

State Purchasing Bureau Policy

NOTICE

This guidance document is advisory in nature but is binding on the Nebraska Department of Administrative Services until amended. A guidance document does not include internal procedural documents that only affect the internal operations of the Department of Administrative Services and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document. See Neb. Rev. Stat. § 84-901.03

Policy No: 23-08
Application: Goods & Services
Subject: Suspension & Debarment
Effective Date: 11-20-2023

I. DEFINITIONS

- a. **Contractor** – An individual, group, or entity that directly or indirectly provides or proposes to directly or indirectly provide goods or services to the State of Nebraska.
- b. **Debarment** – Action taken by the State Purchasing Bureau to exclude a Contractor from contracting and subcontracting with the State of Nebraska for a specified period; a Contractor that is excluded is debarred.
- c. **Suspension** – Action taken by the State Purchasing Bureau to immediately and temporarily disqualify a Contractor from contracting or subcontracting with the State of Nebraska; a Contractor that is disqualified is suspended.

II. CAUSES FOR SUSPENSION OR DEBARMENT

A Contractor may be suspended or debarred for the following:

- a. 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 such contract or subcontract;
- b. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification, or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a Contractor;
- c. Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
- d. Violation of contract provisions, as set forth below, of a character which is regarded by the Materiel Administrator or the Director of the Department of Administrative Services to be so serious as to justify debarment or suspension:
 - i. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

- ii. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided 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.
- e. Any other cause the Materiel Administrator or the Director of the Department of Administrative Services determines to be so serious and compelling as to affect responsibility as a State of Nebraska Contractor, including debarment by another governmental entity for any cause listed in regulations; and
- f. An ethical violation that is regarded by the Materiel Administrator or the Director of the Department of Administrative Services to be so serious as to justify debarment or suspension.

III. PROCEDURE

- a. **Notice of Suspension or Debarment Consideration:** If Suspension or Debarment are being considered, the Materiel Administrator shall send a notice to the Contractor, advising the following:
 - i. Suspension or debarment is being considered;
 - ii. The facts alleged under which the suspension or debarment are being considered;
 - iii. The grounds relied on for debarment or suspension; and
 - iv. The potential effect of a debarment or suspension.
- b. **Investigation:** After a Notice of Suspension or Debarment Consideration has been issued, the Materiel Administrator shall investigate or cause an investigation to be made related to the allegations contained therein. In the investigation, the Materiel Administrator or designee may consider information from any source, including any information regarding mitigating circumstances.
- c. **Contractor Response:** The Contractor shall have thirty (30) business days to respond to the Notice of Suspension or Debarment. The Contractor's response may contain mitigating evidence and propose a cure, if possible. The Materiel Administrator may construe the Contractor's failure to submit a response as admission of the allegations in the Notice of Suspension or Debarment Consideration.
- d. **Evidence Required:** The Materiel Administrator may suspend or debar the Contractor if such suspension or debarment is in the public interest and the Materiel Administrator finds by a preponderance of the evidence that a cause, in Section II, *supra*, exists.
- e. **Notice of Suspension:** If the Materiel Administrator determines after investigation that suspension is merited, the Materiel Administrator shall send a Notice of Suspension to the suspended Contractor. The Notice shall include the following:
 - i. The cause, as outlined in Section II, *supra*, under which suspension is issued; and
 - ii. The period for which suspension is issued.
- f. **Notice of Debarment:** If the Materiel Administrator determines after investigation that debarment is merited, the Materiel Administrator shall send a Notice of Debarment to the debarred Contractor. The Notice of Debarment shall include the following:

- i. The cause, in Section II, supra, under which debarment was investigated;
 - ii. A summary of all evidence the Materiel Administrator or designee reviewed in his or her investigation;
 - iii. The Materiel Administrator's finding of facts from the investigation;
 - iv. The Materiel Administrator's reasons for finding that the facts merited debarment under a cause in Section II, supra; and
 - v. The period for which debarment is issued.
- g. **Debarment Record:** If a Contractor appeals the Materiel Administrator's debarment decision, the Materiel Administrator shall compile a record of all evidence relied upon to determine that debarment was merited for submission to the Director of the Department of Administrative Services or designee.

IV. Period of Suspension or Debarment

- a. The period of suspension and debarment is at the Materiel Administrator's discretion, subject to subsections b and c below.
- b. Unless a longer period is necessary to protect the state's interests:
 - i. Suspensions shall not be longer than eighteen (18) months; and
 - ii. Debarments shall not be longer than three (3) years.
- c. The Materiel Administrator may reduce the period of debarment or suspension at the Materiel Administrator's discretion.

V. Effect of Suspension or Debarment


- a. Agencies may not enter into new contracts or new purchases, renewals, or extensions with a Contractor has been debarred or suspended, unless an emergency exists in accordance with Neb. Rev. Stat. § 73-502.
- b. A suspended or debarred Contractor's name will be published on the Department of Administrative Services' website, and the suspension or debarment will be kept in the Contractor's file. Such suspension or debarment may be held against the Contractor in future bidding opportunities.

VI. Appeal of Debarment

- a. A Contractor may appeal a Notice of Debarment to the Director of the Department of Administrative Services (the "DAS Director").
- b. **Notice of Appeal**
 - i. The debarred Contractor must electronically submit a Notice of Appeal to the DAS Director at as.materielpurchasing@nebraska.gov within ten (10) business days after the Materiel Administrator's issuance of the Notice of Debarment.
 - ii. The Notice of Appeal must assign specific error to the Materiel Administrator's decision and argue all errors assigned.
- c. The DAS Director or designee shall issue his or her decision on the appeal within ninety (90) business days after the submission of a Notice of Appeal. If the DAS Director or designee determines that the issues involved in the appeal are too complex for a determination to be made within the above timeline, the DAS Director or designee may extend this deadline by a period not to exceed ninety (90) business days.

- d. The DAS Director or designee shall review the debarment de novo on the record created before the Materiel Administrator.
- e. The debarred Contractor has the burden to show the Materiel Administrator erred by a preponderance of the evidence.
- f. The DAS Director or designee may affirm the decision of the Materiel Administrator, reverse the decision of the Materiel Administrator.
- g. The DAS Director may appoint a designee to review any appeal of debarment on his or her behalf. Any designee must meet the following requirements:
 - i. The designee must be licensed to practice law in the State of Nebraska.
 - ii. The designee must not be under the direct supervision of the DAS Director or the Materiel Administrator.
- h. **No Contested Case:** An appeal under this Suspension & Debarment Policy does not create a contested case under Neb. Rev. Stat. § 84-901(3).

The foregoing policy is duly signed and executed on this 20th day of November, 2023.



Director,
State of Nebraska, *Department of Administrative Services*

20 NOV 23

DATE

Amara Block

Materiel Administrator,
State of Nebraska, *Department of Administrative Services*

11/20/23

DATE

