

1230.1150 AUTHORITY TO DEBAR OR SUSPEND VENDORS.

Subpart 1. **Suspension.** After written notice to the person involved and providing for a reasonable opportunity for that person to be heard, the director shall have the authority to suspend a person from eligibility to receive solicitations, the award of contracts, or selling any products or services to state agencies if the director determines that the person has engaged in an activity that might lead to debarment. A suspension must not exceed six months unless the vendor is proposed for debarment by the federal government and in that event, the suspension must not exceed the length of time necessary for the federal government to issue a final order.

Subp. 2. Debarment causes.

A. A person shall be debarred if one or more of the following occurs:

(1) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;

(2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty that affects responsibility as a state vendor;

(3) conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

(4) violation of contract provisions, as set forth in units (a) and (b), of a character that is regarded by the director to be so serious as to justify debarment action:

(a) failure without good cause to perform according to the specifications, time limits, or any terms or conditions in the contract; or

(b) a record of failure to perform, or of unsatisfactory performance, according to the terms of one or more contracts or as measured by standard commercial practices; provided that this failure to perform or unsatisfactory performance was not caused by acts beyond the control of the contractor; or

(5) any other cause the director determines to be serious and compelling including, but not limited to, threatening, abusive, or intimidating behavior; collusion with other vendors to restrain competition; giving false information on a vendor's registration application or response to a solicitation; violating terms of suspension; and all acts that would disqualify the person as a responsible vendor, as defined in part 1230.0150, subpart 20, including debarment by another governmental entity.

B. The following must occur in cases in which a vendor is debarred by other governmental entities:

(1) Any vendor debarred by the federal government, the state of Minnesota, or any of its departments, commissions, agencies, or political subdivisions, is automatically debarred by the division under the same terms and limits of the original debarment.

(2) If the vendor is debarred by any other governmental entities, it is cause for suspension until a determination can be made by the division under normal suspension procedures as to whether the debarment applies under Minnesota statutes and rules.

Subp. 3. **Written notice.** A written notice of debarment or suspension must be furnished to the affected parties and must:

A. state the reasons for the action taken;

B. give the length of time the vendor will be debarred or suspended; and

C. inform the debarred or suspended person of the person's rights to administrative and judicial review according to subpart 4.

Subp. 4. **Suspension or debarment appeals.** If suspended or debarred, a person may file an appeal in writing with the commissioner of administration within 30 calendar days of receipt of a decision to suspend or debar. The commissioner shall, within 45 calendar days, decide whether the actions taken were according to statutes and regulations and were fair and in the best interest of the state.

Any person receiving an adverse decision from the commissioner may appeal in any appropriate court of the state.

Subp. 5. **Length of debarment.** A vendor may be debarred from receiving solicitations and submitting responses for not less than one year, nor more than three years unless a longer time is in effect under subpart 2, item B, subitem (1). The length of the debarment must depend on the vendor's past performance, the number and seriousness of the current complaints, and the cost to the state associated with correcting the problem.

Subp. 6. **Public list of debarred and suspended.** The division shall maintain a master list of all suspensions and debarments. The master list must retain all information concerning suspensions and debarments as a public record. The records must be maintained for at least three years following the end of a suspension or debarment. Such public information may be considered in responsible vendor determinations according to part 1230.0150, subpart 20.

Statutory Authority: *MS s 16B.04; 16B.18; 16B.19; 16B.22; 16C.03; 16C.16; 16C.19*

History: *16 SR 194; 28 SR 499*

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