

§§5A-3-33a. Definitions.

For purposes of the provisions of sections thirty-three-a through thirty-three-f of this article:

- (a) "Debarment" means the exclusion of a vendor from the right to bid on contracts to sell goods or supply services to the state or its subdivisions for a specified period of time.
- (b) "The state and its subdivisions" means the state of West Virginia, every political subdivision thereof, every administrative entity that includes such a subdivision, all municipalities and all county boards of education.
- (c) "Vendor" means any person or entity that is eligible to bid on contracts to supply the state or its subdivisions with commodities or services, including contracting services for the construction and improvement of roads and buildings.

§§5A-3-33b. Scope.

The provisions of sections thirty-three-a through thirty-three-f of this article govern the debarment of vendors with regard to bids under the following provisions of this code:

- (a) Section one, article twenty-two, chapter five, relating to bids for construction contracts by the state and its subdivisions;
- (b) Section eleven, article three, chapter five-a, relating to the purchase of supplies and printing by the state;
- (c) Section eleven, article one, chapter seven, relating to bids for the purchase of commodities and printing by county commissions;
- (d) Sections nineteen and twenty, article four, chapter seventeen, relating to bids for construction and reconstruction of state roads and bridges and the furnishing of materials and supplies therefor;
- (e) Article nine-d, chapter eighteen, relating to the awarding of contracts by the school building authority; and
- (f) Sections four and five, article five, chapter eighteen-b, relating to expenditures by the governing boards for higher education.

§§5A-3-33c. Duties.

The director has primary responsibility for administering the debarment process. The director's duties include:

- (a) Obtaining lists of vendors declared ineligible under federal laws and regulations;
- (b) Notification of all contracting officials for the state and its subdivisions regarding debarred vendors;
- (c) Compiling and maintaining a current, consolidated list of all vendors that have been debarred or declared ineligible, the period of such debarment, and the reasons therefor;
- (d) Investigating complaints about vendors from the officials of the state and its subdivisions responsible for contracting with vendors for supplies and services;
- (e) Initiating and conducting debarment procedures;
- (f) Proposing rules for legislative approval, pursuant to the provisions of article three, chapter twenty-nine-a of this code, for the operation of the debarment process described in the provisions of sections thirty-three-a through thirty-three-f of this article.

§§5A-3-33d. Grounds for debarment.

Grounds for debarment are:

- (1) Conviction of an offense involving fraud or a felony offense in connection with obtaining or attempting to obtain a public contract or subcontract;

- (2) Conviction of any federal or state antitrust statute relating to the submission of offers;
- (3) Conviction of an offense involving embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property in connection with the performance of a contract;
- (4) Conviction of a felony offense demonstrating a lack of business integrity or business honesty that affects the present responsibility of the vendor or subcontractor;
- (5) Default on obligations owed to the state, including, but not limited to, obligations under the West Virginia workers' compensation act, the West Virginia unemployment compensation act and West Virginia state tax and revenue laws. For purposes of this subsection, a vendor is in default when, after due notice, the vendor fails to submit a required payment, interest thereon or penalty, and has not entered into a repayment agreement with the appropriate agency of the state or has entered into a repayment agreement but does not remain in compliance with its obligations under the repayment agreement. In the case of a vendor granted protection by order of a federal bankruptcy court or a vendor granted an exemption under any rule of the bureau of employment programs or the workers' compensation commission, the director may waive debarment under section thirty-three-f of this article: *Provided*, That in no event may debarment be waived with respect to any vendor who has not paid all current state obligations for at least the four most recent calendar quarters, excluding the current calendar quarter, or with respect to any vendor who is in default on a repayment agreement with an agency of the state;
- (6) The vendor is not in good standing with a licensing board, in that the vendor is not licensed when licensure is required by the law of this state, or the vendor has been found to be in violation of an applicable licensing law after notice, opportunity to be heard and other due process required by law; and
- (7) Violation of the terms of a public contract or subcontract for:
 - (A) Willful failure to substantially perform in accordance with the terms of one or more public contracts;
 - (B) Performance in violation of standards established by law or generally accepted standards of the trade or profession amounting to intentionally deficient or grossly negligent performance on one or more public contracts;
 - (C) Use of substandard materials on one or more public contracts or defects in construction in one or more public construction projects amounting to intentionally deficient or grossly negligent performance, even if discovery of the defect is subsequent to acceptance of a construction project and expiration of any warranty thereunder;
 - (D) A repeated pattern or practice of failure to perform so serious and compelling as to justify debarment; or
 - (E) Any other cause of a serious and compelling nature amounting to knowing and willful misconduct of the vendor that demonstrates a wanton indifference to the interests of the public and that caused, or that had a substantial likelihood of causing, serious harm to the public.

§§5A-3-33e. Debarment procedure.

- (a) The director shall obtain lists of vendors declared ineligible under federal laws and regulation and lists of vendors who are in default on state obligations, and shall initiate debarment proceedings with respect to such vendors, except when good cause is shown which includes evidence that the vendor has become responsible.
 - (1) In the case of federal ineligibility restrictions applicable to state agencies, the director shall also notify the appropriate agencies of any ineligibility determined under federal authority.

(2) The director may also initiate debarment proceedings if he or she finds probable cause for debarment for any ground set forth in section thirty-three-d of this article.

(3) The director shall initiate debarment proceedings when any state agency requests debarment of a vendor and the director finds that probable cause for debarment exists.

(b) The director shall notify the vendor by certified mail, return receipt requested, of the following:

(1) The reasons for the proposed debarment in sufficient detail to put the vendor on notice of the conduct or transactions upon which the proposed debarment is based;

(2) The causes relied upon for the proposed debarment;

(3) That within thirty working days after receipt of the notice, the vendor may submit in writing information and argument in opposition to the proposed debarment;

(4) The procedures governing debarment decision-making; and

(5) The potential effect of the proposed debarment.

(c) In the event a vendor wishes to contest the debarment decision, the director shall decide the matter in accordance with the provisions of article five, chapter twenty-nine-a of this code.

(d) In any debarment decision, the director shall make a specific finding, based on the substantial record, whether the public interest requires that the debarment decision extend to all commodities and services of the vendor, or whether the public interest allows the debarment decision to be limited to specific commodities or services.

(e) In any debarment decision, the director shall specify the length of the debarment period. The debarment period must be for the period of time that the director finds necessary and proper to protect the public from an irresponsible vendor.

(f) Proof of grounds for debarment must be clear and convincing.

§5A-3-33f. Effects of debarment.

(a) Unless the director determines in writing that there is a compelling reason to do otherwise, the state and its subdivisions may not solicit offers from, award contracts to, or consent to subcontract with a debarred vendor during the debarment period.

(b) The contracting officer may not exercise an option to renew or otherwise extend a current contract with a debarred vendor, or a contract which is being performed in any part by a debarred subcontractor, unless the director approves the action in writing, based on compelling reasons for exercise of the option or extension.

(c) The debarment decision may extend to all commodities and services of the vendor, or may be limited to specific commodities or services, as the director specifically finds, in the debarment procedure under section thirty-three-e of this article, to be in the public interest based on the substantial record.

(d) The director may extend the debarment to include an affiliate of the vendor upon proof necessary to pierce the corporate veil at common law. The director shall follow the same procedure, and afford the affiliate like notice, hearing and other rights, for extending the debarment to the affiliate as provided for under section thirty-three-e for the debarment of the vendor.

(e) The director may reduce the period or extent of debarment, upon the vendor's request supported by documentation, for the following reasons:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or judgment upon which debarment was based;

(3) Elimination of the causes for which the debarment was imposed; or

(4) Other good cause shown, including evidence that the vendor has become responsible.

(f) The director may extend the debarment period for an additional period if the director determines that the extension is necessary to protect the interests of the state. Upon the expiration of a debarment period, the director shall extend the debarment period for any vendor who has not paid all current state obligations for at least the four most recent calendar quarters, exempting the current calendar quarter, and for any vendor who is in default on a repayment agreement with an agency of the state, until such time as the cause for the extended debarment is removed. If the director extends the debarment period, the director shall follow the same procedures, and afford the vendor like notice, hearing and other rights for extending the debarment, as provided for debarment under section thirty-three-e of this article.

(g) A debarment under this article may be waived by the director with respect to a particular contract if the director determines the debarment of the vendor would severely disrupt the operation of a governmental entity to the detriment of the general public or would not be in the public interest.