

1 Department of Administration

2 Procurement Division

3

4 Adopted Rules Relating to Debarment and Suspension

5

6 Rules as Adopted

7 1230.3000 SCOPE.

8 Parts 1230.3000 to 1230.4300 apply to all Mn/DOT contracts.

9 1230.3100 DEFINITIONS.

10 Subpart 1. Scope. The terms used in parts 1230.3000 to
11 1230.4300 have the meanings given them in this part.

12 Subp. 2. Administrative law judge. "Administrative law
13 judge" means a person appointed under Minnesota Statutes,
14 section 14.48 or 14.49 and assigned under Minnesota Statutes,
15 section 14.50 to hear contested cases.

16 Subp. 3. Business. "Business" means a sole proprietor
17 doing business as a contractor, subcontractor, or supplier, or a
18 partnership, association, corporation, or other entity formed
19 for the purpose of doing business as a contractor,
20 subcontractor, or supplier.

21 Subp. 4. Commissioner. "Commissioner" means the
22 commissioner of the Department of Administration.

23 Subp. 5. Contract crime. "Contract crime" means a
24 violation of state or federal antitrust law, fraud, theft,
25 embezzlement, bribery, forgery, misrepresentation, making false
26 statements, falsification or destruction of records, or other
27 criminal offense in connection with obtaining, attempting to
28 obtain, or performing a public or private contract or
29 subcontract.

30 Subp. 6. Contractor. "Contractor" means a person to whom
31 the Minnesota commissioner of transportation has awarded a
32 Mn/DOT contract for which competitive bids are required or taken.

33 Subp. 7. Conviction. "Conviction" has the meaning given
34 to it in Minnesota Statutes, section 609.02, subdivision 5.

35 Subp. 8. Debar. "Debar" means to disqualify under parts

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1 1230.3100 to 1230.4300 from entering into or receiving a Mn/DOT
 2 contract or from serving as a subcontractor or material supplier
 3 under a Mn/DOT contract.

4 Subp. ~~8~~ 9. Mn/DOT contract. "Mn/DOT contract" means a
 5 written instrument:

6 A. containing the elements of offer, acceptance, and
 7 consideration to which the Minnesota Department of
 8 Transportation is a party, or acts as an agent for a party under
 9 Minnesota Statutes, section 161.36, subdivisions 2 and 3,
 10 360.016, subdivisions 2 and 3, or 360.039, subdivisions 2 and 3;

11 B. for which competitive bids are required or taken;
 12 and

13 C. which is subject to the approval of the
 14 commissioner.

15 Subp. ~~9~~ 10. Person. "Person" means a natural person or a
 16 business.

17 Subp. ~~10~~ 11. Principal. "Principal" means an officer,
 18 director, or partner, or an employee of-a-business, or a
 19 shareholder engaged in management of the business.

20 Subp. ~~11~~ 12. Suspend. "Suspend" means to temporarily
 21 disqualify from entering into or receiving a Mn/DOT contract or
 22 from serving as a subcontractor or material supplier under a
 23 Mn/DOT contract.

24 1230.3200 GROUNDS FOR DEBARMENT.

25 Subpart 1. Contract crime. A business must be debarred
 26 upon conviction in any jurisdiction, of the business or a
 27 principal of the business, for commission of a contract crime or
 28 when a conviction is imputed to the business under part
 29 1230.3300.

30 Subp. 2. Violation of antitrust laws. A business must be
 31 debarred upon conviction in any jurisdiction, of the business or
 32 a principal of the business, for violating Minnesota Statutes,
 33 sections 325D.49 to 325D.66 or federal antitrust laws, or when a
 34 conviction is imputed to the business under part 1230.3300.

35 1230.3300 ~~LIABILITY~~ CONVICTION OF ~~INDIVIDUAL~~ PERSON IMPUTED

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1 TO BUSINESS.

2 The conviction of a person for offenses listed in part
3 1230.3200 is imputed to a business when the conduct which gave
4 rise to the conviction occurred in connection with the person's
5 performance of duties for or on behalf of that business and in
6 the course of employment or with the knowledge, approval,
7 acquiescence, or subsequent ratification of the conduct by the
8 business.

9 1230.3400 DEBARMENT PROCEDURE.

10 Subpart 1. Requirement. A business must be debarred by
11 the Minnesota Department of Transportation when one or more of
12 the grounds set forth in part 1230.3200 are established at a
13 hearing or opportunity for hearing conducted under Minnesota
14 Statutes, chapter 14.

15 Subp. 2. Three-year limitation. A debarment or a
16 suspension must be initiated within three years from the date of
17 the conviction of a business for an offense described in part
18 1230.3200.

19 1230.3500 TERM OF DEBARMENT.

20 The administrative law judge shall recommend and the
21 commissioner of transportation shall establish the term of
22 debarment. The term of debarment depends upon: the seriousness
23 of the grounds offense; whether restitution has been made;
24 whether the debarred person cooperated in civil or criminal
25 lawsuits; and the state's need to preserve the competitive
26 bidding process; and whether the business is debarred or has
27 been debarred in another jurisdiction. The length of the
28 debarment period in another jurisdiction must be taken into
29 account in determining the term of debarment in Minnesota.

30 1230.3600 DEBARMENT BASED ON AFFILIATION.

31 Subpart 1. Liability Conviction of business imputed
32 to individual person. The conviction of a business in any
33 jurisdiction, for offenses listed in part 1230.3200 is imputed
34 to any principal or other person associated with the business
35 subject to debarment or suspension, who participated in, ^{knew}

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1 of, or had reason to know of the conduct.

2 Subp. 2. Debarment. A business must be debarred when it:

3 A. employs a former principal of a debarred or
4 suspended business or person described in subpart 1 as an
5 officer, director, manager, or in another significant
6 decision-making capacity;

7 B. is owned by or associated in a joint venture with
8 a debarred or suspended business or is controlled by a principal
9 or former principal of a debarred or suspended business; or

10 C. is a business in which a former principal of a
11 debarred or suspended business has a significant financial
12 interest and the former principal has the authority to or will
13 control, direct, manage, or influence any activities of the
14 business with respect to the Mn/DOT contract in question.

15 Subp. 3. Procedure. A business described in subpart 2
16 must be debarred after a hearing or opportunity for hearing
17 conducted under Minnesota Statutes, chapter 14.

18 Subp. 4. Duration. The period of debarment must be the
19 same as that of the debarred former principal or business.

20 1230.3700 DEBARMENT LIMITATION.

21 A person may not be debarred for more than three years for
22 conduct which gave rise to the grounds for debarment. If new or
23 different grounds arise, a new debarment hearing must be held.

24 1230.3800 EFFECTIVE DATE OF DEBARMENT.

25 A debarment takes effect on the date of the mailing of the
26 order for debarment by the Minnesota Department of
27 Transportation. The order for debarment must be sent by
28 certified mail.

29 1230.3900 TERMINATION OF DEBARMENT OR AWARD DURING DEBARMENT.

30 The commissioner of transportation may terminate a
31 debarment by order or may award a Mn/DOT contract to a debarred
32 or suspended business when:

33 A. that business is the sole supplier of a material
34 or service required by the Minnesota Department of
35 Transportation;

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1 B. the commissioner of transportation determines that
2 an emergency exists as defined in Minnesota Statutes, section
3 161.32, subdivision 3; or

4 C. the commissioner of administration determines that
5 an emergency exists as defined in Minnesota Statutes, section
6 ~~16.06~~ 16B.08, subdivision 2 6; or

7 D. the contract is for purchasing materials or
8 renting equipment for routine road maintenance.

9 1230.4000 CONTINUATION OF CONTRACTS.

10 Mn/DOT contracts in existence at the time of debarment or
11 suspension are not terminated by the debarment or suspension
12 except as provided in part 1230.1200.

13 1230.4100 PROHIBITIONS.

14 Subpart 1. Mn/DOT contracts. Except as provided in part
15 1230.3900, the Department of Transportation may not award a
16 Mn/DOT contract to a debarred or suspended person and may not
17 approve a contract under which a debarred or suspended person
18 will serve as a subcontractor or material supplier.

19 Subp. 2. Subcontracts and purchase of materials. Except
20 as provided in part 1230.3900, a contractor to whom a Mn/DOT
21 contract has been awarded by the Minnesota Department of
22 Transportation may not subcontract with or purchase materials or
23 services from a debarred or suspended person for performance of
24 that contract.

25 1230.4200 SUSPENSION.

26 Subpart 1. Order of suspension. The commissioner of
27 transportation shall suspend a person or business by order upon
28 receiving notice or learning of a conviction for conduct
29 described in part 1230.3200 or upon learning receiving evidence
30 of an affiliation described in part 1230.3600, subpart 2.

31 Subp. 2. Commencement of proceedings. The commissioner of
32 transportation shall start debarment proceedings within ten days
33 of the mailing of the suspension order.

34 Subp. 3. Notice and content. The order for suspension
35 must describe the reason for suspension and must be sent by

1 certified mail to the person suspended.

2 Subp. 4. Effective date of suspension; term. The order
3 for suspension takes effect on the date the order is mailed. No
4 suspension may exceed 60 days.

5 1230.4300 NOTICE TO PUBLIC.

6 Subpart 1. Notice to commissioner. The Minnesota
7 Department of Transportation shall provide to the commissioner a
8 copy of each suspension, debarment, or termination order on the
9 same day that the order is mailed to the debarred or suspended
10 person.

11 Subp. 2. Publication. The commissioner shall publish
12 weekly, in the State Register, a list of debarred and suspended
13 persons, the effective date of each suspension and debarment,
14 and the term of each debarment. The commissioner shall also
15 publish notice of debarment terminations under part 1230.3900
16 and the effective date of the termination.

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