

HUMAN SERVICES

OFFICE OF ADMINISTRATION

OFFICE OF CONTRACT POLICY AND MANAGEMENT

Contract Administration

Proposed Readoption: N.J.A.C. 10:3

Authorized By: Elizabeth Connolly, Acting Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:1-12 et seq.

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

Proposal Number: PRN 2016-094.

Submit comments by August 19, 2016, to:

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Summary

Pursuant to N.J.S.A. 30:1-12, the Department of Human Services (Department) proposes to readopt N.J.A.C. 10:3 without amendments. This chapter is due to expire

on May 13, 2016, pursuant to N.J.S.A. 52:14B-5.1. As the agency submitted this notice of proposal to the Office of Administrative Law on that date, the expiration date is extended 180 days to November 9, 2016, pursuant to N.J.S.A. 52:14B-5.1.c(2).

The Department has reviewed these rules and has determined that they continue to be necessary, proper, and reasonable for the purpose for which they were originally promulgated.

The following is a description of the sections of N.J.A.C. 10:3:

N.J.A.C. 10:3-1, Debarment, Suspension and Disqualification of a Person(s) sets forth rules governing the exclusion of a provider from eligibility for consideration in the granting of a contract for goods or services by the Department. This subchapter also includes sections addressing procedures and conditions for exclusion, maintenance of a list of those debarred, suspended, or disqualified, authority to contract, appeals, and conflict of interest.

N.J.A.C. 10:3-2, Capital Funding Program and Funding Agreements addresses agreements to be used by the Department for capital projects.

N.J.A.C. 10:3-3, Request for Proposal (RFP) establishes the policy and procedures by which a Departmental component or other designated entity issues RFPs and by which entities respond to RFPs for provision of third-party social services.

This subchapter also includes four appendices: Appendix A is the Addendum to Request for Proposal for Social Services and Training Contracts; Appendix B is the Statement of Assurances; Appendix C is the Privatization Participation Documentation

form; and Appendix D is the Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.

Through the readoption of this rule, the Office of Contract and Policy Management will continue to perform all of the functions that it is performing.

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

Social Impact

The rules proposed for readoption will continue to safeguard the community and provider agencies with which the Department contracts and with Department clients that benefit from such services and facilities. The Social Impact is positive and beneficial.

Economic Impact

The rules proposed for readoption have no direct impact on the regulated community or Department clients. The protection provided by these rules continues to ensure the awarding and administration of third-party social services contracts to agencies are treated consistently throughout the Department.

Federal Standards Statement

The rules proposed for re-adoption do not require a Federal standards analysis because no Federal standards that apply to the subject of this rulemaking are exceeded in these rules. The Federal standards that apply to these rules include, but not limited to, the following: Title VI of the Civil Rights Act of 1964; 4 CFR 100; Section 504 of the Rehabilitation Act of 1973; 29 U.S.C. § 794; 34 CFR Part 104; Americans with Disabilities Act; Age Discrimination Act of 1975; 42 U.S.C. §§ 6101 et seq.; 45 CFR 90; Equal Employment Opportunities Act; Davis-Bacon Act; 40 U.S.C. §§ 276a through 276a-5; 29 CFR 5.5; 31 U.S.C. § 1352; and Federal Executive Orders 12549 and 12689.

Jobs Impact

The rules proposed for re-adoption will not result in the loss of jobs. Instead, they will contribute to the generation of jobs due to the infusion of funds into the community in which the recipient programs are located. Re-adoption of this chapter is necessary to continue the mission of third-parties contracting for essential programs and services to Department clients and to preserve existing programs for Department clients and the existing jobs for agencies providing these programs and services.

Agriculture Industry Impact

The rules proposed for re-adoption will have no impact on the agriculture industry.

Regulatory Flexibility Analysis

N.J.A.C. 10:3-1, Debarment, Suspension and Disqualification of a Person, imposes requirements on small business at N.J.A.C. 10:3-1.4(a)3, which requires submission of documentation in support of a request to remove or reduce a period of debarment. Requirements are also imposed at N.J.A.C. 10:3-1.14(c), which prohibits offers or actual gratuities to any State employee. Requirements imposed at N.J.A.C. 10:3-1.14(e) prohibits business relationships with State employees. Requirements imposed at N.J.A.C. 10:3-1.14(f) prohibit attempts to influence, or actual influence, of any State employee in order to impair the objectivity or judgement of that official. Requirements imposed at N.J.A.C. 10:3-1.14(g) prohibit the use of influence to obtain unwarranted privileges. All of these requirements are imposed in accordance with Executive Order No. 34 (1978) and Executive Order No. 189 (1988); and the Department cannot modify them, whether based on business size of any other criteria.

N.J.A.C. 10:3-2, Capital Funding Program and Funding Agreement, does impose reporting, recordkeeping, and specific requirements on small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Under this program, the Department grants funding to non-profit agencies, some of which may be considered small businesses under the Act. These nonprofits, in turn, contract with other agencies that actually perform the work. The small businesses that receive the grants are required to provide certain information to the Department; however, such reporting, recordkeeping, and compliance requirements mirror the information provided in the normal course of business as part of the regular ongoing audit process under the Standard Contract/Agreement Document. There is no differentiation based on business

size, there are no capital costs, and no professional services are needed in order to comply.

N.J.A.C.10:3-3, Request for Proposal (RFP), sets the standards by which every provider agency replying to an RFP must comply. There are no recordkeeping or reporting requirements; however, each provider agency applying for funding through the RFP process must follow N.J.A.C. 10:3-3, Request for Proposal, which sets forth compliance requirements and the information required to ensure consistent and equitable review for a contract award with the Department of Human Services.

Housing Affordability Impact Analysis

The rules proposed for readoption will have an insignificant impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average cost associated with housing because the rules concern contract administration in the Department.

Smart Growth Development Impact Analysis

The rules proposed for readoption will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules concern contract administration for the Department.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:3.