

**CHAPTER 3
CONTRACTS**

Authority

N.J.S.A. 34:1-20, 34:11-56.37, Executive Order No. 34(1976) and Executive Order No. 189(1988).

Source and Effective Date

R.1998 d.545, effective October 22, 1998.
See: 30 N.J.R. 2986(a), 30 N.J.R. 4051(a).

Executive Order No. 66(1978) Expiration Date

Chapter 3, Contracts, expires on October 22, 2003.

Chapter Historical Note

All provisions of the chapter were adopted pursuant to authority of N.J.S.A. 34:1A-3(e) and Executive Order Number 34 and became effective July 2, 1976 as R.1976 d.211. See: 8 N.J.R. 301(b), 8 N.J.R. 399(b).

1988 Revisions: The existing chapter was repealed and new rules became effective December 19, 1988 as R.1988 d.584. See: 20 N.J.R. 2519(a), 20 N.J.R. 3137(a).

Pursuant to Executive Order No. 66(1978), Chapter 3, Contracts, was readopted as R.1993 d.680, effective November 24, 1993. See: 25 N.J.R. 4716(a), 25 N.J.R. 5933(a).

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SUBCHAPTER 1. DEBARMENT FROM CONTRACTING; CONFLICT OF INTEREST

12:3-1.1 Purpose and scope

(a) The purpose of this subchapter is to set forth the causes and conditions which constitute grounds for debarment and to notify individuals of the Departmental policies and procedures concerning debarment.

(b) The provisions of this subchapter shall be applicable to all persons supplying goods or services to the Department or performing contracts with the assistance of and subject to the approval of the Department.

12:3-1.2 Definitions

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

“Commissioner” means the Commissioner of the Department of Labor or his or her designee.

“Contracting” means any arrangement giving rise to an obligation to supply any thing or to perform any service for the Department, 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 services or the persons who may supply or perform the same.

“Contractor” means a person who undertakes to perform a job or piece of a contract retaining control of the means, method and manner of accomplishing the desired result. Contractor includes the officers and directors of a corporate contractor.

“Debarment” means the inclusion on a Statewide list of individuals who are prohibited from contracting within the State, on the basis of a lack of responsibility evidenced by an offense as set forth in this subchapter.

“Department” means the New Jersey Department of Labor.

“Person” means any natural person, company corporate officer or principal, firm, association, corporation, contractor, subcontractor or other entity engaged in contracting.

12:3-1.3 Cause and conditions for debarment

(a) The Commissioner may debar a person from contracting with the Department or any agency within the control or jurisdiction of the Department for a definitely stated period of time for the violation of any labor law including but not limited to wage and hour, minimum wage, discrimination in wages and child labor laws and the prohibition against conflict set forth at N.J.A.C. 12:3-1.6.

1. Debarment from contracting with the Department shall be made only by the Commissioner except as otherwise provided by law.

(b) A violation of the State labor laws shall not necessarily require that a person be debarred. In each case, the decision to debar shall be made at the discretion of the Commissioner unless otherwise provided by law.

(c) The Commissioner may consider the following factors as material in each decision to debar:

1. The record of previous violations by the person with the Office of Wage and Hour Compliance;
2. Previous cases of debarment by the Commissioner;
3. The frequency of violations by the person discovered in previous or still pending cases;
4. The significance or scale of the violations;
5. The existence of outstanding audit(s) or failure(s) to pay;
6. Failure to respond to a request to produce records, forms, documents, or proof of payments;
7. Submission of falsified or altered records, forms, documents, or proof of payment;
8. Failure to provide goods and/or services; and
9. Failure to comply with contract specifications.

(d) A violation of any labor law or the prohibition against conflict of interest shall be determined by the Commissioner. In the event an appeal taken from such determination results in a reversal, the debarment shall be removed unless the Commissioner determines that another cause for debarment exists.

Amended by R.1993 d.680, effective December 20, 1993.
See: 25 N.J.R. 4716(a), 25 N.J.R. 5933(b).

Case Notes

Prevailing wage requirement of Prevailing Wage Act applies to all workmen. *Dep't of Labor v. Titan Construction Co.*, 102 N.J. 1, 504 A.2d 7 (1985).

Errors of wage rates and of apprentice to journeyman ratios were of such significance as to warrant debarment from public works contracting for three years. *Department of Labor v. All-Pro Electric*, 95 N.J.A.R.2d (LBR) 38.

12:3-1.4 Procedures and period of debarment

(a) When the Department seeks to debar a person, the person or persons shall be furnished with a written notice stating:

1. That debarment is being considered;
2. The specific details concerning the violations; and
3. That the person shall have the right to a hearing upon written notification to the Commissioner requesting such a hearing within 20 days of receipt of the notice of intent to debar.

(b) The notice of intent to debar shall be mailed, by regular mail and return receipt requested, to each corporate officer of record, partner, individual proprietor or other involved person.

(c) If, after confirmation that the person has been mailed the notice of intent to debar, the person has not requested a hearing to contest the debarment, the person shall be deemed to have forfeited the right to apply for injunctive relief in the Superior Court against the listing as a debarred person.

(d) All hearings pursuant to this section shall be conducted in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 54:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. Where any other State Department or agency has already imposed debarment upon a party, the Commissioner may also impose a similar debarment without affording an opportunity for a hearing, provided the Commissioner furnishes notice of the proposed similar debarment to that party, and affords that party an opportunity to present information in his or her behalf to explain why the proposed similar debarment should not be imposed in whole or in part.

(e) Debarment shall be for a period of three years.

Case Notes

Prevailing wage requirement of Prevailing Wage Act applies to all workmen. *Dep't of Labor v. Titan Construction Co.*, 102 N.J. 1, 504 A.2d 7 (1985).

12:3-1.5 Lists

The Department shall provide the State Treasurer with the names of all persons debarred and the effective date and period of debarment, if any.

12:3-1.6 Conflict of interest prohibited

(a) No contractor 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 State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13(b) and (e), in the Department of the Treasury or any other agency with which such contractor 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-13(i), 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-13(g).

(b) 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 from any State contractor shall be reported in writing by the contractor to the Attorney General and the Executive Commission on Ethical Standards.

(c) No contractor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such contractor to, with 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 instrumentality, 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-13(g). Any relationships subject to this subsection shall be reported in writing to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State 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.

(d) No contractor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his or her official

capacity in any manner which might tend to impair the objectivity or independence of judgment of the officer or employee.

(e) No contractor shall 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 or her official position to secure unwarranted privileges or advantages for the contractor or any other person.

(f) The provisions in (a) through (e) above shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with contractors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate.

(g) The prohibitions set forth in this section shall be included in all departmental requests for proposals and all contracts executed on behalf of the Department.