

Part I Chapter 16 Debarment and Suspension

A. Debarment

- 1. Authority.** The head of a purchasing agency may, after reasonable notice to the contractor involved and reasonable opportunity for the contractor to be heard, debar a contractor from consideration for the award of Commonwealth contracts.
- 2. Substantial Evidence.** The decision to debar shall be based upon substantial evidence that a cause for debarment has occurred.
- 3. Causes for Debarment.**
 - a.** Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
 - b.** Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of, or acquiescence in such activities by a contractor or any affiliate, officer, employee, or other individual or entity associated with:
 - (1)** Obtaining.
 - (2)** Attempting to obtain.
 - (3)** Performing a public contract or subcontract.

The contractor's acceptance of the benefits derived from the conduct shall be deemed evidence of such knowledge, approval, or acquiescence.

- c.** Violation of federal or state antitrust statutes.
- d.** Violation of any federal or state law regulating campaign contributions.
- e.** Violation of any federal or state environmental law.
- f.** Violation of any federal or state law regulating hours of labor, minimum wage standards, or prevailing wage standards, discrimination in wages, or child labor violations.
- g.** Violation of the Act of June 2, 1915 (P. L. 736, No. 338), Workers' Compensation Act.
- h.** Violation of any federal or state law prohibiting discrimination in employment.
- i.** Debarment by any agency or department of the federal government or any other state.

- j. Three or more occurrences where a contractor has been declared ineligible for a contract.
 - k. Unsatisfactory performance, including, but not limited to, any of the following:
 - (1) Failure to comply with terms of a Commonwealth agency contractor subcontract, including, but not limited to: willful failure to perform in accordance with the terms of one or more contracts, a history of failure to perform, or unsatisfactory performance of one or more contracts.
 - (2) Offering unbalanced bids.
 - (3) Failure to complete the work in the time frame specified in the contract.
 - (4) Being declared in default on prior work or project.
 - (5) Failure to submit documents, information, or forms required by the contract.
 - (6) Making false statements or failing to provide information or otherwise to cooperate with the contracting agency, Office of the State Inspector General, or other Commonwealth authorities.
 - (7) Discrimination in violation of laws or regulations in the conduct of business as a contractor.
 - l. Any other act or omission indicating a lack of skill, ability, capacity, quality control, business integrity, or business honesty that seriously and directly affect the present responsibility of a person as determined by the purchasing agency.
- 4. **Mitigating Factors and Seriousness of Violation.** The head of the purchasing agency shall take into consideration the seriousness of any violation and any mitigating factors.
- 5. **Period of Debarment.** A debarment may be for a period of not more than three years.
- 6. **Decision.**
 - a. After the person has been given notice of the potential debarment and the opportunity to be heard, the head of a purchasing agency shall issue a written decision.
 - b. The decision shall:
 - (1) State the reasons for the action taken.
 - (2) Inform the person involved of the right to judicial review.

c. A copy of the written decision shall be sent to the person, any other intervening party or any interested party that has provided written notice to the purchasing agency of that party's interest in the decision.

7. Finality of Decision and Appeal. The written decision shall be deemed final and conclusive unless the person, within 30 days after receipt of the decision, appeals to the Commonwealth Court.

8. Effect of Debarment. Debarment of a person shall automatically prohibit all Commonwealth agencies from awarding any contract to such person or renewing or extending any contract with such person, unless the contracting officer determines that there are compelling reasons for such award, renewal, or extension and the head of the purchasing agency approves the determination.

B. Suspension.

1. Authority. The head of a purchasing agency may suspend a person if there is probable cause for debarment.

2. Probable Cause. The decision to suspend shall be based upon the determination that probable cause for debarment exists.

3. Causes for Suspension. The causes for suspension are the same as the causes for debarment.

4. Period of Suspension. A suspension may be for a term no greater than three months.

At the end of that time period, a debarment proceeding must be commenced or the person's suspension must be lifted.

C. Effect of Suspension. Suspension of a person shall automatically prohibit all Commonwealth agencies from awarding any contract to such person or renewing or extending any contract with such person unless the contracting officer determines that there are compelling reasons for such award, renewal, or extension and the head of the purchasing agency approves the determination.