

CHAPTER 60. RESPONSIBILITY

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Authority

The provisions of this Chapter 60 issued under sections 507, 2401.1, 2403, 2406—2410 and 2412 of The Administrative Code of 1929 (71 P. S. §§ 187, 631.1, 633, 636—640 and 642), unless otherwise noted.

Source

The provisions of this Chapter 60 adopted August 3, 1979, effective August 4, 1979, 9 Pa.B. 2520, unless otherwise noted.

§ 60.1. Scope.

(a) This chapter prescribes policies and procedures relating to administrative debarment and suspension invoked by the Department to exclude or render ineligible certain persons or firms from participation in contracts and subcontracts within this Commonwealth on the basis of a lack of responsibility. It is directly applicable to contracts of the Department, including contracts for construction, alteration, repair, purchase of personal property, services and disposal of property.

(b) These measures are to be used for the purpose of protecting the interests of the Commonwealth and not for punishment. To assure the Commonwealth the benefits to be derived from the full and free competition of interested parties, these measures will not be instituted for any time longer than deemed necessary to protect the interests of the Commonwealth.

§ 60.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Affiliates—Persons having an overt or covert relationship such that any one of them directly or indirectly controls or has the power to control another.

Bidders—Vendors or contractors negotiating or bidding under an invitation for bids or a request for proposals or otherwise.

Commonwealth contracting—An arrangement giving rise to an obligation to supply anything to or perform a service for the Commonwealth other than by virtue of Commonwealth employment or to supply anything to or perform services for a private person where the Commonwealth provides financial assis-

tance and retains the right to approve or disapprove the nature or quality of the goods or service or the persons who may supply or perform the same.

Debarment—An exclusion from Commonwealth contracting for a reasonable, specified period of time commensurate with the seriousness of the offense or failure or the inadequacy of performance.

Department—The Department of General Services of the Commonwealth.

Person—An individual, company, firm, association, corporation or other entity.

Secretary—The Secretary of the Department.

Suspension—An exclusion from Commonwealth contracting or subcontracting for a temporary period of time, pending the completion of an investigation or legal proceedings.

§ 60.3. Cause for debarment.

The Secretary or his authorized representative is authorized to debar in the public interest a person for the following causes:

- (1) Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract thereunder or in the performance of the contract or subcontract.
- (2) Violation of the antitrust statutes.
- (3) Violation of election laws.
- (4) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or another offense indicating a lack of business integrity or honesty.
- (5) Violation of a governing hour of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor violations.
- (6) Violation of the Pennsylvania Human Relations Act (43 P. S. §§ 951—963).
- (7) Willful failure to perform in accordance with the specifications or within contractual time limits.

(8) A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided, that the failure or unsatisfactory performance was within a reasonable period of time preceding the determination to debar and was caused by acts within the control of the contractor debarred.

(9) Providing false or misleading information as part of a prequalification statement, including but not limited to financial statements, equal opportunity employment forms, affidavits of compliance with prevailing wage statutes and product descriptive literature.

(10) Other cause affecting responsibility as a Commonwealth contractor, as may be determined by the Secretary to warrant debarment.

(11) Debarment by some other department or agency of the Commonwealth or other state or the Federal government.

Cross References

This section cited in 4 Pa. Code § 60.4 (relating to conditions); and 4 Pa. Code § 60.7 (relating to suspension).

§ 60.4. Conditions.

(a) Debarment or suspension for any cause will be made only upon approval of the Secretary or his duly authorized representative and an Assistant Counsel.

(b) The existence of any of the causes set forth in § 60.3 (relating to cause for debarment) does not necessarily require that persons be debarred or suspended. In each instance, the decision will be made within the discretion of the Secretary, unless otherwise required by law, and will be rendered in the best interests of the Commonwealth. Mitigating factors may be considered in determining whether debarment or suspension is warranted.

(c) The existence of a cause set forth in § 60.3(1)—(4) will be established by conviction by or a judgment obtained in a court of competent jurisdiction. In the event that an appeal taken from the judgment or conviction results in a reversal thereof, the debarment or suspension will be removed upon request of the affected person unless other cause exists.

(d) The existence of a cause set forth in § 60.3(5)—(11) will be established by evidence which the Department determines to be clear and convincing in nature.

(e) Debarment or suspension for the cause set forth in § 60.3(11) will be proper provided that one of the causes set forth in § 60.3(1)—(10) was the basis for debarment or suspension by the original agency. The action may be based entirely on the record of facts obtained by the original governmental entity or upon a combination of the facts and additional facts.

§ 60.5. Period and scope.

(a) Debarments will be for a reasonable, definitely stated period of time, commensurate with the seriousness of the cause therefor. As a general rule, debarment will not exceed 3 years. Debarment for an additional period will be permitted provided that notice thereof is furnished and opportunity for opposition is given in accordance with § 60.6 (relating to procedure). Debarment may be modified by reducing the period thereof when justified by the circumstances.

(b) Debarment may include known affiliates provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to relevant facts and the circumstances. The fraud or criminal conduct of an individual may be imputed to the business firm with which he is connected when the impropriety involved was performed in the course of official duty or with the knowledge or approval of the business firm.

(c) The Secretary, at his discretion, may permit contracting with the Commonwealth by a debarred person to a limited extent in order to provide an opportunity to demonstrate responsibility for consideration on modifying or reducing the period of debarment.

§ 60.6. Procedure.

(a) The Department will furnish the person and its known affiliates with written notice of a proposed debarment stating:

- (1) That debarment is being considered.
- (2) The reasons for the proposed debarment.
- (3) The period of time to be afforded to present information for consideration.
- (4) That no contracts will be awarded pending the debarment determination.

(b) Information in opposition may be presented in person, in writing or through representation within 30 days of written notice. After the expiration of 30 days but prior to the expiration of 90 days from date of notice, a determination will be made. The provisions of this subsection supersede the provisions of 1 Pa. Code § 35.35 (relating to answers to complaints and petitions).

(c) The person will be notified in writing within 10 days of determination. If debarment is effected, the notice will:

- (1) Reference the notice of proposed debarment;
- (2) Set forth the reasons.
- (3) State the period and effective dates.

Source

The provisions of this § 60.6 amended February 18, 1983, effective August 4, 1979, 13 Pa.B. 781. Immediately preceding text appears at serial page (43737).

Cross References

This section cited in 4 Pa. Code § 60.5 (relating to period and scope).

§ 60.7. Suspension.

(a) *Cause.* The Secretary or his authorized representative may, in the interest of the Commonwealth, upon approval by an Assistant Counsel, suspend a person:

(1) Suspected, upon prima facie evidence, of the causes set forth in § 60.3 (relating to cause for debarment).

(2) For other causes of a serious and compelling nature, affecting responsibility as a Commonwealth contractor or subcontractor, as may be determined by the Secretary to justify suspension.

(b) *Period of suspension.* Suspensions will be for a temporary period pending the completion of an investigation and legal proceedings as may ensue. In the event prospective action is not initiated by an appropriate prosecutorial official within 6 months from the date of the notice of suspension, the suspension will be terminated unless an Assistant Counsel requests continuance of the suspension in writing, in which case the suspension may be continued for an additional 3 months. When prosecutive action is initiated, the suspension may continue until the legal proceedings are completed.

(c) *Notice of suspension.* Upon suspension, the person concerned will immediately be furnished a written notice of the suspension by the Secretary or his authorized representative. This notice will state:

(1) That the suspension is based on prima facie evidence that the person has committed irregularities of a serious nature in business dealings with the Commonwealth or that the suspension is based on the propriety of further dealings of the person with the Commonwealth, together with a statement of the nature of irregularities in general terms.

(2) That the suspension is for a temporary period pending the completion of an investigation and legal proceedings as may ensue.

(3) That bids and proposals will not be solicited from the person and, if received, will not be considered and that awards of contracts may not be made unless it is determined to be in the best interest of the Commonwealth by the Secretary to do so.

(4) The suspension is effective throughout the Department.

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