

**CHAPTER 3
CONTRACT ADMINISTRATION**

Authority

N.J.S.A. 30:1-12.

Source and Effective Date

R.1998 d.551, effective October 22, 1998.
See: 30 N.J.R. 3193(a), 30 N.J.R. 4043(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 3, Contract Administration, expires on April 19, 2004.

Chapter Historical Note

Chapter 3, Contract Administration, was adopted as R.1978 d.83, effective March 7, 1978. See: 9 N.J.R. 469(b), 10 N.J.R. 154(a).

Subchapter 2, Capital Funding Program and Funding Agreement, was adopted as R.1983 d.392, effective September 19, 1983. See: 15 N.J.R. 1072(a), 15 N.J.R. 1580(a).

Pursuant to Executive Order 66(1978), Chapter 3 expired on September 19, 1988.

Chapter 3, Contract Administration, was adopted as new rules by R.1988 d.513, effective November 21, 1988. See: 20 N.J.R. 1771(a), 20 N.J.R. 2898(a).

Subchapter 4, Cognizant Division Contracting, was adopted as R.1991 d.442, effective August 19, 1991. See: 23 N.J.R. 1647(a), 23 N.J.R. 2534(a).

Subchapter 3, Request for Proposal, was adopted as R.1991 d.554, effective November 4, 1991. See: 23 N.J.R. 957(a), 23 N.J.R. 3356(a).

Pursuant to Executive Order No. 66(1978), Chapter 3, Contract Administration, was readopted as R.1993 d.597, effective October 22, 1993. See: 25 N.J.R. 3694(b), 25 N.J.R. 5165(a).

Pursuant to Executive Order No. 66(1978), Subchapter 1, Debarment, Suspension and Disqualification of Person(s), Subchapter 2, Capital Funding Program and Funding Agreement, and Subchapter 3, Request for Proposal, were readopted as R.1998 d.551, effective October 22, 1998, and Subchapter 4, Cognizant Division Contracting, was repealed by R.1998 d.551, effective November 16, 1998. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. DEBARMENT, SUSPENSION AND DISQUALIFICATION OF PERSON(S)

10:3-1.1 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.

“Commissioner” means the Commissioner of the Department of Human Services or his designated representative.

“Debarment” means an exclusion from Department of Human Services (DHS) 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.

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

“Disqualification” means a debarment or suspension which denies or revokes a qualification to bid or otherwise engage in DHS 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 DHS contracting for a temporary period of time pending the completion of an investigation or legal proceedings.

10:3-1.2 Causes for debarment of a person

(a) Subject to the conditions hereinafter described, the Commissioner 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 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 persons 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. Willful failure to perform in accordance with contract specifications or within contractual time limits;

9. 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;

10. Violation of contractual or statutory provisions regulating contingent fees;

11. Any other cause affecting responsibility as a State contractor of such serious and compelling nature as may be determined by the DHS or the divisions within DHS to warrant debarment, including such conduct as may be prohibited 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. Divisions within the DHS may promulgate rules and regulations specifically setting forth other causes of such serious and compelling nature as to warrant debarment;

12. Debarment by another department or agency in the executive branch.

Amended by R.1993 d.597, effective November 15, 1993.
Sec: 25 N.J.R. 3694(b), 25 N.J.R. 5165(a).

10:3-1.3 Conditions affecting debarment of a person(s)

(a) Debarment shall be made only upon approval of the Commissioner except as otherwise provided by law.

(b) The existence of any of the causes set forth in N.J.A.C. 10:3-1.2 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 unless otherwise required by law, and shall be rendered in the best interests of the State.

(c) 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.

(d) The rendering of a final judgment or conviction based upon any of the grounds set forth in N.J.A.C. 10:3-1.2(a)1 through 7, by either a court of competent jurisdiction or by an administrative agency empowered to render such judgment shall establish cause for debarment. 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.

(e) The existence of a cause set forth in N.J.A.C. 10:3-1.2(a)8 through 11 shall be established by evidence which the DHS determines to be clear and convincing in nature.