

# **EASTERN MICHIGAN UNIVERSITY DEBARMENTS AND SUSPENSIONS PROCEDURES**

## **Debarment and suspension of contractors**

- A. The Director of Purchasing shall adopt rules providing for the suspension and debarment of any person from consideration for award of contracts. If there are reasonable grounds for debarment the rules of the Director may provide for the suspension of any person for not to exceed six months. A debarment shall not exceed three years.
- B. The causes for debarment or suspension include the following:
1. Conviction of any person or any subsidiary or affiliate of any person for commission of a criminal offense arising out of obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
  2. Conviction of any person or any subsidiary or affiliate of any person under any statute of the federal government (i.e.A-21, OMB A110, A 133), this state or any other state for embezzlement, theft, fraudulent schemes and artifices, fraudulent schemes and practices, bid rigging, perjury, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which affects responsibility as a state contractor.
  3. Conviction or civil judgment finding a violation by any person or any subsidiary or affiliate of any person under state or federal antitrust statutes.
  4. Violations of contract provisions of a character which are deemed to be so serious as to justify debarment action, such as either of the following:
    - (a) Knowingly fails without good cause to perform in accordance with the specification or within the time limit provided in the contract.
    - (b) Failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts, except that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.
  5. Any other cause deemed to affect responsibility as a contractor, including suspension or debarment of such person or any subsidiary or affiliate of such person by another governmental entity.
- C. For purchases equal to or exceeding \$25,000 purchasing agents will verify vendors against both the [Michigan disbarred vendor list](#) and the [Federal Debarred vendor list](#) (Excluded Parties listing system)
- D. A written determination to debar or suspend shall be issued pursuant to the rules of the Director which shall:
1. State the reasons for the action taken.

2. Inform any debarred or suspended person involved of the right to administrative review as provided in this article.
- E. A copy of the decision under subsection C shall be mailed or otherwise furnished to any debarred or suspended person and to any intervening party.

#### **Authority to Debar or Suspend**

The Director has the sole authority to debar or suspend a person from participating in University procurements.

#### **Judicial Review**

Any final decision of the Director is subject to additional review by the Associate Vice President for Business and Finance, if requested by the complainant.

#### **Initiation of Debarment**

Upon receipt of information concerning a possible cause for debarment, the Director shall investigate the possible cause. If the Director has a reasonable basis to believe that a cause for debarment exists, the Director may propose debarment.

#### **Period of Debarment**

- A. The Director shall not establish the period of time for a debarment that exceeds three years from the date of the debarment determination.
- B. If debarment is based solely upon debarment by another governmental agency, the Director may establish that the period of debarment is to run concurrently with the period established by the other debarring agency.

#### **Notice of Debarment and Hearing**

- A. If debarment is proposed, the Director shall notify the person and affected affiliates in writing within seven days by certified mail, return receipt requested, or any other method that provides evidence of receipt. The notice shall state that the person and affected affiliates have the right to a hearing to contest the proposed debarment.
- B. The person proposed for debarment and any affected affiliates shall file a written request for a hearing within 10 days of receipt of the Director's notice of proposed debarment.

#### **Imputed Knowledge**

- A. The Director may attribute improper conduct to an affiliate for purposes of debarment where the impropriety occurred in connection with the affiliate's duties for or on behalf of, or with the knowledge, approval, or acquiescence of, the contractor.
- B. The Director may attribute improper conduct of a person or its affiliate having a contract with a contractor to the contractor for purposes of debarment where the impropriety occurred in connection with the person's duties for or on behalf of, or with the knowledge, approval, or acquiescence of, the contractor.

#### **Reinstatement**

- A. The Director may at any time after a final decision on a debarment reinstate a debarred person or rescind the debarment upon a determination that the cause upon which the debarment is based no longer exists.

- B. Any debarred person may request reinstatement by submitting a petition to the Director supported by documentary evidence showing that the cause for debarment no longer exists or has been substantially mitigated.
- C. The Director may require a hearing on the request for reinstatement.
- D. The Director shall make a written decision on reinstatement within 30 days after the request is filed and specify the factors on which it is based.
- E. Reinstatement decisions by the Director are not subject to administrative review.

### **Limited Participation**

The Director may allow a debarred person to participate in University contracts on a limited basis during the debarment period upon a written determination that participation is advantageous to the University. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

### **Suspension**

- A. If the Director determines that reasonable grounds for debarment exist, the Director may suspend a person from receiving any award.
- B. For purposes of suspension, a person's conduct may be attributed to an affiliate or another person.
- C. The Director shall not suspend a person pending debarment unless compelling reasons require suspension to protect state interests.

### **Period and Scope of Suspension**

Unless otherwise agreed to by the parties, the Director shall not implement a period of suspension of more than 35 days.

### **Notice, Hearing, Determination, and Appeal**

- A. The Director shall notify the person suspended by certified mail, return receipt requested, or by any other method that provides evidence of receipt.
- B. The notice of suspension shall state:
  - 1. The basis for suspension;
  - 2. The period, including dates, of the suspension;
  - 3. That offers received from the person will not be considered; and
  - 4. That the person is entitled to a hearing on the suspension if the person files a written request for a hearing with the Director within 30 days after receipt of the notice.
- C. Within 30 day's receipt of the notice of suspension, the suspended party may file a written request for hearing with the Director. The appeal shall include the following information:
  - 1. A copy of the decision of the Director; and

2. The precise factual or legal error in the decision from which the appeal is taken.
- D. The suspension shall be resolved as an appealable action.

### **Master List**

- A. The Director shall maintain a master list of debarments, suspensions, and voluntary exclusions under this Article.
- B. The master list shall show at a minimum, the following information:
  1. The names and vendor numbers of those persons whom the state has debarred or suspended under this Article;
  2. The statutory authority for the action;
  3. The period of debarment or suspension, including the expiration date;
  4. The name of the debarring or suspending agency, if the state's debarment or suspension is based on debarment or suspension by another governmental agency; and
  5. A separate section listing persons voluntarily excluded from participation in state contracts.

## **HEARING PROCEDURES**

### **Hearings**

If a hearing is required or permitted, the Director shall refer the matter to the Legal Affairs Office for findings of fact, conclusions of law, and a recommended decision. The Director may also direct the parties to engage in settlement negotiations or alternative dispute resolution procedures before referring the matter for a hearing.

### **Rehearing of Director's Decision**

- A. Any person who is aggrieved by the Director's decision may file a written request for rehearing of the decision.
- B. The Director, within the time for filing a request for rehearing under this rule, may upon the Director's own initiative, order a rehearing for any reason for which a rehearing may have been granted on request of a party.