

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

Definitions for "Day", "Multi source contracts", and "Waiver of advertising" added.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989. See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

CHAPTER 12**PURCHASE BUREAU****Authority**

N.J.S.A. 52:18A-30(d), 52:25, 52:34-6 et seq., 52:32-17 et seq., 52:27H-6(f), 52:34-12(d), 10:5-36(k) and (o), 52:34-13; Executive Orders No. 34(1976) and No. 189(1988).

Source and Effective Date

R.1995 d.18, effective December 9, 1994.
See: 26 N.J.R. 3248(a), 26 N.J.R. 4166(a), 27 N.J.R. 128(b).

Executive Order No. 66(1978) Expiration Date

Chapter 12, Purchase Bureau, expires on December 9, 1999.

Chapter Historical Note

Chapter 12, Purchase Bureau, was filed and became effective prior to September 1, 1969. Subchapter 7, Debarment, Suspension and Disqualification of a Person(s), was filed on November 30, 1976 as R.1976 d.378 to become effective on December 1, 1976. See: 8 N.J.R. 490(a), 9 N.J.R. 47(b). Subchapter 6 was amended by R.1977 d.169, effective May 16, 1977, and Subchapter 2 was amended by R.1977 d.170, effective June 1, 1977. See: 9 N.J.R. 192(a) and (b), 9 N.J.R. 295(d) and (e). Chapter 12 was repealed and new rules were adopted as R.1979 d.132, effective March 30, 1979. See: 11 N.J.R. 95(a), 11 N.J.R. 264(a). Pursuant to Executive Order No. 66(1978), Chapter 12 was readopted as R.1984 d.328, effective August 6, 1984. See: 16 N.J.R. 867(a), 16 N.J.R. 2152(a).

Pursuant to N.J.S.A. 52:14B-4(c), Chapter 12 was readopted as Emergency R.1989 d.481, effective August 14, 1989 (expired October 13, 1989), and Subchapter 6, Contracts for Small Businesses, Female Businesses and Minority Businesses, was recodified at N.J.A.C. 17:13 as "Goods and Services Contracts for Small Businesses, Urban Development Enterprises and Micro Businesses". Subchapter 7, Debarment, Suspension and Disqualification of a Person(s), was recodified to Subchapter 6. A concurrent re-adoption of Chapter 12 was filed on October 13, 1989 as R.1989 d.554. See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Pursuant to gubernatorial waiver, the Executive Order No. 66(1978) expiration date of Chapter 12 was extended from October 13, 1994 to February 28, 1995. See: 26 N.J.R. 4421(b). Pursuant to Executive Order No. 66(1978), Chapter 12 was readopted as R.1995 d.18. See: Source and Effective Date.

Law Review and Journal Commentaries

Battle for state contracts: What process is due in a challenge to a state contract award? Patrick D. Kennedy & Maeve E. Cannon, 180 N.J.Law. 16 (Mag.) (Oct./Nov. 1996).

CHAPTER TABLE OF CONTENTS**SUBCHAPTER 1. PURCHASE BUREAU DESCRIPTION OF ORGANIZATION**

- 17:12-1.1 General course and method of operation
- 17:12-1.2 Source for public information
- 17:12-1.3 Definitions

SUBCHAPTER 2. BIDDING PROCEDURES

- 17:12-2.1 Advertised bids
- 17:12-2.2 Bid security

- 17:12-2.3 Performance security
- 17:12-2.4 Information in bidding
- 17:12-2.5 Cause for automatic rejection of bids
- 17:12-2.6 Tie bids
- 17:12-2.7 Bid errors
- 17:12-2.8 Bid openings
- 17:12-2.9 Response to bid invitation; result of failure
- 17:12-2.10 Out-of-State vendors
- 17:12-2.11 Preference laws; out-of-State vendors

SUBCHAPTER 3. HEARING PROCEDURES

- 17:12-3.1 Informal hearings; subject matter
- 17:12-3.2 Parties who may request hearings
- 17:12-3.3 Request for hearings; hearing procedures; time limitations
- 17:12-3.4 Necessary parties to the hearing
- 17:12-3.5 Effect of requests for hearings on contract award
- 17:12-3.6 Discovery procedures

SUBCHAPTER 4. AGENCY COMPLAINTS PROCEDURE

- 17:12-4.1 General
- 17:12-4.2 Complaints procedure
- 17:12-4.3 Notification; non-conforming goods
- 17:12-4.4 Time frames
- 17:12-4.5 Rejection of goods
- 17:12-4.6 Effect of vendor non-compliance with contract provisions
- 17:12-4.7 Emergency situations
- 17:12-4.8 Causes for bypass of low bidder

SUBCHAPTER 5. COOPERATIVE PURCHASING

- 17:12-5.1 Subscription fees
- 17:12-5.2 Participation in State contracts by independent institutions of higher education

SUBCHAPTER 6. DEBARMENT, SUSPENSION AND DISQUALIFICATION OF A PERSON(S)

- 17:12-6.1 Definitions
- 17:12-6.2 Causes for debarment of a person(s)
- 17:12-6.3 Conditions affecting the debarment of a person(s)
- 17:12-6.4 Procedures, period of debarment and scope of debarment affecting the debarment of a person(s)
- 17:12-6.5 Causes for suspension of a person(s)
- 17:12-6.6 Conditions for suspension of a person(s)
- 17:12-6.7 Procedures, period of suspension and scope of suspension affecting the suspension of a person(s)
- 17:12-6.8 The extent of debarment, suspension or disqualification
- 17:12-6.9 Prior notice by P and P
- 17:12-6.10 List of debarred, suspended or disqualified persons
- 17:12-6.11 Director's authority to contract

SUBCHAPTER 1. PURCHASE BUREAU DESCRIPTION OF ORGANIZATION**17:12-1.1 General course and method of operation**

(a) The official title of the Purchase Bureau is as follows: Department of the Treasury, Division of Purchase and Property, Purchase Bureau.

(b) The Purchase Bureau is under the direct supervision of the Director of the Division of Purchase and Property,

who is charged with the responsibility of making contracts or agreements and writing orders, the price of which is to be paid with or out of State funds. If the aggregate amount involved does not exceed the threshold established pursuant to N.J.S.A. 52:34-7, any purchase contract or agreement may be made, negotiated or awarded by the Director without advertising in any manner which he may deem effective and practicable to permit full and free competition.

(c) When the aggregate amount exceeds the threshold established pursuant to N.J.S.A. 52:34-7, specifications and invitations for bids shall permit such full and free competition as is consistent with the procurement of supplies and services necessary to meet the requirements of the using agency. Any such purchase, contract or agreement where the cost or contract price exceeds the threshold referenced above may, with the written approval of the State Treasurer, be made, negotiated or awarded by the Director of the Division of Purchase and Property without advertising when the subject matter thereon is that described in N.J.S.A. 52:34-9 and 52:34-10.

(d) The director may authorize the signing of purchase orders on his behalf for such amounts as he may establish from time to time.

(e) When deemed to be in the best interest of the State, the Director may authorize the award of contracts on the following basis:

1. Line item;
2. Term contract;
3. Multi source contract; or
4. Waiver of Advertising.

As amended, R.1980 d.142, effective April 7, 1980.

See: 12 N.J.R. 158(a), 12 N.J.R. 293(a).

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

In (b) and (c), aggregate amount of \$2,500 changed to threshold established by N.J.S.A. 52:34-7. Subsection (e) added.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989. See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

17:12-1.2 Source for public information

(a) The public may obtain information concerning the State procurement program and invitations to bid by writing to the Director of the Division of Purchase and Property, CN 039, Trenton, New Jersey 08625-0039, by visiting the Division's reception area at 33 West State Street, 9th Floor, or by accessing the Division's Internet site at www.state.nj.us/treasury/purchase.

(b) Subsequent to bid opening, all bid documents are considered public information, notwithstanding any other disclaimers submitted by the bidder to the contrary.

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

In (a), address changed. Subsection (b) added.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989.

See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

Administrative change.

See: 29 N.J.R. 2183(b).

In (a), substituted "obtain information" for "receive information", "procurement" for "purchase", "writing to" for "contacting" and added ", by visiting the Division's . . . www.state.nj.us/treasury/purchase".

17:12-1.3 Definitions

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

"Bid security" means a guarantee, in the form of a bond or deposit, that the bidder, if selected, will accept the contract as bid; otherwise, the bidder (in the case of a deposit) or the bidder or his guarantor (in the case of a bond) will be liable for the amount of the loss suffered by the State, which loss may be partially or completely recovered by the State in exercising its rights against the deposit or bond.

"Day" means working day unless specifically noted otherwise.

"Line item" means a procurement item specified in the invitation for bids for which the bidder is asked to give individual pricing information and which, under the terms of the invitation, is usually susceptible to a separate contract award.

"Multi source contracts" means a commodity or service awarded to two or more bidders required to meet the needs of agencies in accordance with the provisions of N.J.S.A. 52:34-12.1. The Director shall take into consideration such factors as delivery and pickup locations, quantities, compatibility and cost, etc.

"Performance security" means a guarantee, executed subsequent to award, in the form of a bond or deposit, that the successful bidder will complete the contract as agreed and that the State will be protected from loss in the event the contractor fails to complete the contract as agreed.

"Term contract" means a contract in which a source or sources of supply are established for a specified period of time, usually characterized by an estimated or definite minimum quantity, with the possibility of additional requirements beyond the minimum, all at a predetermined unit price.

"Waiver of advertising" means a contract awarded without public advertisement pursuant to the provisions of N.J.S.A. 52:34-9 and 52:34-10.

SUBCHAPTER 2. BIDDING PROCEDURES

17:12-2.1 Advertised bids

(a) When advertising is required, the advertisement for bids shall be placed in such newspaper or newspapers selected by the Director, Division of Purchase and Property as will give best notice thereof to bidders. Advertisements shall be made a minimum of 10 working days in advance of the bid opening in order to permit competitive bidding.

(b) If during the course of a purchase advertised pursuant to (a) above, it becomes necessary to alter any of the terms, conditions, or requirements of the request for proposal, such amendments shall be advertised a minimum of five working days in advance of the bid opening date and time.

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

Subsection (b) added.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989.

See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

17:12-2.2 Bid security

(a) The Director or his designee may require bid security where, in his or her opinion, it is determined that security is warranted, based upon a review of market conditions and an evaluation of potential risk to the State.

(b) Bid security, in such amount as the Director or his designee deems necessary, shall consist of a certified or cashier check drawn to the order of the Treasurer of the State of New Jersey, an individual or annual bid bond issued by an insurance or security company authorized to do business in the State of New Jersey, or an irrevocable letter of credit shall be drawn naming the State Treasurer, State of New Jersey as beneficiary issued by a Federally insured financial institution.

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

In (a), "bid security" replaced bid deposit and bond requirement; in (b), "irrevocable letter of credit" option added.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989.

See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

17:12-2.3 Performance security

(a) Performance security may be required by the Director, Division of Purchase and Property or his designee in such an amount on any award for a term contract or line item purchase in which the Director or his designee, at his discretion, feels that such security is warranted. The performance security shall consist of a certified or cashier's check drawn to the order of the Treasurer of the State of New Jersey, an individual or annual performance bond issued by an insurance or security company authorized to do business

in the State of New Jersey, or an irrevocable letter of credit shall be drawn naming the State Treasurer, State of New Jersey as beneficiary issued by a Federally insured financial institution.

(b) Failure to submit the required performance security may be sufficient cause for the Director to cancel the contract and assess the contractor for any costs incurred by the State.

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

In (a), Director's "designee" and "irrevocable letter of credit" option added. Subsection (b) added.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989.

See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

17:12-2.4 Information in bidding

(a) The Director reserves the right to waive any minor informalities not in compliance with the specifications, terms, and conditions of the invitations to bid, including, but not limited to:

1. Failure to attend a non-mandatory bidders' conference or site inspection;
2. Failure to submit bid samples or furnish sufficient product description when that information is not required to evaluate the bid;
3. Failure to return a certificate of insurance. This certificate of insurance may be accepted prior to issuance of a contract or purchase order provided that the vendor expresses his intent to do so in the bid proposal.

(b) The Director may make a stipulated award to a bidder when deemed to be in the best interest of the State, considering terms, conditions, specifications and cost. However, in no case shall the stipulated award be used to correct a deficient bid proposal.

As amended, R.1980 d.142, effective April 7, 1980.

See: 12 N.J.R. 158(a), 12 N.J.R. 293(a).

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

Subsection (b) added.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989.

See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

Case Notes

Bid was nonconforming and there was no discretion to award contract. Matter of Protest of Award of On-Line Games Production and Operation Services Contract, Bid No. 95-X-20175, 279 N.J.Super. 566, 653 A.2d 1145 (A.D.1995).

Evidence; relevancy; inquiry whether deviation from request for proposals was material. Matter of Protest of Award of On-Line Games Production and Operation Services Contract, Bid No. 95-X-20175, 279 N.J.Super. 566, 653 A.2d 1145 (A.D.1995).

On-line gaming system; deviation in proposal which failed to include required display screens visible from 15 feet not immaterial. Matter of Protest of Award of On-Line Games Production and Operation Services Contract, Bid No. 95-X-20175, 279 N.J.Super. 566, 653 A.2d 1145 (A.D.1995).

17:12-2.5 Cause for automatic rejection of bids

(a) Pursuant to N.J.S.A. 52:34-12, the State Treasurer has determined that it is in the public interest to establish grounds for automatic rejection of bids which fail to conform with the requirements of the request for proposal in the following respects:

1. No signature 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 request for proposal. Signature on an enclosed bid deposit check (where bid security is required) will not suffice, since bid security is not considered part of the bid document. Signatures on the Stockholders Disclosure Form and the Affirmative Action Affidavit do not constitute a bid signature;
2. Bid not received on or before the time and date, and at the place specified on the bid request form;
3. If a bid fails to provide price information;
4. Failure to provide bid security when it is required and in the amount specified in the bid;
5. Failure to attend a mandatory bidders' conference or site inspection;
6. Failure to initial price alterations: If a unit price in the bid has been altered, the vendor's initials must appear adjacent to the alteration. Examples of alterations include, but are not limited to, cross-outs, erasures, etc., with reentered prices. If the alteration has not been so initialed, that particular item only in the bid will be automatically rejected, except as follows: If the extended price is correct and does not contain alterations, it shall be considered the bid price. If the extended total price does not contain alterations and the altered unit price is not initialed, the extended total price is considered as the bid price. In the event of an automatic rejection, and when the bid contains multiple items, the remainder of the bid will be evaluated;
7. If information essential to a bid evaluation, including but not limited to, price, terms, and product description is submitted in pencil; provided, however, that the bid may not be rejected if the same essential information appears elsewhere in the bid, either typewritten or printed, and provided further that the information is entirely consistent with the information submitted in pencil and does not invite any other interpretation;
8. Failure to comply with the State Affirmative Action guidelines promulgated pursuant to chapter 127, P.L. 1975; Stockholder Disclosure requirements promulgated pursuant to chapter 33, P.L. 1977; or foreign corporation registration requirements under N.J.A.C. 17:12-2.10 and N.J.S.A. 14A:13-1, et seq.;

9. Telephone, telefacsimile or telegraph bids will not be accepted for publicly advertised bid requirements which specify sealed bid submissions.

As amended, R.1980 d.142, effective April 7, 1980.

See: 12 N.J.R. 158(a), 12 N.J.R. 293(a).

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

In (a)1, "Stockholders Disclosure Form" and "Affirmative Action Affidavit" included as non bid signatures; in (a)2, "at the place specified" added; in (a)4, "amount specified in the bid" added; (a)9 added.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989.

See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

17:12-2.6 Tie bids

(a) In the event that prices submitted by two or more vendors are identical, the Director shall award the contract based on a relative comparison of the following factors:

1. Delivery advantage, considering time, distance, convenience, and facilities of vendor;
2. History of vendor performance as evidenced by formal complaints or, if applicable, record of outstanding performance;
3. The fact that the vendor is a New Jersey based vendor.

(b) When none of the above distinguishable characteristics are available, the Director shall, if practicable, provide for contract award by splitting the award.

17:12-2.7 Bid errors

(a) 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. Such requests must be made to the Supervisor, Purchase Bureau. If the request is granted, the bidder may submit a revised bid as long as the bid is received prior to the time for bid opening.

(b) If an error is discovered after bid opening but before contract award, the vendor may request that his bid be withdrawn. The decision to withdraw shall be at the discretion of the Director, Division of Purchase and Property. Evidence of vendor good faith shall be used by the Director in making this determination. Other essential conditions to relief may include: that the mistake is of so great a consequence that to enforce the contract as actually made would be unconscionable; that the matter as to which the mistake was made relates to a material feature of the contract; that the mistake occurred notwithstanding the exercise of reasonable care by the party making the mistake; and that the vendor get relief by way of cancellation without serious prejudice to the State.

(c) The Director may, under extraordinary circumstances, allow for a bid to be withdrawn after contract award. In these cases, however, the vendor requesting withdrawal of

his bid and contract rescission will be liable for any administrative expenses incurred as a result of contract cancellation and subsequent re-award.

(d) If, during the evaluation, an obvious error made by a potential award winning vendor has been found, the Director or his designee shall notify the vendor, in writing, of that fact. Copies of that letter will be sent to all other vendors. The vendor will have five days after receipt of that letter to request withdrawal of his bid, but in no instance shall there be a bid modification. If the vendor fails to request withdrawal of his bid within the time frames noted above, he will waive his right to have the bid withdrawn.

(e) If a pricing error is discovered after bid opening between the unit price and the total extended price, the unit price shall prevail.

(f) Notwithstanding the 30 day cancellation clause in contracts issued by the Division, the Director shall:

1. Cancel any contract without delay upon the discovery of an error in the bid evaluation which led to an erroneous award. It is not the intent of this provision to reconsider the Director's business judgment in making an award. Cancellation under this provision shall occur only upon discovery of a gross or obvious error, apparent in a written evaluation or after a review of the bid documents, including, but not limited to, an erroneous computation, an award to a vendor who failed to meet mandatory requirements, or an erroneous determination that a vendor failed to meet mandatory requirements. The Director shall document the error and promptly notify all parties.

2. Void those contracts or purchase orders which were signed on his behalf in excess of the amount authorized.

As amended, R.1980 d.142, eff. April 7, 1980.
See: 12 N.J.R. 158(a), 12 N.J.R. 293(a).
Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).
See: 21 N.J.R. 2810(a).

New (e) added and existing (e) redesignated (f).
Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989.
See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

17:12-2.8 Bid openings

(a) All bids not received prior to or at the time designated for formal bid opening, shall be invalid. However, the Director or his designee may extend the time for bid opening at the request for a vendor who notifies the Purchase Bureau that he intends to bid but that, due to an emergency situation, he may be late. The vendor making this request must do so prior to the time of the actual bid opening. All bids will be held and remain sealed until the delinquent bid is received. In no instance shall bid openings be delayed for more than one hour under this provision.

(b) A bid is "read" at the formal opening when the vendor's name and total price is announced. Each individual price need not be read aloud. After the opening, all

parties will be given an opportunity, under appropriate security measures as established by the Director, to review the bids.

(c) If a bid is received by the Purchase Bureau prior to the time and date of the bid opening, but through error has not been opened and read publicly at the specified time, date and place, the Director shall notify all bidders and schedule a bid opening date, time and place for that bid or bids only.

As amended, R.1980 d.142, eff. April 7, 1980.

See: 12 N.J.R. 158(a), 12 N.J.R. 293(a).

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

Subsection (c) added.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989.

See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

17:12-2.9 Response to bid invitation; result of failure

If a bidder does not respond to three consecutive opportunities to bid for the same product or service, the Director may remove the bidder from the bidder's list for that product or service.

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

Deleted text concerning notification of vendors regarding possible removal from bidder's list.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989.

See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

17:12-2.10 Out-of-State vendors

All foreign corporations who wish to do business with the State of New Jersey shall be afforded seven days to register with the Secretary of State of New Jersey, after notification by the Purchase Bureau of the intent to award that out-of-State firm a contract. Failure to provide either certification or notification of filing with the Secretary of State within the seven day period constitutes automatic cause for rejection of that firm's bid.

17:12-2.11 Preference laws; out-of-State vendors

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

"In-state preference" means a procedure established by statute, rule, regulation or practice whereby a state or local government procurement agency gives a bidder an advantage in the evaluation of bids based on whether the bidder maintains his principal place of business within the borders of the state or locality, and includes any advantage given to a bidder based on whether the goods or services offered in a bid were produced, manufactured, mined or grown within the borders of the state or locality.

"Out-of-state bidder" means a bidder who does not have a regular place of business in New Jersey.

“Principal place of business” means an office, factory, warehouse or other space of a bidder which is recognized by a state or local government as the basis for applying an in-state preference in favor of the bidder.

“Regular place of business” means a bona fide office, factory, warehouse or other space which is regularly maintained by the bidder, occupied by one or more of the bidder’s employees and used in carrying on the bidder’s business. The maintenance of a temporary job site or field office in New Jersey, the storage of goods in New Jersey, and the employment of an independent agent or subcontractor in New Jersey do not constitute regular place of business.

(b) Pursuant to the provisions of Public Law 1985, chapter 156 (N.J.S.A. 52:32-1.4 et seq.), the Director, Division of Purchase and Property shall apply on a reciprocal basis against an out-of-State bidder any in-state preference which is applied in favor of that bidder by the state or locality in which the bidder maintains his principal place of business.

(c) The Director shall provide to prospective bidders notice of the State’s intent as to in-state preference through appropriate language in the terms, conditions and/or specifications of the bid solicitation.

(d) For purposes of implementing these provisions, the Director shall maintain and make available for public inspection a list to be updated annually of states having statutes, rules and/or regulations which grant in-state preferences in the competitive bidding for goods and services. The Director shall develop and maintain the list based on surveys conducted by the Division and/or by research conducted by national organizations of state and local governments, procurement agencies, government officials and purchasing agents, such as the National Association of State Purchasing Officials, the National Institute of Governmental Purchasing, and the Council of State Governments. In addition, the Director may receive and review information from prospective bidders which indicates that any state or local government agency outside of New Jersey applies an in-state preference in its procurement statutes, rules, regulations, ordinances, charters or practices.

(e) The Director shall also apply in-State preference in the evaluation of bids whenever a bid is received from an out-of-State bidder where residential preference statutes, rules, regulations, or practices exist in political sub-divisions of a state. It shall be the responsibility of the bidder or bidders for a specific procurement to provide written evidence to the Director of the existence of such local government preference rules, regulations, ordinances, charters, or practices either with the bidder’s proposal or within five working days of the public bid opening. Written evidence that is not provided to the Director within five working days of the public bid opening will not be considered in the evaluation of that procurement, but will be retained and considered in the evaluation of subsequent procurements.

(f) Consistent with the procedures and practices of the Division of Purchase and Property, the Director shall reasonably apply any reciprocal in-State preference in a similar manner and to similar effect as the other state or locality. Where an in-state preference is applied by another state or locality in the form of a percentage which is added to or subtracted from bidders’ prices, markups or discounts, the Director shall similarly apply the same percentage against an affected out-of-State bidder. Where an in-state preference is applied by another state or a locality in the form of a categorical rejection of certain bids, the Director shall apply a similar categorical rejection against an affected out-of-State bidder.

(g) The bidder or bidders who would benefit by the imposition of in-state preference must otherwise be eligible for an award as a responsive and responsible bidder.

(h) The Director may consider waiving a reciprocal in-State preference on a specific procurement. The Director may waive the application of a reciprocal in-State preference where such waiver would be in the best interests of the State, including where the resulting prices for goods and services would exceed the reasonable estimate of the using agency or would otherwise be unreasonably high, or where the State is entering into a long-term contract or a contract for large quantities of goods or services.

(i) The Director shall waive a reciprocal in-State preference on procurements supported by Federal funds where Federal rules prohibit the use of residential preference.

(j) The Director shall waive reciprocal in-State preference when the action would result in an award to a vendor who has a poor record of complaints or contract terminations pursuant to N.J.A.C. 17:12-4.

(k) The Director shall waive reciprocal in-State preference when a public exigency requires the immediate delivery of articles or performance of the service.

(l) Nothing in these rules shall be deemed to modify or restrict the authority of the Director pursuant to N.J.S.A. 52:34-12 to award any contract to that bidder whose bid the Director determines is “most advantageous to the State, price and other factors considered.”

(m) The Director shall annually prepare, following the close of the State’s fiscal year, a report for the State Treasurer on the cost consequences to the State of applying the reciprocal in-State preference described in these rules.

New Rule R.1986 d.132, effective April 21, 1986.

See: 18 N.J.R. 264(b), 18 N.J.R. 848(a).

Repeal and New Rule by R.1991 d.502, effective October 7, 1991.
See: 23 N.J.R. 2225(a), 23 N.J.R. 3038(c).

SUBCHAPTER 3. HEARING PROCEDURES

17:12-3.1 Informal hearings; subject matter

(a) Administrative hearings conducted by the Division of Purchase and Property may be called as follows:

1. Informal hearings protesting an award by the Director, Division of Purchase and Property requested by any interested bidder;
2. Informal hearings to suspend or debar a current or prospective bidder from doing business with the State of New Jersey for any of the reasons enumerated in subchapter 6 of this chapter;
3. Rejection of bids arising under the provisions of N.J.A.C. 17:12-2.5 is not the proper subject matter for administrative hearings. A hearing may be called, however, to dispute the issue of whether the facts of a particular case are sufficient to meet the policy guidelines set forth in that regulation.

Case Notes

Bidder whose low bid was rejected on the basis that acceptance would create an adverse public impression of the Lottery Commission held accorded administrative due process through a fair and full agency hearing. *Keyes Martin & Co. v. Director, Div. of Purchase and Property*, 99 N.J. 244, 491 A.2d 1236 (1985).

Limited scope hearings provided by Acting Director in response to disappointed bidder's hearing request held sufficient to dispose of substantial matters at issue: examination of bid specifications' pricing structure for vending machine services. *Blondell Vending v. State*, 169 N.J.Super. 1, 403 A.2d 1207 (App.Div.1979), certification denied 81 N.J. 333, 407 A.2d 1207 (1979).

17:12-3.2 Parties who may request hearings

(a) The following parties may request hearings in the above named matters:

1. The Director, Division of Purchase and Property;
2. Any interested bidder who has submitted a bid on the matter in question.

17:12-3.3 Request for hearings; hearing procedures; time limitations

(a) Any interested bidder requesting a hearing:

1. Must make written request to the Director, Division of Purchase and Property setting forth the specific grounds for challenging the award. The notice must be submitted within 10 working days after receipt of written notification that his bid has not been accepted or that an award of contract has been made. If no written notice of award is provided, the request for hearing must be made within a reasonable time;

2. Hearings which are not under the jurisdiction of the Office of Administrative Law shall be informal and held, where feasible, within 14 days. Hearings will be heard, where practicable, by an impartial hearing officer. The hearing officer shall prepare a report to the Director within 10 days of the conclusion of the hearing unless, due to the circumstances of the hearing, a greater time is required. The hearing report shall be advisory in nature and is not binding on the Director. All parties shall receive a copy of the hearing officer's report and have 10 days to provide written comments or exceptions to the Director. Subsequent to the 10 day period for exceptions, the Director, Division of Purchase and Property, shall make a final judgment on the matter;

i. Such informal hearings as convened under these rules are fact finding for the benefit of the Director. The Director may determine that sufficient information already exists in the record so that a decision can be made without an informal hearing. The Director may waive the informal hearing and publish a final decision accordingly.

3. The Director, Division of Purchase and Property, may, in instances where public exigency exists or where there is potential for substantial savings to the State, modify or amend time frames noted above. In these instances the Director shall document for the record the rationale for such amendment and give adequate notice to the parties involved.

4. Hearings in those matters which are contested cases as defined pursuant to N.J.A.C. 1:1-1 shall be held under the jurisdiction of the Office of Administrative Law except in those cases where the Director or the head of the agency reserves the right to hear the case in person. The judge designated by the Office of Administrative Law shall prepare a report to the Director within 45 days of the conclusion of the hearing. The hearing report shall be advisory in nature and is not binding on the Director. All parties shall receive a copy of the hearing officer's report and have 10 days from the date of receipt of this report by the Division to provide this agency with written comments or exceptions to the Director. The Director may shorten this exception period based on exigent circumstances. Subsequent to the 10 day period for exceptions, the Director, Division of Purchase and Property, shall make a final judgment in the matter which shall be rendered no later than 45 days from the date he received a copy of the hearing report. Pursuant to N.J.S.A. 52:14-14B-10, failure to modify or reject the hearing report will result in the adoption of the decision of the administrative law judge as the final decision of the head of the agency.

As amended, R.1980 d.142, effective April 7, 1980.

See: 12 N.J.R. 158(a), 12 N.J.R. 293(a).

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

In (a)1, submission of notice clarified as "10 working days after receipt of"; (a)2i added.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989. See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

17:12-3.4 Necessary parties to the hearing

(a) In those instances where a hearing is requested by an interested bidder, the Director, Division of Purchase and Property, shall extend invitations to all interested vendors who bid on the matter in question. The extent of the participation of these parties shall be limited to those matters in question as expressed by the complaining parties. The Director, Division of Purchase and Property, has discretionary authority to exclude invitations to bidders in those cases where such bidders have no potential interest in the outcome of the hearing.

(b) Representatives of the protesting bidder or bidders, or in the case of debarment or suspension proceedings, representatives of the party or parties against whom the action is called, shall be necessary parties to the hearing. Any such party has a right to be represented by counsel for such hearings if he/she desires.

(c) The State shall be represented by the Office of the Attorney General where necessary, as well as responsible members of the Division of Purchase and Property staff and the using agency concerned.

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

In (a), "requested by an interested bidder" also included "a vendor". Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989. See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

17:12-3.5 Effect of requests for hearings on contract award

(a) The Division of Purchase and Property shall, except in those instances noted below, hold all awards of contracts for 10 days, pending potential protests of non-winning vendors in situations where there has been a bypass of a low bid vendor. In these situations, all bidders will be notified of the intent to award to the successful bidder. If in fact the award of contract is protested, the Division of Purchase and Property shall not award the contract in question until the completion of the hearing process.

(b) The Director, Division of Purchase and Property may, in those instances where the failure to award contract will result in substantial costs to the State of New Jersey, or in those instances where the public exigency so requires, award the contract notwithstanding the above provisions. The Director shall document all cases where such action is required and shall notify all interested parties.

17:12-3.6 Discovery procedures

The Director, Division of Purchase and Property, shall be entitled, upon request, to review all records and documents used in evidence by a complaining vendor. Such documents shall be made available to the Division of Purchase and Property at the cost of reproduction, if such reproduction is required.

SUBCHAPTER 4. AGENCY COMPLAINTS PROCEDURE

17:12-4.1 General

The Director, Division of Purchase and Property has determined that in the best interest of the business of State, vendor failure to comply with contract provisions should be dealt with promptly and efficiently. The provisions of this subchapter deal specifically with means of assuring prompt action in cases where vendor contract performance fails to meet contract requirements and provides a mechanism by which the Director may refrain from doing business with any vendor who has performed poorly, given that poor performance is attributable to the vendor, without undergoing debarment or suspension action under subchapter 6.

17:12-4.2 Complaints procedure

All using agencies will notify the Division of Purchase and Property immediately of any failure by a vendor to comply with the terms and conditions of his/her contract. Notification shall be in writing and on such forms as may be provided from time to time.

17:12-4.3 Notification; non-conforming goods

(a) The following breaches in contract terms will be made known to the Division of Purchase and Property:

1. Failure by the vendor to deliver at the time and place specified;
2. Delivery of damaged material;
3. Unauthorized absence of vendor (in the case of service contracts);
4. Delivery of an insufficient quantity of goods;
5. Vendor demand for higher prices;
6. Delivery of inferior goods, unauthorized substitutes, ungraded material where grading is required;
7. Failure to install goods; improper installation;
8. Any other failure to comply with contract specifications.

17:12-4.4 Time frames

(a) Upon receipt of the complaint from a using agency, the Division of Purchase and Property will inform the vendor of the problem within five days, in writing.

(b) The vendor must reply to the complaint within 10 days of receipt. The vendor may cure any defects during that period.

(c) If the Director or his designee finds that a complaint against a vendor is valid, the vendor shall be notified of the time period by which corrections are to be made.

17:12-4.5 Rejection of goods

Nothing in the above noted provisions shall preclude the using agency from rejecting the goods in question if, upon delivery, defects are substantial and not curable by the vendor within a reasonable time. If goods are rejected, the agency shall notify the Division of Purchase and Property immediately.

17:12-4.6 Effect of vendor non-compliance with contract provisions

(a) The Division of Purchase and Property may, in the following circumstances, notify the non-complying vendor that his contract is rescinded and immediately purchase goods through another source and charge the defaulting vendor the difference in price, if any:

1. Refusal of a non-conforming vendor to bring goods or services into compliance;
2. Refusal of a vendor to answer inquiries by the Department or failure to return complaint within 10 days, as mandated in N.J.A.C. 17:12-4.4(b);
3. Rejection of goods under N.J.A.C. 17:12-4.5.

(b) The Director may, upon continued or willful failure to perform, suspend or debar the vendor pursuant to N.J.A.C. 17:12-7.

17:12-4.7 Emergency situations

When, in the discretion of the Director, Division of Purchase and Property, the non-compliance by the vendor affects or may affect the health, safety or welfare of the State, the Director shall immediately contact the vendor and attempt to obtain full compliance. If no resolution is immediately forthcoming, the Director may immediately obtain a substitute vendor and charge the non-complying vendor any difference in price.

17:12-4.8 Causes for bypass of low bidder

(a) When the Director determines, in accordance with N.J.S.A. 52:25-24.1, that a vendor with a poor performance record with the State as evidenced by formal complaints, has failed to demonstrate that he is either financially responsible

or is able to furnish materials requested under a contract, the Director may bypass that vendor.

(b) The Director may, in those instances where there is evidence of a record of poor performance by a vendor with customers other than the State, solicit information regarding the vendor's present capability to perform adequately under the terms of the contract in question. If the vendor fails to demonstrate his current ability to perform, the Director may bypass that vendor.

(c) The above noted provisions shall not be construed to otherwise preempt the Director's authority to bypass low bidders under provisions of his general statutory authority.

SUBCHAPTER 5. COOPERATIVE PURCHASING**17:12-5.1 Subscription fees**

(a) The Director, Division of Purchase and Property, may establish a subscription fee for the dissemination of State contract and specification information to the local governments, volunteer fire departments and volunteer first aid or rescue squads, school districts, county colleges, State colleges, quasi-State agencies and independent authorities and independent institutions of higher education of this State. That fee shall be chargeable on an annual basis, and shall be structured to include direct State costs of personnel, printing and mailing of notices of award and other procurement information to the local governments, volunteer fire departments and volunteer first aid or rescue squads, school districts, county colleges, State colleges, quasi-State agencies and independent authorities and independent institutions of higher education.

(b) At the end of each fiscal year the Director, Division of Purchase and Property will review expenditures under the program, certify as to their accuracy, and adjust subscription rates accordingly.

R.1982 d.481, eff. January 17, 1983.

See: 14 N.J.R. 1085(b), 15 N.J.R. 96(b).

Amended by R.1986 d.133, effective April 21, 1986.

See: 18 N.J.R. 265(a), 18 N.J.R. 848(b).

Added text in (a) "and independent institutions of higher education." Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

In (a), volunteer entities, colleges, quasi-agencies, and authorities included in subscription category.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989.

See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

17:12-5.2 Participation in State contracts by independent institutions of higher education

(a) Pursuant to the Public Laws of 1985, Chapter 263, the Director, Division of Purchase and Property may permit the

use of selected State contracts for commodities and services by independent institutions of higher education. The Director will periodically make a list of selected contracts available to these institutions for their use.

(b) The independent institutions of higher education shall be responsible for issuance of purchase orders, certification of accepted commodities, payment of invoices, and resolution of complaints relative to procurement transactions with State contract vendors.

New Rule R.1986 d.133, effective April 21, 1986.
See: 18 N.J.R. 265(a), 18 N.J.R. 848(b).

SUBCHAPTER 6. DEBARMENT, SUSPENSION AND DISQUALIFICATION OF A PERSON(S)

17:12-6.1 Definitions

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

“Debarment” means an exclusion from Division of Purchase and Property (P and P) 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 a debarment or a suspension which denies or revokes a qualification to bid or otherwise engage in P and P contracting which has been granted or applied for pursuant to statute, or rules and regulations.

“P and P contracting” means any arrangement giving rise to an obligation to supply anything or perform any service for P and P, other than by virtue of State employment, or to supply anything to or perform any service for a private or public person where P and P 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.

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

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

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).
See: 21 N.J.R. 2810(a).

Recodified from 17:12-7.1.
Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989.
See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).
Provisions of emergency amendment R.1989 d.481 readopted without change.

17:12-6.2 Causes for debarment of a person(s)

(a) In the public interest, P and P 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. 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 (c.114, L. 1942, 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 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 purchase and property to 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 violations of such laws or contracts;

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

14. Any offer or agreement to pay or to make payment 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 report to the Attorney General and to the Executive Commission on Ethical Standards in writing forthwith 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 report in writing forthwith or failure to obtain a waiver from the Executive Commission on Ethical Standards, who may undertake, directly or indirectly, 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 vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g;

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

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

As amended, R.1980 d.141, effective April 7, 1980.

See: 12 N.J.R. 159(a), 12 N.J.R. 292(a).

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

Recodified from 17:12-7.2; (a)14 through 18 added.
Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989.
See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

17:12-6.3 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 Purchase and Property, except as otherwise provided by law.

2. The existence of any of the causes set forth in N.J.A.C. 17:12-6.2 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, P and P, 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. 17:12-6.2(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. 17:12-6.2(a)9 through 12 shall be established by evidence which P and P determines to be clear and convincing in nature.

6. Debarment for the cause set forth in N.J.A.C. 17:12-6.2(a)13 shall be proper, provided that one of the causes set forth in N.J.A.C. 17:12-6.2(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.

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

Recodified from 17:12-7.3.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989.

See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

17:12-6.4 Procedures, period of debarment and scope of debarment affecting the debarment of a person(s)

(a) The procedures, the period of debarment, and the scope of debarment to be followed by P and P are explained below:

1. P and P seeking to debar a person or his 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 so requests within a stated period of time. All such hearings shall be conducted in accordance with the provisions of the Administrative Procedures Act. However, where another department or agency has imposed debarment upon a party, P and P may also impose a similar debarment without affording an opportunity for a hearing, provided that P and P furnishes notice of the proposed similar debarment to that party, and affords that party an opportunity to present information in his behalf to explain why the proposed similar debarment should not be imposed in whole or in part.

2. 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.

3. Except as otherwise provided by law, a debarment may be removed or the period thereof may be reduced in the discretion of P and P 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 causes for which the debarment was imposed.

4. A debarment 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. The offense, failure or inadequacy of performance of an individual may be imputed to a person with whom he is affiliated, where such conduct was accomplished within the course of his official duty or was effected by him with the knowledge or approval of such person.

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

Recodified from 17:12-7.4.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989.

See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

Case Notes

Debarment and suspension rules held explicitly to confirm Director's ability to refuse to award a contract where such an award would create an adverse public impression of the awarding agency. *Keyes Martin & Co. v. Director, Div. of Purchase and Property*, 99 N.J. 244, 491 A.2d 1236 (1985).

Director's debarment decision reversed due to failure of the State to carry the burden of proving charges by clear and convincing evidence and the Director's reference in his decision to petitioner's settlement of a lawsuit, a matter not part of the record of the debarment proceeding (citing former N.J.A.C. 17:13-8, 8.2 and 8.3). *In re Debarment of Triangle, PWC, Inc.*, 182 N.J.Super. 400, 442 A.2d 606 (App.Div.1981).

17:12-6.5 Causes for suspension of a person(s)

In the public interest, P and P shall suspend a person for any cause specified in N.J.A.C. 17:12-7.2 or upon adequate evidence that such cause exists.

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

Recodified from 17:12-7.5.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989.

See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

17:12-6.6 Conditions for suspension of a person(s)

(a) The following conditions concerning suspension are to be adhered to:

1. Suspension shall be imposed only upon approval of the Director of P and P and upon approval of the Attorney General, or his designee, except as otherwise provided by law.

2. 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 Director of P and P and of the Attorney General or his designee and shall be rendered in the best interests of the State.

3. 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.

4. 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.

5. Reasonable suspicion of the existence of a cause described in N.J.A.C. 17:12-6.2(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.

6. A suspension invoked by another agency for any of the causes described in N.J.A.C. 17:12-6.2 may be the basis for the imposition of a concurrent suspension by P and P, which may impose such suspension without the approval of the Attorney General or his designee.

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

Recodified from 17:12-7.6.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989.

See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

17:12-6.7 Procedures, period of suspension and scope of suspension affecting the suspension of a person(s)

(a) The following provisions regarding procedures, period of suspension and scope of suspension shall be adhered to by P and P:

1. P and P may suspend a person or his affiliates, provided that within ten days after the effective date of the suspension, P and P provides such party with a written notice:

i. Stating that a suspension has been imposed and its effective date;

ii. Setting forth the reasons for the suspension to the extent that the Attorney General or his designee determines that such reasons may be properly disclosed;

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

iv. Indicating that, if such legal proceedings are not commenced or the suspension removed within 60 days of the date of such notice, the party will be given either a statement of the reasons for the suspension and an opportunity for a hearing if he so requests, or a statement declining to give such reasons and setting forth P and P's position regarding the continuation of the suspension. Where a suspension by another agency has been the basis for suspension by P and P, the latter shall note the fact as a reason for its suspension.

2. 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.

3. A suspension 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. The offense, failure or inadequacy of performance of an individual may be

imputed to a person with whom he is affiliated, where such conduct was accomplished within the course of his official duty or was effectuated by him with the knowledge or approval of such person.

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

Recodified from 17:12-7.7.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989.

See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

Case Notes

Hazardous waste disposal contractor waived right to hearing regarding suspension of right to contract. *Waste Conversion, Inc. v. Sims*, D.N.J.1994, 868 F.Supp. 643.

"Reasonable suspicion" that contractor had engaged in prohibited activities; due process in connection with alleged denial of opportunity for suspension hearing. *Waste Conversion, Inc. v. Sims*, D.N.J.1994, 868 F.Supp. 643.

Section 1983 defendants had qualified immunity for alleged failure to inform hazardous waste contractor for right to hearing. *Waste Conversion, Inc. v. Sims*, D.N.J.1994, 868 F.Supp. 643.

17:12-6.8 The 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 P and P including any contracts which utilize State funds. When it is determined by the Director of P and P 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 designee.

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

Recodified from 17:12-7.8.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989.

See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

17:12-6.9 Prior notice by P and P

Insofar as practicable, prior notice of any proposed debarment or suspension shall be given to the Attorney General, or his designee, and the Treasurer.

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

Recodified from 17:12-7.9.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989.

See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

17:12-6.10 List of debarred, suspended or disqualified persons

P and P shall supply to the State Treasurer a monthly list of all persons having been debarred, suspended, or disqualified in accordance with the procedures prescribed herein. Such list shall at all times be available for public inspection.

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

Recodified from 17:12-7.10.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989.

See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.

17:12-6.11 Director's authority to contract

Nothing contained herein shall be construed to limit the authority of the Director of P and P to refrain from contracting within the discretion allowed by law.

Emergency amendment, R.1989 d.481, effective August 14, 1989 (expired October 13, 1989).

See: 21 N.J.R. 2810(a).

Recodified from 17:12-7.11.

Adopted concurrent proposal, R.1989 d.554, effective October 13, 1989.

See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Provisions of emergency amendment R.1989 d.481 readopted without change.