



New Jersey's Clean Energy Program Request for Comments

Proposed Changes to the Contractor Remediation Procedures

Background

One of the primary responsibilities of the Program Managers is to oversee the level of performance of the contractors that participate in New Jersey's Clean Energy Program (NJCEP). This involves two primary areas: (1) adherence to program processes and (2) the level of service delivery. The Program Managers will continue to support those companies who participate in NJCEP at both the management and field/administrative staff levels.

For all contractors involved in the programs, there are basically three types of contractor issues that commonly arise:

1. Deficiencies in adhering to established guidelines and procedures (administrative and field services);
2. Failure to provide the services to the customer in a timely and professional manner as described in the program; and
3. Outright intent to work outside the rules or commit fraud, theft, etc.

The Board approved a set of Contractor Remediation Procedures to address the aforementioned issues by Order dated October 5, 2010, Docket No. E007030203. Since then, Staff has reviewed its Contractor Remediation Procedures to determine whether any modifications would be necessary. As a result, the modifications in the table below are being proposed. The table describes most types of contractor issues and the recommended actions to either remedy the problem or take appropriate actions relative to the involved firm. The areas of non-performance will affect the level at which they enter the matrix if the infraction is deemed serious by the Program Manager.

Summary of Changes

The revised procedures are designed to provide greater clarity and to track more closely to other disciplinary procedures used by State agencies, e.g., by providing a clear notice and opportunity to be heard in connection with the imposition of significant disciplinary actions. The proposed procedures are listed on the following pages.



Proposed Procedures

The following describes some Issues / Problems that may require a Contractor¹ participating in NJCEP to engage in certain remedial actions in order to resolve such issues, as well as the Processes related to same.

CONTRACTOR REMEDIATION PROCEDURES TABLE

<u>Level & Title</u>	<u>Issue / Problem</u>	<u>Remedial Actions</u>	<u>Process</u>
1 Coaching	<p>The Contractor’s work is failing to meet standards, but the problem is not significant and does not rise to Levels 2-4. Examples of Level 1 Issues / Problems include, without limit:</p> <ol style="list-style-type: none"> 1. Unintentionally incorrect or incomplete data submittals; or 2. Unintentionally incorrect or incomplete SEER / EER / HSPF data; or 3. Evidence, including legitimate customer complaints, of: <ol style="list-style-type: none"> a. Deficient service and/or equipment, or b. Misleading sales or commercial practices, c. Extreme, repetitive verbal abuse of customers or OCE, PA, or PM staff. <p>in each case, that is related to NJCEP, is not malicious or fraudulent, and does not pose a significant risk to human health or safety.</p>	<p>The PM shall coach and more closely supervise the Contractor for between 30 and 60 days, with the specific actions and number of days to be determined by the PM. Examples of appropriate Remedial Actions for this Issue / Problem include:</p> <ol style="list-style-type: none"> 1. Oral and/or written guidance; and 2. More frequent Quality Assurance / Quality Control (QA/QC) of Contractor’s applications to the program and/or inspections of the Contractor’s fieldwork; and 3. Additional training or re-training; and 4. Such other coaching or supervisory Remedial Actions as the PM may impose, <i>provided however</i>, that if the Contractor is only at Level 1 such Remedial Actions shall not include those provided for Levels 2 – 4 below. 	<ol style="list-style-type: none"> 1. Prior to imposing Remedial Action, the PM shall Notify the Contractor that the Contractor will be subject to Remedial Actions, with a brief description of the Issue(s) / Problem(s) that led to the imposition of Remedial Action and a brief description of the type(s) of Remedial Action being imposed. 2. The Notice shall also identify, among other things, the time period for the Remedial Action, which the PM may choose to identify as a specific time (e.g., “until ____, 20__”) or as a range (e.g., “until a date between ____, 20__ and ____, 20__”, as determined by the PM during the course of the Remedial Action.”). 3. If the PM determines to impose Remedial Actions in addition or instead of those set forth in a Notice previously provided to the Contractor, it must first send another Notice to the Contractor providing the above-described information as to the new Remedial Actions.

¹ “Contractor” and other capitalized terms are defined in the Legend / Definitions section below.



<u>Level & Title</u>	<u>Issue / Problem</u>	<u>Remedial Actions</u>	<u>Process</u>
<p>2 Probation</p>	<p>The Contractor's work is failing to meet standards to a degree or at a frequency higher than Level 1, but the problem does not rise to Levels 3-4. Examples of Level 2 Issues / Problems include, without limit:</p> <ol style="list-style-type: none"> 1. At the conclusion of Level 1 Remedial Action, the Contractor has failed to demonstrate that its Issue / Problem has been satisfactorily resolved; or 2. The PM determines that the type and/or frequency of the Contractor's deficiencies is too great for Level 1 but not yet deserving of Level 3 or 4. 	<p>In addition to Level 1 Remedial Actions,² the PM shall also perform the following, for between 60 and 90 days (Probationary Period), with the number of days to be determined by the PM:</p> <ol style="list-style-type: none"> 1. For each project pending at any time during the Probationary Period, inspect the Contractor's work before issuing payment from the Program; and 2. Closely monitor all of the Contractor's applications pending at any time during the Probationary Period and approve such applications only with the written approval of PM staff at the "Manager" level or higher. 	<p>Same as for Level 1.</p>

² For the avoidance of doubt, if the Remedial Actions applicable to more than one Level overlap or are substantially similar, the PM shall apply the more severe Remedial Action.



<u>Level & Title</u>	<u>Issue / Problem</u>	<u>Remedial Actions</u>	<u>Process</u>
<p>3 Suspension</p>	<p>The Contractor's work is failing to meet standards to a degree or at a frequency greater than Level 1 and 2, but the Issue / Problem does not rise to Level 4. Examples of Level 3 Issues / Problems include, without limit:</p> <ol style="list-style-type: none"> 1. At the conclusion of Level 2, the Contractor has failed to demonstrate that its Issue / Problem has been satisfactorily resolved; or 2. At the conclusion of Level 1, the Contractor has failed to demonstrate that its Issue / Problem has been satisfactorily resolved and the PM has determined that Level 2 is unlikely to resolve the Contractor's Issue / Problem; or 3. Deficient service or equipment that poses a risk to human health or safety that does not rise to Level 4. 	<p>In addition to Level 1 and 2 Remedial Actions,³ the PM shall also take one or more of the following Remedial Actions for between 90 and 180 days (Suspension Period), with the actions and number of days to be determined by the PM:</p> <ol style="list-style-type: none"> 1. Prohibit the Contractor from submitting any new applications to any NJCEP program or participating in any new customer applications to NJCEP or projects covered by any such applications. If an application involving the Contractor is nonetheless submitted, Notify the customer and Contractor that the Contractor is suspended and that the application will not be further reviewed unless and until the Contractor is allowed to re-enter the Program (or the application is re-submitted identifying a Contractor other than the one suspended). 2. Other than as necessary for the processing of applications that were deemed complete prior to the beginning of the Suspension Period, preclude the Contractor from using NJCEP forms, receiving NJCEP funding 	<p>In addition to the Process for Level 1:</p> <ol style="list-style-type: none"> 1. The PM shall Notify the Contractor at least 10 Business Days prior to the commencement of the Suspension Period. 2. The PM shall provide in the Notice that the Contractor may in a writing delivered to the PA request a meeting with the PA to dispute or otherwise discuss the imposition of the Suspension ("Request"). The Request must identify the relief sought and the reasons for granting it. 3. If there is a Request, the PA shall use reasonable efforts to schedule the Requested meeting for a date within 10 Business Days of the PA's receipt of the Request for same, and Notify the Contractor of the time and place of the meeting at least 3 Business Days prior to the meeting. 4. Following the meeting described above, the PA shall either (a) rescind the Suspension, (b) modify the Suspension's length or Remedial Actions, or (c) affirm the Suspension. 5. The PA shall Notify the Contractor of its determination, using its reasonable efforts to do so within 10 Business Days of the meeting described above. This Notice will delineate the start date of the Suspension (unless rescinded). 6. The party filing or serving any notice, request, determination, or other document related to this Level 3 shall simultaneously serve a copy of the document upon OCE Staff, the PA, and the PM (recognizing the party need not send a copy to itself). 7. If the Contractor desires to challenge a final determination, issued pursuant to the above Processes, the Contractor may, pursuant to <u>N.J.A.C. 14:1-1.1 et seq.</u> and <u>N.J.A.C. 1:1-1.1 et seq.</u> (including <u>N.J.A.C. 1:14-1.1 et seq.</u>) (collectively, Formal

³ For the avoidance of doubt, if the Remedial Actions applicable to more than one Level overlap or are substantially similar, the PM shall apply the more severe Remedial Action.



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3 Suspension (cont'd)		of co-op advertisement incentives, and/or using NJCEP logos, online applications, online forms, and/or software.	Hearing Rules), file a request for a formal hearing with the BPU. 8. Request to Stay a Suspension: <ul style="list-style-type: none"> a. The Contractor may at any time request in writing that the PA stay all or part of the Suspension. A stay request shall be granted or denied within 10 Business Days of its submission. b. The Contractor may seek further review of a determination regarding a stay request pursuant to the Formal Hearing Rules, including without limit <u>N.J.A.C. 1:1-12.6 and 14:1-8.7(d)</u>.



<u>Level & Title</u>	<u>Issue / Problem</u>	<u>Remedial Actions</u>	<u>Process</u>
<p>4 Debarment</p>	<p>The Contractor:</p> <ol style="list-style-type: none"> 1. Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense; or 2. Has engaged in gross negligence that posed a significant risk to human health or safety; or 3. Has engaged in repeated acts of negligence, submissions of incorrect or incomplete data, significantly deficient service, unethical misleading, or illegal sales or commercial practices, or other failures to meet standards, in each case on projects related to NJCEP and which either have not been satisfactorily resolved in Levels 1-3 or are too serious to be assigned to one of those levels; or 4. Has been convicted of, or engaged in acts constituting, any crime or offense involving moral turpitude or relating adversely to the Contractor's business. For the purpose of this subsection a judgment of conviction or a plea of guilty, non vult, nolo contendere or any other such disposition of alleged criminal activity shall be deemed a conviction; or 5. Is presently engaged in drug or alcohol use that is likely to impair the Contractor's ability to conduct its business with reasonable skill and safety. For purposes of this subsection, the term "presently" means at this time or any time within the previous 365 days. 	<p>The BPU may Debar the Contractor from the Program.</p>	<p>The PM and/or the PA may recommend to OCE Staff that a Contractor be Debarred. If OCE Staff determines to seek Debarment:</p> <ol style="list-style-type: none"> 1. OCE Staff shall Notify the Contractor that the Contractor will be Debarred effective 45 days after the Notification unless the Contractor within 10 Business Days submits a written Answer to OCE Staff disputing the grounds for the Debarment. The Notice identified in this #1 shall include a summary of the Issue / Problem justifying the Debarment and shall also Notify the Contractor that any Answer it files must include a summary of the reason(s) the Contractor challenges the proposed Debarment. 2. The Contractor shall be the subject of Level 3 Remedial Actions (i.e., shall be suspended) from the 10th Business Day following its receipt of the Notice described in #1 above. A Contractor wishing to challenge such imposition of Level 3 Remedial Actions shall follow the procedures set forth at #8, Process, Level 3. 3. If the Contractor submits an Answer, OCE Staff may in its discretion: (a) meet with the Contractor in an attempt to settle the matter in manner acceptable to both parties; or (b) deem the matter to be a contested to be handled in accordance with the Formal Hearing Rules. OCE Staff shall use reasonable efforts to Notify the Contractor of its determination in this regard within 15 Business Days from the submission of the Answer. <p>A Debarred Contractor may apply to the Board for reinstatement of its eligibility to participate in NJCEP. The Notice, order, or other document imposing the Debarment (each, a Debarment Order) may set forth the amount of time that must pass, which amount of time shall be no less than 2 years and shall be deemed to be 2 years if the Debarment Order does not set forth the amount of time that must pass. The Board may grant such an application if (a) the</p>



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4 Debarment (cont'd)			Contractor has demonstrated its rehabilitation, and (b) the Board finds good cause for the reinstatement.



Legend / Definitions:

Board, BPU, or State	=	The State of New Jersey, acting through its Board of Public Utilities.
Business Day	=	Any day that is not a Saturday, Sunday or other day on which the State Offices are officially closed.
Contractor	=	The contractor or vendor providing goods and/or services directly to NJCEP or to a customer or another contractor for a project or other item directly or indirectly related to NJCEP (for the avoidance of doubt, including, without limit, its SREC Registration Program). For the avoidance of doubt, third party owners, developers, and installers of solar power installations are all deemed Contractors if they provide goods and/or services directly or indirectly related to NJCEP.
Debar / Debarment	=	The Contractor is prohibited from directly or indirectly participating in NJCEP, including (1) involvement in any applications to NJCEP, (2) receipt of any funds from NJCEP, (3) use of NJCEP forms, NJCEP logos and/or NJCEP-authorized software. If there are NJCEP applications pending at the time of Debarment, the BPU through its staff shall inform the relevant applicants/customers that the Contractor has been Debarred and that therefore their applications will not be further reviewed or approved unless and until they are resubmitted in a way that no longer involves the Contractor.
EER	=	Energy Efficiency Ratio.
HSPF	=	Heating Seasonal Performance Factor.
NJCEP	=	New Jersey's Clean Energy Program.
Notify	=	To inform the recipient in writing (via email, regular mail, delivery service, or personal delivery, in each case with a receipt or certificate documenting receipt by the recipient). A Notice is the writing(s) by which the recipient is Notified.
OCE	=	BPU's Office of Clean Energy.
PA	=	The Program Administrator of NJCEP, i.e., AEG.
PM	=	The AEG subcontractors managing the various NJCEP programs, i.e., TRC, ICF, CLEAResult.
SEER	=	Seasonal Energy Efficiency Ratio.
Table	=	The table immediately above this Legend.

Note: All capitalized terms not otherwise defined in this document shall be deemed to have the meaning given to them in the Table.



Processes that Apply to all Levels Unless the Table Specifically Provides Otherwise:

1. All actual and/or alleged Issues / Problems shall be tracked by the relevant PM. The tracking shall include at least:
 - a. Copies of all documents related to the Issue / Problem and its remediation.
 - b. The date the Issue / Problem is first brought to the attention of the PM, PA, or OCE Staff.
 - c. The relevant application number(s) and PM.
 - d. The date upon which the PM deems the matter closed and a brief description of the resolution of the matter.
2. The PM, PA, or OCE Staff, as applicable, shall use reasonable efforts to Notify the Contractor of the ultimate resolution of any Issue / Problem within fifteen (15) Business Days after such ultimate resolution. If a customer of the Contractor presents a complaint that could reasonably be determined to be an Issue / Problem, the PM shall also promptly inform the customer of the ultimate resolution of the matter. The PM or other tribunal, as applicable, may in its discretion also choose to inform the customer of any significant developments in the matter.
3. If OCE Staff, the PA, or another PM becomes aware of an issue / problem / complaint that could reasonably be determined to be an Issue / Problem described in the Table, that party shall promptly provide all relevant information to the relevant PM.
4. OCE Staff and/or the BPU may seek the assistance of the PA in connection with any Issue / Problem.
5. The PM, PA, and/or OCE Staff, may conduct any reasonable, formal or informal, investigations they choose to conduct, including communicating with any of the Contractor's customers who may be affected by the Issue / Problem, *provided, however*, that they may not conduct any investigation prohibited by applicable law. Such permitted investigations may include, without limit, OCE Staff obtaining the information being tracked by the PM according to #1 above and/or other information the PM or PA may have that is reasonably related to a matter arising out of these Contractor Remediation Procedures (CRPs), all subject to # 4 above.
6. A Notice is deemed to have been given on the date the related receipt or certificate indicates it was received by the recipient.
7. The PM, PA, or OCE Staff, as applicable, may, for good cause and by way of Notice to the Contractor, extend the time during which a Contractor remains in Level 1 or Level 2 and subject to the Level's Remedial Actions one time by up to the maximum number of days the CRP provide for the relevant Level's Remedial Actions. By way of example only, a PM may impose Coaching upon a Contractor for 60 days and then, prior to the expiration of the original 60 days, extend the Coaching for a second 60 days by providing Notice of that extension to the Contractor and the other parties mentioned in this #7.
8. For the avoidance of doubt, if the Remedial Actions applicable to more than one Level overlap or are substantially similar, the PM shall apply the more severe Remedial Action.
9. The BPU may in its discretion proceed to seek emergent relief by way of Order to Show Cause or other process in accordance with N.J.A.C. 14:1-1.1 et seq. and/or N.J.A.C. 1:1-1.1 et seq. instead of or in addition to the Processes set forth in the Table.
10. In the event any party desires to challenge the resolution of any dispute arising out of or related to Levels 1 or 2 of these CRPs, the party may avail itself of the dispute resolution procedures (DRP) set



forth at NJCEP web site at www.NJCleanEnergy.com/disputeresolution, *provided, however*, that the foregoing reference to the DRP shall not in and of itself be deemed to provide a party with a right to request a formal hearing with the BPU.

11. Within 10 Business Days after the end of each fiscal quarter, each PM shall provide the PA, and within 20 Business Days after the end of each fiscal quarter, the PA shall provide OCE Staff, with a report as to the status of all CRPs within its scope (as to the PA, including those within the PMs' scopes) that were pending during the fiscal quarter, including the identification of each case in each Level and a description of the Remedial Actions that applied to each case during the fiscal quarter.

Comments on the proposed changes should be submitted by October 19, 2016 to:
publiccomments@NJCleanEnergy.com and reference "Proposed Changes to the Contractor Remediation Procedures."