220-RICR-30-00-14

TITLE 220 – DEPARTMENT OF ADMINISTRATION

CHAPTER 30 – PURCHASES

SUBCHAPTER 00 – N/A

PART 14 – Vendor Suspension and Debarment

14.1 Purpose

The purpose of this Part is to govern the suspension and debarment of vendors.

14.2 Authority

This Part is promulgated pursuant to the authority granted in R.I. Gen. Laws Chapter 37-2.

14.3 Definitions

A. "Debarment" means exclusion from all procurements and termination of all existing or outstanding contracts. A debarred vendor cannot perform work as a subcontractor or subconsultant for the State.

B. "Responsible bidder" shall have the same meaning as set forth in R.I. Gen. Laws § 37-2-15(6).

C. "Small disadvantaged business" means either a "minority business enterprise" or "small disadvantaged businesses owned and controlled by persons with disabilities", as defined below.

1. "Small disadvantaged businesses owned and controlled by persons with disabilities" shall has the same meaning as set forth in R.I. Gen. Laws § 37-2.2-2.

2. "Minority business enterprise" shall have the same meaning as set forth in R.I. Gen. Laws § 37-14.1-3(f).

D. "Suspension" means temporary exclusion from procurements, for a specified period of time and termination of outstanding contracts (at the discretion of the Purchasing Agent). A suspended vendor cannot perform work as a subcontractor or subconsultant for the State during the duration of the Suspension.

E. "Vendor" means any individual, firm, corporation, partnership or other entity submitting a proposal to the Division indicating a desire to enter into contracts

with the State of Rhode Island, or with whom a Contract is executed by the State Purchasing Agent.

14.4 Responsibility and Authority of the Purchasing Agent

Unless notified in writing by the Chief Purchasing Officer to the contrary, the Purchasing Agent shall be authorized to act on behalf of the Chief Purchasing Officer in carrying out the responsibilities and authority set forth herein for selection, evaluation, approval, debarment, suspension, rejection, and restriction of vendors.

14.5 Suspension and Debarment

A. Applicability

1. A suspension or debarment of any part of a business entity constitutes suspension or debarment of all of its divisions, officers, directors, owners and all other organizational elements, except where the suspension or debarment has been specifically limited in scope and application, and may include all known corporate affiliates of a business entity, when such offense or act occurred in connection with the affiliate's performance of duties for or on behalf of the business entity, or with the knowledge, approval, or acquiescence of the business entity or one or more of its principals or directors, or where the business entity otherwise participated in, knew of, or had reason to know of the acts.

2. The fraudulent, criminal or other serious improper conduct of any officer, director, shareholder, partner, employee, or any other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

B. Just cause for suspension shall be:

1. In lieu of debarment, a vendor may be suspended for any just cause for debarment, at the sole discretion of the Purchasing Agent, guided by a review of the severity of the violation;

2. An indictment or any information filed by a public agency charging a criminal offense as described above for debarment;

3. Substantial evidence, as determined by the Purchasing Agent, of willfully supplying materially false information incident to obtaining or attempting to obtain or performing any public contract or subcontract, or willful failure to

comply with requirements imposed upon contractors or subcontractors by law or regulation;

4. Suspension by the federal government;

5. Material nonperformance on at least one contract, subject to the notice provisions set forth in § 13.20 of this Chapter, if applicable;

6. Lack of responsibility evidenced by:

   a. Withdrawal of two or more bids within a two-year period, even with the consent of the Purchasing Agent, or

   b. Correction following public or formal opening of two or more bids within a two-year period, even with the consent of the Purchasing Agent, or

   c. Rejection for non-responsiveness of two or more bids within a two-year period;

7. Commission of any act indicating a lack of business integrity or business honesty;

8. Lack of competence, financial responsibility, or other limitations related to the ability of a vendor to provide goods and services;

9. Failure to pay subcontractors for work performed and accepted in accordance with the Prompt Payment Statute, R.I. Gen. Laws § 42-11.1-3;

10. Any failure by a vendor to perform a contract in a workmanlike manner.

C. Just cause for debarment shall be:

1. Conviction or final adjudication by a court or administrative agency of competent jurisdiction of any of the following offenses:

   a. Criminal offense incident to obtaining or attempting to obtain a public contract or subcontract, or the performance of such contract or subcontract, in any jurisdiction; or

   b. Criminal offense involving embezzlement, theft, fraud, perjury, forgery, bribery, falsification or destruction of records, receiving stolen property (or any other offense indicating a lack of business integrity or honesty which seriously and directly affects the contractor's present responsibility as a public contractor); or

   c. Violation of state or federal antitrust laws relative to the submission of bids or proposals (including those proscribing price fixing

between competitors, allocation of customers between competitors, and bid rigging); or

d. Violation of state or federal laws regulating campaign contributions;

e. Violation of state or federal laws regulating equal employment opportunity or accessibility for individuals with disabilities.

2. Substantial evidence, as determined by the Purchasing Agent of:

a. Violation of the terms of a public agreement or transaction so serious as to affect the integrity of any agency program;

b. Falsification of information on a bid submission or Bidder Registration form, subcontracting plan, or MBE Utilization Plan;

c. Material nonperformance on two or more contracts, subject to the notice provisions set forth in § 13.20 of this Chapter, if applicable;

d. Debarment by the federal government;

e. Withdrawal, without written permission of the Purchasing Agent, of two or more bids after an award has been announced;

f. Commission of any act indicating a lack of business integrity or business honesty;

g. Lack of competence, financial responsibility, or other limitations related to the ability of a vendor to provide goods and services;

h. Failure to pay subcontractors for work performed and accepted in accordance with the Prompt Payment Statute, R.I. Gen. Laws § 42-11.1-3; or

i. Any failure by a vendor to perform a contract in a workmanlike manner.

D. A vendor or contractor who knowingly engages as a subcontractor, for a contract awarded by the State, a vendor or contractor then under a ruling of suspension or debarment by the State shall be subject to disallowance of cost, annulment or termination of award, issuance of a stop work order, debarment or suspension, as may be judged to be appropriate by the State Purchasing Agent.

E. The Purchasing Agent may suspend a vendor for up to a two-year period, depending on the severity of a particular violation, provided however that where the cause of the suspension is a criminal indictment as described above, the suspension shall remain in force until such time as the court has disposed of the indictment.

14.6 Notification, Protest and Reconsideration

A. The Purchasing Agent shall notify in writing any vendor whom he or she intends to suspend or debar. Notice shall be issued to the email address that the vendor has on file with the Division of Purchases (or post office address if vendor email address is not on file). Such notice shall:

1. State the nature of and, in the case of suspension, the duration of the sanction,

2. Provide the vendor with the rationale for the decision, and

3. Provide a reasonable time for reconsideration not less than fourteen (14) calendar days within which the vendor may provide justification for why such action should not be implemented.

4. If a suspension or debarment is based upon charges of fraud or dishonesty pursuant to §§ 14.5(B)(3), 14.5(B)(7), 14.5(C)(2)(b) or 14.5(C)(2)(f) of this Part, the vendor may request an opportunity to be heard before the Purchasing Agent prior to the issuance of the reconsideration decision.

B. If the Chief Purchasing Officer determines that immediate suspension is necessary to prevent serious harm to the State of Rhode Island, the suspension may take effect immediately upon transmittal of a written notice of such immediate suspension to the vendor. The written notice shall include the applicable provisions of §§ 14.6(A)(1) through (4) of this Part, above. Notwithstanding any other provisions of this Part, any contractor federally suspended or debarred shall by reason of such suspension or debarment be simultaneously suspended or debarred by the Division of Purchases.

C. Where reconsideration has been requested in writing by a vendor, the Purchasing Agent shall, upon expiration of the reconsideration period, notify the affected vendor of his or her final decision. Where no such request is received, the action shall be implemented without notice.

D. Protests of a suspension or debarment may be submitted to the Chief Purchasing Officer in accordance with Part 1.6 of this Subchapter and R.I. Gen. Laws § 37-2-52.

E. Where issuance of a purchase order or other award to a particular vendor may compromise the best interests of the State, nothing herein prevents the Purchasing Agent from directing that a suspension or debarment take effect immediately.

F. No notice shall be required where the Purchasing Agent rejects the offer of a vendor for an individual procurement.

G. A vendor who has been suspended shall not be reinstated until he or she has submitted a written request for reinstatement to the Purchasing Agent, with evidence that the reason for suspension or revocation has been corrected.

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