

**N.J.A.C. 17:19-4.1 Causes for debarment of a firm(s) or an individual(s)**

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

1. Commission of a criminal offense incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract;
2. Civil or criminal violation of the Federal Organized Crime Control Act of 1970 or the New Jersey Racketeer Influenced and Corrupt Organizations Act, N.J.S.A. 2C:41-1 et seq., or the commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice or any other offense indicating a lack of business integrity or honesty;
3. Violations of the Federal or any state antitrust statutes, or of the Federal Anti-Kickback Act (18 U.S.C. § 874, 40 U.S.C. § 276c);
4. Violations of any of the laws governing the conduct of elections of the Federal government, any state or its political subdivisions;
5. Violation of the "Law Against Discrimination" (P.L. 1945, c.169, N.J.S.A. 10:5-1 et seq., as supplemented by P.L. 1975, c.127), or of the act banning discrimination in public work employment (N.J.S.A. 10:2-1 et seq.), or of the act prohibiting discrimination by industries engaged in defense work in the employment of individuals therein (P.L. 1942, c.114, N.J.S.A. 10:1-10 et seq.);
6. Violations of any laws governing hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages or child labor;
7. Violations of any laws governing the conduct of occupations or professions or regulated industries;
8. Violations of any Federal or state laws that may bear upon a lack of responsibility or moral integrity;
9. Willful failure to perform in accordance with contract specifications or within contractual time limits;
10. A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that such failure or unsatisfactory performance has occurred within a reasonable time preceding the determination to debar and was caused by acts within the control of the firm or the individual debarred;
11. Violation of contractual or statutory provisions regulating contingent fees;
12. Any other cause affecting responsibility as a State contractor of such serious and compelling nature as may be determined by the DPMC to warrant debarment, including such conduct as may be prescribed by the laws or contracts enumerated in this section even if such conduct has not been or may not be prosecuted as violations of such laws or contracts;
13. Debarment or disqualification by any other agency of government;

14. Making any offer or agreement to pay or make payment of, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee of an agency of government with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family as defined by N.J.S.A. 52:13D-13i, of any such officer or employee of an agency of government, or any partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g;

15. Failure by a vendor to immediately report to the Attorney General and to the Executive Commission on Ethical Standards in writing the solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any officer or employee of any State agency of government or special State officer or employee as defined by N.J.S.A. 52:13D-13;

16. Failure by a vendor to immediately report in writing, or obtain a waiver from the Executive Commission on Ethical Standards for, the direct or indirect undertaking of any private business, commercial or entrepreneurial relationship (including the selling of any interest in such vendor), regardless of whether the relationship is pursuant to employment, contract or other agreement, express or implied, with the following:

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

ii. Any firm or entity with which the State officer or employee of an State agency of government is employed or associated or has an interest in within the meaning of N.J.S.A. 52:13D-13g;

17. Influencing or attempting to influence or cause to be influenced, any officer or employee of any agency of government, in that officer's or employee's official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee;

18. Causing or influencing or attempting to cause or influence, any State officer or employee of any State agency of government or special State officer or employee as defined by N.J.S.A. 52:13D-13, to use, or attempt to use, that officer or employee's official position to secure unwarranted privileges or advantages for the vendor or any other firm or individual; and/or

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

**N.J.A.C. 17:19-4.2 Conditions affecting the debarment of a firm(s) or an individual(s)**

(a) The following conditions apply to debarment:

1. Debarment shall be made only upon approval of the Director, except as otherwise provided by law.
2. The existence of any of the causes set forth in N.J.A.C. 17:19-4.1 shall not necessarily require that a firm or an individual be debarred. In each instance, the decision to debar shall be made within the discretion of the Director, 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. 17:19-4.1(a)1 through 8 shall be established upon the rendering of a final judgment or judgment of conviction or 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 written request of the debarred firm or individual, unless other cause for debarment exists.
5. The existence of a cause set forth in N.J.A.C. 17:19-4.1(a)9 through 12 shall be established by evidence that the Director determines to be clear and convincing in nature.
6. Debarment for the cause set forth in N.J.A.C. 17:19-4.1(a)13 shall be proper, provided that one of the causes set forth in N.J.A.C. 17:19-4.1(a)1 through 12 was the basis for debarment by the original debarring agency. Such debarment may be based entirely on record of facts obtained by the original debarring agency.

**N.J.A.C. 17:19-4.3 Procedures, period(s) of debarment and scope of debarment affecting the debarment of a firm(s) or an individual(s)**

(a) The procedures, period of debarment and scope of debarment include the following:

1. When the DPMC seeks to debar a firm or an individual, the DPMC shall furnish to such firm or individual written notice: stating that debarment is being considered; setting forth the reasons for the proposed debarment; and indicating that such firm or individual will be afforded an opportunity for a hearing if such firm or individual so requests within a stated period of time. All such hearings shall be conducted in accordance with N.J.A.C. 17:19-5.
2. Where an agency of government, other than the DPMC, has imposed debarment upon a firm or an individual, the DPMC may also impose a similar debarment without affording an opportunity for a hearing, provided that the DPMC furnishes notice of the proposed similar debarment to that firm or

individual, and affords that firm or individual an opportunity to present information in its behalf to explain why the proposed similar debarment should not be imposed, in whole, or in part.

3. 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 firm or the individual is afforded an opportunity to present information in its behalf to explain why the additional period of debarment should not be imposed.

4. Except as otherwise provided by law, a debarment may be removed or the period thereof may be reduced at the discretion of the Director 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.

5. A debarment may include all known affiliates of a firm or an individual, 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 firm or an individual with whom the individual is affiliated, where such conduct was accomplished within the course of the individual's official duty or was affected by the knowledge or approval of the individual.

6. A firm that has been given notice of debarment by the DPMC shall not be eligible for an increase in its aggregate rating or an expansion of its trade classifications pending determination of the debarment action. The debarment or the suspension of a firm shall result in the immediate forfeiture of the firm's classification.

#### **N.J.A.C. 17:19-4.4 Causes for suspension of a firm(s) or an individual(s)**

In the public interest, the DPMC may suspend a firm or an individual for any cause specified in N.J.A.C. 17:19-4.1, or upon adequate evidence that such cause exists.

#### **N.J.A.C. 17:19-4.5 Conditions for suspension of a firm(s) or an individual(s)**

(a) The conditions for the suspension of a firm or an individual shall include the following:

1. Suspension shall be imposed only upon approval of the Director and the Attorney General, 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 and the Attorney General and shall be rendered in the best interest of the State.

3. Suspension shall not be based upon unsupported accusation, but upon adequate evidence that cause exists.

4. In assessing whether adequate evidence exists, consideration shall be given to the credible evidence that is produced, to the existence or absence of corroboration as to important allegations, and to inferences that 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. 17:19-4.1(a)1 through 8 may be established by the rendering of a final judgment or judgment of 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 of government for any of the causes described in N.J.A.C. 17:19-4.1(a)1 through 12 may be the basis for the imposition of a concurrent suspension by the DPMC, which may impose such suspension when found to be in the best interest of the State.

**N.J.A.C. 17:19-4.6 Procedures, period of suspension and scope of suspension affecting the suspension of a firm(s) or an individual(s)**

(a) The provisions regarding procedures, period of suspension and scope of suspension shall include the following:

1. The DPMC may suspend a firm or individual or the firm's or the individual's affiliates, provided that within 10 days before the effective date of the suspension, the DPMC provides such firm or individual with a written notice:

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

ii. Setting forth the reasons for the suspension to the extent that the Attorney General 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 any legal proceedings that 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 firm or the individual will be given either a statement of the reasons for the suspension and an opportunity for a hearing pursuant to N.J.A.C. 17:19-5, or a statement declining to give such reasons, which sets forth the DPMC's position regarding the continuation of the suspension. Where the DPMC suspends a firm or an individual based on a suspension by any other agency of government, the DPMC shall identify same as a reason for the suspension.

2. A suspension shall not continue beyond 18 months from its effective date, unless civil or criminal action regarding the alleged violation has been initiated within that period, or unless debarment action

has been commenced. When 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 firm or an individual provided that each decision to include an affiliate is made on a case-by-case basis after given due regard to all relevant facts and circumstances. The offense, failure or inadequacy of performance of a firm or an individual may be imputed within the course of the firm or the individual's official duty or was effectuated by the firm or the individual with the knowledge or approval of such firm or individual.

#### **N.J.A.C. 17:19-4.7 Disqualification of a firm(s) or an individual(s)**

The disqualification of a firm or an individual shall be based upon the DPMC's re-evaluation of the responsibility of a classified or prequalified firm or the individual based upon information not provided at the time that classification or prequalification was originally granted, as determined by the factors set forth in N.J.A.C. 17:19-2.4 or 3.3.

#### **N.J.A.C. 17:19-4.8 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 DPMC. When it is determined by the Director to be essential to the public interest, an exception from total exclusion may be made with respect to a particular State contract.

#### **N.J.A.C. 17:19-4.9 Prior notice by the DPMC**

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

#### **N.J.A.C. 17:19-4.10 List of debarred, suspended or disqualified firms or individuals**

The DPMC shall supply to the State Treasurer a monthly list of all firms or individuals having been debarred, suspended or disqualified in accordance with the procedures in this subchapter. The list shall be available for public inspection.

#### **N.J.A.C. 17:19-4.11 Director's authority to contract**

Nothing contained in this chapter shall be construed to limit the authority of the DPMC to refrain from contracting within the discretion allowed by law.