

Effective 5/12/2015

63G-6a-904 Debarment or suspension from consideration for award of contracts -- Process -- Causes for debarment -- Appeal.

- (1)
- (a) Subject to Subsection (1)(b), the chief procurement officer or the head of a procurement unit with independent procurement authority may:
 - (i) debar a person for cause from consideration for award of contracts for a period not to exceed three years; or
 - (ii) suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity that might lead to debarment.
 - (b) Before debarring or suspending a person under Subsection (1)(a), the chief procurement officer or head of a procurement unit with independent procurement authority shall:
 - (i) consult with:
 - (A) the procurement unit involved in the matter for which debarment or suspension is sought; and
 - (B) the attorney general, if the procurement unit is in the state executive branch, or the procurement unit's attorney, if the procurement unit is not in the state executive branch;
 - (ii) give the person at least 10 days' prior written notice of:
 - (A) the reasons for which debarment or suspension is being considered; and
 - (B) the hearing under Subsection (1)(b)(iii); and
 - (iii) hold a hearing in accordance with Subsection (1)(c).
 - (c)
 - (i) At a hearing under Subsection (1)(b)(iii), the chief procurement officer or head of a procurement unit with independent procurement authority may:
 - (A) subpoena witnesses and compel their attendance at the hearing;
 - (B) subpoena documents for production at the hearing;
 - (C) obtain additional factual information; and
 - (D) obtain testimony from experts, the person who is the subject of the proposed debarment or suspension, representatives of the procurement unit, or others to assist the chief procurement officer or head of a procurement unit with independent procurement authority to make a decision on the proposed debarment or suspension.
 - (ii) The Rules of Evidence do not apply to a hearing under Subsection (1)(b)(iii).
 - (iii) The chief procurement officer or head of a procurement unit with independent procurement authority shall:
 - (A) record a hearing under Subsection (1)(b)(iii);
 - (B) preserve all records and other evidence relied upon in reaching a decision until the decision becomes final;
 - (C) for an appeal of a debarment or suspension by a procurement unit other than a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district, submit to the procurement policy board chair a copy of the written decision and all records and other evidence relied upon in reaching the decision, within seven days after receiving a notice that an appeal of a debarment or suspension has been filed under Section 63G-6a-1702 or after receiving a request from the procurement policy board chair; and
 - (D) for an appeal of a debarment or suspension by a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district, submit to the Utah Court of Appeals a copy of the written decision and all records and other

- evidence relied upon in reaching the decision, within seven days after receiving a notice that an appeal of a debarment or suspension has been filed under Section 63G-6a-1802.
- (iv) The holding of a hearing under Subsection (1)(b)(iii) or the issuing of a decision under Subsection (1)(c)(v) does not affect a person's right to later question or challenge the jurisdiction of the chief procurement officer or head of a procurement unit with independent procurement authority to hold a hearing or issue a decision.
 - (v) The chief procurement officer or head of a procurement unit with independent procurement authority shall:
 - (A) promptly issue a written decision regarding a proposed debarment or suspension, unless the matter is settled by mutual agreement; and
 - (B) mail, email, or otherwise immediately furnish a copy of the decision to the person who is the subject of the decision.
 - (vi) A written decision under Subsection (1)(c)(v) shall:
 - (A) state the reasons for the debarment or suspension, if debarment or suspension is ordered;
 - (B) inform the person who is debarred or suspended of the right to judicial or administrative review as provided in this chapter; and
 - (C) indicate the amount of the security deposit or bond required under Section 63G-6a-1703 and how that amount was calculated.
 - (vii)
 - (A) A decision of debarment or suspension issued by a procurement unit other than a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district is final and conclusive unless the person who is debarred or suspended files an appeal of the decision under Section 63G-6a-1702.
 - (B) A decision of debarment or suspension issued by a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district is final and conclusive unless the person who is debarred or suspended files an appeal of the decision under Section 63G-6a-1802.
- (2) A suspension under this section may not be for a period exceeding three months, unless an indictment has been issued for an offense which would be a cause for debarment under Subsection (3), in which case the suspension shall, at the request of the attorney general, if the procurement unit is in the state executive branch, or the procurement unit's attorney, if the procurement unit is not in the state executive branch, remain in effect until after the trial of the suspended person.
- (3) The causes for debarment include the following:
- (a) conviction 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 a public or private 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 for the procurement unit;
 - (c) conviction under state or federal antitrust statutes;
 - (d) failure without good cause to perform in accordance with the terms of the contract;
 - (e) a violation of this chapter; or
 - (f) any other cause that the chief procurement officer or the head of a procurement unit with independent procurement authority determines to be so serious and compelling as to affect

responsibility as a contractor for the procurement unit, including debarment by another governmental entity.

- (4) A person who is debarred or suspended under this section may appeal the debarment or suspension:
 - (a) as provided in Section 63G-6a-1702, if the debarment or suspension is by a procurement unit other than a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district; or
 - (b) as provided in Section 63G-6a-1802, if the debarment or suspension is by a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district.
- (5) A procurement unit may consider a cause for debarment under Subsection (3) as the basis for determining that a person responding to a solicitation is not responsible:
 - (a) independent of any effort or proceeding under this section to debar or suspend the person; and
 - (b) even if the procurement unit does not choose to seek debarment or suspension.

Amended by Chapter 258, 2015 General Session