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Local Finance Notice

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Federal Debarment – Consequences for Certain Public Works Contracts

Pursuant to [P.L. 2019, c.406](#), a contractor that is debarred from contracting with a federal government agency, along with any affiliates of the debarred contractor, is now prohibited from contracting for “public work” with any State or local government entity. This prohibition applies to all entities subject to the Local Public Contracts Law or Public School Contracts Law, as well as to county colleges.

The federal debarment law defines “public work” as the construction, reconstruction, repair or improvement of “any public building, public highway, bridge, or other public betterment, work, or improvement of a permanent nature” that is performed “wholly at the expense of the public.” This means that the law applies to construction, reconstruction, repair, or improvement of any structure or infrastructure, without regard to dollar threshold, that is fully funded by local, State, and/or federal dollars. Public roadwork and work on items such as curbs, sidewalks, and publicly owned underground infrastructure are covered under the law. The law also applies to installation, repair, and replacement of items such as HVAC, plumbing, and electrical. However, please note that the scope of projects to which the federal debarment law applies is narrower than the types of projects encompassed by the Prevailing Wage Act. For example, a contract solely for demolition work would not come under the federal debarment law; nor would painting, decorating, or routine maintenance work that would otherwise be subject to prevailing wage.

Before a contracting agency can award a contract for public work as defined in P.L. 2019, c.406, the contractor must provide a written certification to the contracting unit that neither the contractor nor the contractor’s affiliates are debarred by the federal government from contracting with a federal agency. The term “affiliate” means any entity that directly, indirectly, or constructively controls the contractor, or any entity that the contractor directly, indirectly, or constructively controls, or is subject to the control of a common entity. The law considers an entity to be in control of another entity if it owns, directly or indirectly, more than 50% of the ownership

interest in that entity. This means the contractor must not directly or indirectly own or be owned by an entity debarred from contracting on the federal level. A [model certification form](#), adapted from the Ownership Disclosure Statement, asks a contractor to identify any individual or entity owning greater than 50% interest in the contractor, as well as the identity of any individual or entity owning greater than 50% of the contractor's parent entity. The contractor must likewise disclose any entities in which the contractor directly or indirectly owns greater than a 50% share.

Upon receiving the contractor's certification and prior to contract award, the contracting unit must consult the federal government's [System for Award Management \(SAM\)](#) database to verify whether the contractor and any affiliated individuals or entities listed on the certification are currently debarred from contracting with a federal government agency. Type the name of each individual and entity listed on the certification form into the database and click the "View Details" button for each. If the contractor has a DUNS number and/or CAGE code, these should be listed on the certification as well and typed into the database with the name.

For individuals and entities marked "Exclusion," click "View Details" and look under "Additional Comments" to determine whether a final debarment has been issued; an individual or entity that is in "Suspension" or "Proposed Debarment" or "PD" status at the time of award is not considered to be debarred under the law. Check the Termination Date to confirm that the debarment is currently in effect; prior debarments that have expired do not prohibit the award of a contract. To help ensure accuracy, contracting units should verify the address of any individuals listed on the non-debarment certification by clicking "View Details" and typing the provided address into the "Verify Address" fields; a message will display either "Verified" for a match or "No Match" if there is not. Please consult the [SAM User Guide for Identifying Excluded Entities](#) for further information on identifying federally-debarred contractors.

In the case of emergency contracts, a contracting unit may award a contract to a contractor without first receiving the non-debarment certification if the contractor agrees to provide the certification within two weeks of the contract's execution. The contracting unit is not liable for payment until the contractor provides the completed non-debarment certification. Although not expressly required under the law, if practical the contracting unit should use the SAM database before awarding an emergency contract to verify that the contractor itself is not debarred on the federal level. If a contractor completes the emergency work within the two-week timeframe but was debarred at the time the contract was awarded, the contracting unit should consult legal counsel to determine whether the debarred contractor must be paid. Where emergency contract work is ongoing, and the contracting unit learns that the contractor was federally debarred at the time of contract award, the contractor should be replaced with a non-debarred contractor if the project circumstances permit.

Other laws may require a contractor to disclose a federal debarment occurring after the contract award. Please consult legal counsel on whether a particular contract is subject to such a continuing disclosure obligation, as well as the impact of post-award federal debarment on the contract.

Approved: Melanie R. Walter, Director

Document	Internet Address
P.L. 2019, c.406	https://www.njleg.state.nj.us/2018/Bills/PL19/406_.PDF
Model Contractor Certification	https://www.nj.gov/dca/divisions/dlgs/programs/lpcl_docs/DLGS%20Federal%20Debarment%20Model%20Form.doc
System for Award Management (SAM)	https://www.sam.gov/SAM/pages/public/searchRecords/search.jsf
Identifying Excluded Entities in SAM	https://www.sam.gov/SAM/transcript/Govt_User_-_Identifying_Excluded_Entities.pdf