A. 52:27C-61 et seq.; or
2. When any one or more of the following circumstances exist:
 - i. Standardization of equipment and interchangeability of parts is in the public interest;
 - ii. Only one source of supply or service is available;
 - iii. The exigency of the Commission’s duties and responsibilities will not admit of advertisement;
 - iv. More favorable terms can be obtained from a primary source of supply of an item or service;
 - v. Bid prices, after advertising, are not reasonable or have not been independently arrived at in open competition, but no negotiated purchase, contract, or

agreement may be entered into under this subparagraph after the rejection of all bids received unless:

(1) Notification of the intention to negotiate and reasonable opportunity to negotiate is given to each responsible bidder;

(2) The negotiated price is lower than the lowest rejected bid price of a responsible bidder; and

(3) The negotiated price is the lowest negotiated price offered by any responsible bidder;

vi. The purchase is to be made from, or the contract is to be made with, any Federal or State government or agency or other entity, or any political subdivision thereof; or

vii. Purchases are made through or by the Director of the Division of Purchase and Property, in the Department of the Treasury.

12A:4-3.3 Recommendation for waiver

If the value of the contract exceeds the bid threshold, and if at least one of the circumstances set forth in N.J.A.C. 12A:4-3.2 exists to justify waiver of the advertisement requirement, the Chief Financial Officer or designee shall make such a recommendation to the Chief Executive Officer, or designee, for presentation to the Board of Directors for its consideration. If the Board of Directors adopts a resolution allowing the advertisement requirement to be waived, the Commission shall follow the procedure articulated in N.J.A.C. 12A:4-5. If the Board of Directors fails to adopt such a resolution, the purchase, contract, or agreement shall be subject to the advertisement requirement and the Commission shall follow the procedure articulated in N.J.A.C. 12A:4.

SUBCHAPTER 4. POLICY AND PROCEDURE FOR ADVERTISEMENTS

12A:4-4.1 Publications

(a) The Commission shall purchase advertisement space in newspapers and advertise a bid notice sufficient to alert potential vendors that the Commission is soliciting a bid and that the bid request is available directly from the Commission.

(b) The bid notice shall contain information on how a vendor may obtain the bid request. Bid requests shall be sent to all responding vendors.

(c) Where applicable, the advertisement shall be published in a newspaper in general circulation, determined to give notice to the broadest range of potential vendors sufficiently in advance to allow for competitive bidding but, in no event, less than 10 business days prior to the bid opening date.

12A:4-4.2 Direct mailing

The bid request may also be mailed directly to pre-identified, potential vendors.

12A:4-4.3 Re-Advertisement

In the event that the terms, conditions, or requirements of the bid request change prior to bid opening, an addendum to the bid request shall be issued to all of the vendors who have requested or received the bid request.

SUBCHAPTER 5. UNADVERTISED PROCUREMENT

12A:4-5.1 Commission's discretion

When advertisement is not required, the Commission may award or negotiate a contract, or agreement for the purchase of goods and services, in any manner in which the Commission, in its judgment, deems necessary to serve its unique interests and purposes and which promotes, whenever practicable, full and free competition by the acceptance of quotations or proposals and by the use of other suitable methods.

12A:4-5.2 Mechanism for soliciting and receiving bids

(a) For the unadvertised procurement of goods or services whose values do not exceed the bid threshold, the Commission may solicit and receive bids, either orally or in writing, consistent with the guidelines issued by the Director of the Division of Purchase and Property within the Department of the Treasury, and shall memorialize the bids in a format sufficient to express the terms and conditions of the bid and of the award.

(b) For the unadvertised procurement of goods or services whose values exceed the bid threshold, the Commission shall solicit and receive only written bids. The Commission shall memorialize the bids in a format sufficient to express the terms and conditions of the bid and of the award.

SUBCHAPTER 6. BID REQUEST

12A:4-6.1 Bid request

(a) The bid request shall, at a minimum:

1. Identify the specifications, fully describing the goods or services requested and the term of contract and any other terms and conditions;

2. Utilize equivalents for any brand names specified in the requisitions or advertisements;

3. Articulate the manner of and any special requirements for submitting bids, specifying any certifications and forms required for the submission; and

4. Contain notice of the time and place of opening of the bids.

(b) Bid requests must be stamped "Request for Sealed Bid." The Commission shall enclose a return envelope stamped "Confidential-Sealed Bid Enclosed." On the face of the envelope, in the lower left-hand corner, shall be typed the bid due date (month, day, year) and a reference number.

12A:4-6.2 Pre-bid conferences

At the discretion of the Commission, either mandatory or non-mandatory pre-bid conferences may be held to explain in detail the specifications of a bid request and to answer any questions. The details of the pre-bid conference shall be supplied in the bid request and/or advertised prior to bid due date.

SUBCHAPTER 7. RECEIPT AND OPENING OF BIDS SUBMITTED IN RESPONSE TO PUBLIC ADVERTISEMENT

12A:4-7.1 Receipt of bids submitted in response to a public advertisement

(a) All bids received in response to a public advertisement shall be mailed or hand delivered and shall be time stamped on each envelope received and sorted by reference number.

(b) Bids submitted to the Commission must be sealed or they shall be rejected.

(c) All bids shall remain sealed until the announced opening day and time.

(d) Bids cannot be faxed. Any bids that are faxed shall be rejected.

(e) No bids shall be accepted after the time designated in the bid notice or bid request or addendum.

12A:4-7.2 Opening of bids

(a) At the designated location and on the designated date and time, the Commission shall proceed to unseal all bids received and announce the vendor and price given.

(b) A record of the price shall be made.

12A:4-7.3 Confidentiality of bidder information

Bidder information shall not be available to anyone outside the Commission until public opening. However, upon opening, all documents become subject to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

12A:4-7.4 Bid errors

If a bidder discovers after submitting his bid, but prior to bid opening, that he has made an error, he may request that his bid be withdrawn. The bidder may submit a revised bid as long as the bid is received prior to the time for bid opening.

SUBCHAPTER 8. AWARD OF PURCHASE, CONTRACT, OR AGREEMENT

12A:4-8.1 Time frame for issuance of award

(a) The Commission shall mail a notice of intent to award or a purchase order to the successful vendor and notices to all other vendors in the time stated in the bid request, but in no case more than 30 days after the passage of a Board resolution approving a recommended award, except as stated in (b) below.

(b) The bids of any vendors who consent thereto may, at the Commission's request, be held for consideration for such longer period of time as may be agreed.

SUBCHAPTER 9. EVALUATION OF A BID SUBMITTED IN RESPONSE TO PUBLIC ADVERTISEMENT

12A:4-9.1 Cause for rejection of bids

(a) The Commission may reject bids which fail to conform with the requirements of the bid request in any way including the following:

1. Lack of required signatures in the bid document: If the vendor has not affixed his signature anywhere in the bid document, that is, on any of the documents he returns in response to a bid request. A signature on an enclosed bid deposit check (where bid security is required) shall not suffice, since bid security is not considered part of the bid document. Signatures on the Disclosure Form and the Affirmative Action Affidavit shall not constitute a bid signature;
2. If the bid is not received on or before the time and date, and at the place specified in the bid request;
3. If the bid fails to provide all of the required price information;
4. If the bid fails to include required bid security when it is required and in the amount specific in the bid;
5. If the vendor fails to attend a mandatory bidders' conference or site inspections;
6. If the vendor fails to comply with the State Affirmative Action rules at N.J.A.C. 17:27; stockholder disclosure requirements pursuant to N.J.S.A. 52:25-24.2; foreign cor-

poration registration requirements under N.J.A.C. 17:12-2.10 and N.J.S.A. 14A:13-1 et seq.; the MacBride Principles Certification pursuant to N.J.S.A. 52:34-12.2; the Business Registration and Use Tax Requirements of N.J.S.A. 52:32-44 as amended by P.L. 2004, c. 57; the Pay to Play Disclosure Certification pursuant to N.J.S.A. 19:44A-20.13; and Source Disclosure Certification pursuant to N.J.S.A. 52:34-13.2.

12A:4-9.2 Evaluation of bids

(a) The Commission shall review the bids received based upon N.J.S.A. 52:27C-76a, which requires the Commission to consider price and other factors in its awards.

(b) The specific price and other factors standards to be used for evaluating bids are as follows:

1. The vendor’s ability to meet the terms and conditions of the bid request;
2. The price received in the bid;
3. The quality of products or services normally sold;
4. Prior experience of the vendor in like procurements, if any;
5. The number of years in business;
6. The size of staff and inventory;
7. Other accounts served by vendor;
8. The financial stability of the vendor;
9. The vendor’s anticipated response time performing the terms of the bid or purchase order; and
10. Such other standards as the Commission may deem appropriate in the public interest for a specific bid request.

(c) After consideration of price and other factors, as detailed in (b) above, a recommendation on awarding the bid will be made to the Board of Directors for their action.

(d) If the Board of Directors approves the awarding of the bid, the Commission will send an intent to award notice or a purchase order to the successful vendor, and notice of the award to all other vendors who submitted bids.

(e) The Commission may waive non-material deviations in the bid format, documents or information provided.

SUBCHAPTER 10. BID SECURITY

12A:4-10.1 Security amount

The Commission reserves the right to require bid security in an amount not to exceed 10 percent of the base cost or price of the goods, services or property through certified check, cashier’s check, or bid bond at the vendor’s option.

The Commission shall hold all bid security through the evaluation process.

12A:4-10.2 Release of security

(a) All bid security from vendors who have been issued an award notice shall be held until the successful execution of all required contractual documents, bonds, insurance, or other such requirements. If a contractor fails to execute or obtain the required contractual documents, bonds, insurance or other such requirements within 30 calendar days after receipt of the award notice, the award may be withdrawn. The Commission reserves all rights inclusive of, but not limited to, the right to purchase goods and/or to complete the required work with another vendor and to recover any actual excess through forfeiture of the security or otherwise as may be necessary.

(b) All bid securities shall be returned to vendors who have not been awarded a contract, within 45 days of the award of a contract to a vendor.

SUBCHAPTER 11. AWARD PROTESTING PROCEDURES

12A:4-11.1 Informal hearings

(a) The Chief Executive Officer of the Commission, or designee, at his or her discretion, may conduct an informal hearing on the protest of a bid award, upon the request of any vendor who has submitted a bid in response to the bid request that resulted in the award being challenged.

(b) Such informal hearings as convened under this subchapter are fact finding for the benefit of the Chief Executive Officer, or designee, who may determine that sufficient information already exists in the record so that a final decision can be made without an informal hearing. The Chief Executive Officer or designee may, in his or her discretion, deny a request for an informal hearing and issue a final decision accordingly. If the decision is to hold the hearing, the bidder will be notified of the manner and time of the hearing, as further provided at N.J.A.C. 12A:4-11.2. If the decision is to deny the request for an informal hearing, the bidder will be notified of the reason for the denial.

(c) The Chief Executive Officer, or designee, may, if a case in which he or she determines that the failure to award the purchase, contract, or agreement will result in substantial costs to the State of New Jersey, or in cases where the public exigency so requires, award the purchases, contracts, and agreements, notwithstanding (a) and (b) above. The Chief Executive Officer, or designee, shall document all cases where such action is required and shall notify all bidders, contemporaneous with the notice provided under (b) above, of the intent to immediately award the purchases, contracts, and agreements in question.

(d) The Commission shall, except in those instances notices in (c) above, refrain from taking action on all purchases, contracts, and agreements for 10 working days after award, pending potential protests. If in fact the intent to award is protested, the Commission shall not award the purchase, contract, or agreement in question until the Chief Executive Officer has issued a final decision.

12A:4-11.2 Request for information hearings; hearing procedures; time limitations

(a) Any interested bidder requesting a hearing must make written request to the Chief Executive Officer or designee, setting forth the specific grounds for challenging the award and a summary of the facts to be presented at the hearing. The notice must be submitted within 10 working days after receipt of written notification that his bid has not been accepted or a notice of intent to award has been issued.

(b) Informal hearings requested under (a) above shall be held, where feasible, within 15 working days of notice to the Chief Executive Officer or designee, under (a) above. Hearings will be heard, where practicable, by a hearing officer designated by the Chief Executive Officer. The hearing officer shall prepare a report to the Chief Executive Officer, or designee, within 10 working days of the conclusion of the hearing unless, due to the circumstances of the informal hearing, a greater time is required. The informal hearing report shall be advisory in nature and is not binding on the Chief Executive Officer or designee. The protesting party shall receive a copy of the hearing officer's report and have 10 working days to provide written comments or exceptions to the Chief Executive Officer or designee. Subsequent to the 10 working day period for exceptions, the Chief Executive Officer or designee shall issue a final decision on the matter.

(c) The Chief Executive Officer, or designee, may, in his or her discretion, modify or amend time frames noted above in this section, and give adequate notice to the parties involved.

12A:4-11.3 Parties to the hearing

In those instances where a hearing is granted, the Chief Executive Officer, or designee, shall extend invitations to those bidders who requested an informal hearing and to the successful bidder, if applicable. The extent of the participation of these parties shall be limited to those matters in question as expressed by the bidder requesting an informal hearing.

SUBCHAPTER 12. DEBARMENT, SUSPENSION AND DISQUALIFICATION

12A:4-12.1 Definitions

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

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

“Commission contracting” means any arrangement giving rise to an obligation to supply goods or perform any service for Commission other than by virtue of Commission employment, or to supply goods to or perform any service for a private or public person where the Commission provides substantial financial assistance and retains the right to approve or disapprove the nature or quality of the goods or services or the persons who may supply or perform the same.

“Debarment” means an exclusion from Commission 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 an exclusion from receiving Commission financial assistance or a denial or revocation of a qualification to bid or otherwise engage in Commission contracting which has been granted or applied for pursuant to statute or rules.

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

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

12A:4-12.2 Procedure for debarment, disqualification and suspension

(a) The Chief Executive Officer, or designee, shall provide written notice to a person and know affiliates of the intent to debar, disqualify or suspend, setting forth the reasons therefor. Within 30 days of the date of the notice, the person may request a hearing. Upon receipt of a hearing request, the matter shall be referred to the Office of Administrative Law for a hearing pursuant to 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.

(b) If no hearing request is timely received, the Chief Executive Officer, or designee, may recommend, and the Board of Directors may approve, at a public meeting, the uncontested debarment of a person or known affiliate for a specific period of time upon a finding of any of the causes set forth in N.J.A.C. 12A:4-12.3. Notice of the Commission's approval of an uncontested debarment, the time period of the debarment, and the reasons therefor, shall be mailed by certified mail to the last known address of the person so debarred following the expiration of the 10-day Governor's veto period over the minutes of the public meeting at which the uncontested debarment was approved.

12A:4-12.3 Causes for debarment of a person(s)

(a) In the public interest, the Chief Executive Officer and the Board of Directors may decline to give financial assistance to any person, or may recommend debarment for any of the following causes:

1. Commission of a criminal offense as an incident to obtaining 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, Pub. L. 91-452, as amended, 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 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. Violation of any laws governing the conduct of elections of the Federal Government, State of New Jersey, or of its political subdivision;
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 persons therein (P.L. 1942, c. 114, N.J.S.A. 10:1-10 et seq.);
6. Violation of any laws governing hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages, or child labor;
7. Violation of any laws governing the conduct of occupations or professions or regulated industries;
8. Violation of any 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, including, but not limited to, failure to accept purchase orders and maintain prices or any terms and conditions as bid;
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 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

warrant debarment, including, but not limited to, making a material false representation in a bid, even if such conduct has not been or may not be prosecuted as a violation of such laws or contracts;

13. Debarment by some other department or agency in the Executive Branch of State Government; or

14. Violation of any of the prohibitions on vendor activities representing a conflict of interest in (a)14i, iii, iv and v below, or failure to report a solicitation as set forth in (a)14ii below. The provisions in this paragraph shall not be construed to prohibit a Commission officer or employee or special Commission officer or employee from receiving gifts from or contracting with persons under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the State Ethics Commission may promulgate.

i. No person shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any Commission officer or employee or special Commission officer or employee, with which such person 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 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.

ii. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any Commission officer or employee or special Commission officer or employee from any person shall be reported in writing by the person to the Attorney General and the State Ethics Commission.

iii. No person may directly or indirectly, undertake any private business, commercial, or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such person to any Commission officer or employee or special Commission officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to the Commission, or with any person, firm or entity with which he or she is employed or associated or in which he or she has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this subsection shall be reported in writing to the State Ethics Commission, which may grant a waiver of this restriction upon application of the Commission officer or employee or special Commission officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

iv. No person shall influence or attempt to influence or cause to be influenced, any Commission officer or employee or special Commission officer or employee in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of the officer or the employee.

v. No person shall cause or influence, or attempt to cause or influence, any Commission officer or employee, or special Commission officer or employee, to use, or to attempt to use, his or her official position to secure unwarranted privileges or advantages for the person or any other person.

12A:4-12.4 Conditions affecting the debarment of a person(s)

(a) The following conditions shall apply concerning disqualification/debarment:

1. Debarment shall be made only upon approval of the Board of Directors, except as otherwise provided by law.

2. The existence of any of the causes set forth in N.J.A.C. 12A:4-12.3(a) shall not necessarily require that a person be disqualified/debarred. In each instance, the decision to disqualify/debar shall be made within the discretion of the Board of Directors, unless otherwise required by law, and shall be rendered in the best interests of the Commission.

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

4. The existence of a cause set forth in N.J.A.C. 12A:4-12.3(a)1 through 8 shall be established upon the rendering of a final judgment or conviction including any 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 disqualification/debarment shall be removed upon the request of the disqualified/debarred person unless other cause for disqualification/debarment exists.

5. The existence of a cause set forth in N.J.A.C. 12A:4-12.3(a)9, 10, 11 and 14 shall be established by a preponderance of the evidence.

6. Debarment for the cause set forth in N.J.A.C. 12A:4-12.3(a)13 shall be proper, provided that one of the causes set forth in N.J.A.C. 12A:4-12.3(a)1 through 12 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, or upon a combination of such facts and additional facts.

12A:4-12.5 Period and scope of debarment/disqualification

(a) Debarment shall be for a reasonable, definitely stated period of time which as a general rule shall not exceed five years. Debarment for an additional period shall be permitted provided that notice thereof is furnished and the party is afforded an opportunity to present information in his behalf to explain why the additional period of debarment should not be imposed.

(b) Except as otherwise provided by law, a debarment may be removed or the period thereof may be reduced in the discretion of the Commission, upon the 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 cases for which the debarment was imposed.

(c) Debarment may include all known affiliates of a person with notice to each known affiliate, provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to all relevant facts and circumstances. The offense, failure or inadequacy of performance of an individual may be imputed to a person with whom he or she is affiliated, where such conduct was accomplished within the course of his or her official duty or was effected by him or her with the knowledge or approval of such person.

12A:4-12.6 Causes for suspension of a person(s)

In the public interest, with the approval of the Attorney General, the Chief Executive Officer, or his or her designee, may recommend to the Board of Directors the suspension of a person for any cause specified in N.J.A.C. 12A:4-12.3 or upon adequate evidence that such cause exists.

12A:4-12.7 Conditions affecting suspension of a person(s)

(a) Suspension shall be imposed only upon approval of the Board of Directors, except as otherwise provided by law.

(b) The existence of any cause for suspension shall not require that a suspension be imposed, and a decision to suspend shall be made at the discretion of the Board of Directors, and shall be rendered in the best interest of the State.

(c) Suspension shall not be based upon unsupported accusation, but upon adequate evidence that cause exists or upon evidence adequate to create a reasonable suspicion that cause exists.

(d) In assessing whether adequate evidence exists, consideration shall be given to the amount of credible evidence which 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.

(e) Adequate evidence of the existence of a cause described in N.J.A.C. 12A:4-12.3(a)1 through 8 may be established by the rendering of a final judgment or conviction including a guilty plea or a plea of nolo contendere by a court or administrative agency of competent jurisdiction, by grand jury indictment, or by evidence assessed pursuant to (d) above that such violations of civil or criminal law did in fact occur.

(f) A suspension invoked by another agency for any of the causes described in N.J.A.C. 12A:4-12.3 may be the basis for the imposition of a concurrent suspension by the Board of Directors, which may impose such suspension.

12A:4-12.8 Procedures, period and scope of suspension

(a) The Board of Directors may suspend a person or his or her affiliates, provided that within 10 days after the effective date of the suspension, the Commission provides such party with a written notice stating:

1. That a suspension has been imposed and its effective date;
2. The reasons for the suspension;
3. That the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue; and
4. That if such legal proceedings are not commenced or the suspension is not removed within 60 days of the date of such notice from the Commission, the party shall be given a statement of the reasons for the continuation of the suspension and an opportunity for a hearing conducted 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.

(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 has been commenced. Whenever prosecution or debarment action has been initiated, the suspension may continue until the legal proceedings are completed by the issuance of a final judgment or conviction, or a plea of guilty or nolo contendere, or the debarment action is decided by the Board of Directors.

(c) A suspension resolution adopted by the Board of Directors may include all known affiliates of a person provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to all relevant facts and circumstances, and after providing such, affiliate(s) notice and reasonable prompt opportunity to be heard after imposition of the suspension.

12A:4-12.9 Extent of debarment, suspension or disqualification

The exclusion from State contracting by virtue of debarment, suspension, or disqualification shall extend to all State contracting and subcontracting within the control or jurisdiction of the Commission, including any contracts which utilize State funds. When it is determined by the Board of Directors to be essential to the public interest, an exception from total exclusion may be made with respect to a particular State contract. A copy of said exception shall be filed with the Attorney General, or his or her designee.

12A:4-12.10 List of debarred, suspended or disqualified persons

Insofar as practicable, prior notice of any proposed debarment shall be given to the Attorney General and the State Treasurer. The Commission shall supply to the State Treasurer a list of all persons having been debarred in accordance with the procedures prescribed in this subchapter.