

LEXSTAT 41 NJR 91(A)

NEW JERSEY REGISTER

Copyright © 2008 by the New Jersey Office of Administrative Law

VOLUME 41, ISSUE 1

ISSUE DATE: JANUARY 5, 2009

RULE PROPOSALS

**LABOR AND WORKFORCE DEVELOPMENT
ADMINISTRATION AND FINANCE**

41 N.J.R. 91(a)

Proposed Readoption with Amendments: *N.J.A.C. 12:3*

[Click here to view Interested Persons Statement](#)

Contracts

Authorized By: David J. Socolow, Commissioner, Department of Labor and Workforce Development.

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

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2009-8.

A **public hearing** on the proposed readoption with amendments will be held on the following date at the following location:

Wednesday, January 28, 2009
10:00 A.M. to 12:00 Noon
NJ Department of Labor and Workforce Development
John Fitch Plaza
1st Floor Conference Room
Trenton, New Jersey

Please call the Office of Legal and Regulatory Services at (609) 292-2789 if you wish to be included on the list of speakers.

Submit written comments by March 6, 2009 to:
David Fish, Regulatory Officer
Office of Legal and Regulatory Services
NJ Department of Labor and Workforce Development
P.O. Box 110--13th Floor
Trenton, New Jersey 08625-0110

If you need this document in Braille, large print or audio cassette, contact the Office of Marketing at (609) 292-7832 or NJ Relay (TTY) 1-800-852-7899.

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1c, *N.J.A.C. 12:3*, the chapter pertaining to contracts (specifically, debarment from contracting and conflicts of interest), is scheduled to expire on May 18, 2009. The chapter sets forth the causes for and conditions constituting grounds for [page=92] debarment and the procedure for and period of debarment. The chapter also prohibits any conflict of interest in contracts to supply goods or services to the New Jersey Department of Labor and Workforce Development (the Department). The Department has reviewed *N.J.A.C. 12:3* and, with the exception of technical amendments throughout the chapter, which reflect the change in the name of the Department from the Department of Labor to the Department of Labor and Workforce Development and the change in the name of the Office of Wage and Hour Compliance to the Division of Wage and Hour Compliance, the Department has determined the chapter to be necessary, reasonable and proper for the purposes for which it was originally promulgated. Accordingly, the Department proposes that *N.J.A.C. 12:3* be readopted, with amendments.

A summary of the chapter (section-by-section) follows:

N.J.A.C. 12:3-1.1 sets forth the purpose and scope of Subchapter 1 (the subchapter).

N.J.A.C. 12:3-1.2 sets forth definitions of words and terms used throughout the subchapter.

N.J.A.C. 12:3-1.3 specifies the cause and conditions for debarment, namely, the violation of any labor law including, but not limited to, wage and hour, minimum wage, discrimination in wages and child labor laws. Pursuant to Executive Order No. 189 (1988), the prohibition against conflict of interest is listed as a cause for debarment. The section also identifies factors, which may be considered material by the Commissioner in determining whether to debar a person from contracting with the Department.

N.J.A.C. 12:3-1.4 sets forth the procedures, which would be followed by the Department when it seeks to debar a person, as well as the procedure for the person to appeal the decision to debar. The section also establishes three years as the period for debarment.

N.J.A.C. 12:3-1.5 requires that the Department provide the State Treasurer with a list of the names of all persons debarred and the period for which they are debarred from contracting with the Department.

N.J.A.C. 12:3-1.6 prohibits any conflict of interest between contractors and State officials and describes instances that present a conflict of interest.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to *N.J.A.C. 1:30-3.3(a)5*.

Social Impact

The rules proposed for readoption and the proposed amendments would have a positive social impact in that they would assist the Department in its enforcement efforts by ensuring that persons who violate State labor laws or conflict of interest rules would be precluded from contracting with the Department for the provision of goods and services. A positive social impact would also be realized due to the prohibition against conflicts of interest between State officials or employees and contractors, which would ensure that contracts for goods or services are entered into, based upon the Department's business interests. The potential for a three-year debarment would, it is hoped, deter persons who contract with the State from violating the State's labor laws and the prohibition against conflicts of interest. In addition, State officials, employees and contractors would benefit from the guidance contained in the rules as to which situations present a conflict of interest.

Economic Impact

The rules proposed for readoption and the proposed amendments would have a positive economic impact. It is anticipated that readoption of the debarment rules would help reduce the number of violations of the State's labor laws, thereby benefiting the members of the public whose wages are protected by those laws. The Department would benefit from the readoption of the chapter, because of their deterrent effect, which would result in fewer labor law violations, thereby helping to conserve the Department's enforcement resources. Providers of goods and services would benefit economically from the readoption of the chapter in that the readopted rules would help to eliminate the unfair economic advantage, which would otherwise be enjoyed by contractors who conduct business in violation of the State's labor laws. Persons who are debarred from contracting with the State would, to varying degrees, sustain a negative economic impact as a result of the readoption of the chapter, since they would be precluded from competing for State contracts.

Federal Standards Statement

The rules proposed for readoption and the proposed amendments are not subject to any standards or requirements imposed by Federal law. The rules guide State officials, employees and potential contractors as to the causes, which may lead to debarment and the procedures for debarment under State law. Therefore, a Federal standards analysis is not required.

Jobs Impact

The rules proposed for readoption and the proposed amendments would have no impact on either the generation or loss of jobs.

Agriculture Industry Impact

The rules proposed for readoption and the proposed amendments would have no impact on the agriculture industry.

Regulatory Flexibility Statement

The rules proposed for readoption and the proposed amendments would impose no reporting or recordkeeping requirements on small businesses as that term is defined in the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. The rules proposed for readoption would require contractors, some of which may be small businesses, to comply with State labor laws and rules prohibiting conflicts of interest (contained within *N.J.A.C. 12:3-1.6*) in order not to risk debarment. The rules proposed for readoption are designed to preserve fairness and integrity in State contracting. Consequently, there can be no exemption for small businesses, nor can there be less stringent requirements for small businesses. No professional services should be required in order to ensure compliance with the rules proposed for readoption or the proposed amendments.

Smart Growth Impact

The rules proposed for readoption and the proposed amendments would not have an impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The rules proposed for readoption and the proposed amendments would not evoke a change in the average costs associated with housing. The basis for this finding is that the rules proposed for readoption and the proposed amendments pertain to contracts between the Department and suppliers of goods and services to the Department and have nothing whatsoever to do with housing.

Smart Growth Development Impact

The rules proposed for readoption and the proposed amendments would not evoke a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the rules proposed for readoption and the proposed amendments pertain to contracts between the Department and suppliers of goods and services to the Department and have nothing whatsoever to do with housing production, either within Planning Areas 1 or 2, within designated centers or anywhere in the State of New Jersey.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at *N.J.A.C. 12:3*.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. DEBARMENT FROM CONTRACTING; CONFLICT OF INTEREST

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 **and Workforce Development** or his or her designee.

...

"Department" means the New Jersey Department of Labor **and Workforce Development**.

[page=93] ...

12:3-1.3 Cause and conditions for debarment

(a)-(b) (No change.)

(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] **Division** of Wage and Hour Compliance;

2.-9. (No change.)

(d) (No change.)