

Kansas Administrative Regulations

Kansas Department of Transportation

Article 31.—Debarment and Suspension of Contractors

36-31-2. Debarment.

(a) Cause. The secretary may impose debarment upon a contractor for any of the causes listed below:

(1) Conviction, judgment, or admission of:

(A) fraud, collusion, or any criminal offense in connection with obtaining, attempting to obtain, or performing a contract let by the secretary or a subcontract of it;

(B) violation of federal or state anti-trust statutes;

(C) embezzlement, theft, forgery, bribery, perjury, falsification or destruction of records, making false statements, receiving stolen property, and obstruction of justice;

(D) violation of any applicable laws governing hours of labor, minimum wage rates, discrimination in wages, or child labor; and

(E) violation of any laws indicating a lack of business integrity or business honesty which seriously and directly affect the present responsibility of the contractor to public contracts or subcontracts of them.

(2) Violation of the terms of a contract let by the secretary, or a subcontract of a contract let by the secretary, including but not limited to the following:

(A) willful failure to perform in accordance with contract specifications; and

(B) 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 has occurred within a reasonable time preceding the determination to debar and was substantially caused by acts within the control of the contractor.

(3) Any other cause that affects the question of present responsibility as a contractor or subcontractor on contracts let by the secretary, including conduct prescribed in (1) and (2) even if this conduct has not been or may not be prosecuted as violations of the laws or contracts.

(b) Procedures.

(1) The secretary or an authorized representative shall designate a hearing official to conduct any hearing held under these rules. The hearing official, upon determining from the secretary's reports, investigations, and other documents that cause exists under (a) to debar a contractor, shall furnish written notice of a hearing to the contractor and any named affiliates. The notice shall state:

(A) that debarment is being considered;

(B) the facts giving rise to the proposed debarment;

(C) the cause or causes under (a) relied upon for proposing debarment;

(D) that the contractor may, within 30 days of receipt of the notice, submit to the hearing official, in writing, information and argument in opposition to or clarification of the proposed debarment;

(E) that, except when the action is based on a conviction, judgment, or admission, fact-finding shall be conducted if the hearing official determines that the contractor's submission raises a genuine dispute over material facts upon which the proposed debarment is based or whether the causes relied upon for proposing debarment exist;

(F) the time, place, and date of the hearing;

(G) the name and mailing address of the hearing official;

(H) if a suspension is not in effect before the notice being sent, that contracts shall not be awarded to the contractor by the secretary pending the decision by the hearing official.

(2) The hearing official may extend the date of any hearing upon request of the contractor, but the hearing shall not be extended to later than 60 days from the date the notice was sent. The hearing official shall schedule and conduct the hearing within 45 days of sending the notice, except when an extension is granted as provided in this subsection. In the course of the hearing, the hearing official shall:

(A) regulate the course and scheduling of the hearings;

(B) rule on offers of proof, receive relevant evidence, and make the proof and evidence part of the record;

(C) take action necessary to insure an orderly hearing; and

(D) at the conclusion of the hearing, issue to the secretary and the contractor and all named affiliates written findings of fact and recommended administrative action. The hearing officer shall deliver the entire record to the secretary.

(3) The contractor shall have the opportunity to be present and appear with counsel, submit evidence, present witnesses, and cross-examine all witnesses of the secretary. A transcribed record shall be made of the hearing unless the secretary and the contractor waive the transcript requirement. The transcript shall be available to the contractor and all named affiliates upon request and at cost.

In actions where it has been established by conviction, judgment or admission, or where it has been established by findings made in accordance with this regulation, that the named contractor has engaged in conduct prescribed in (a), the sole issue before the hearing official shall be the appropriate length of debarment to recommend to the secretary. In these cases, the hearing official shall not receive evidence relating to the merits of prior judicial or administrative decisions or findings.

The secretary, after receiving the record, findings of fact, and recommendations of the hearing official shall determine the administrative action to be taken. The secretary shall notify the named contractor or contractors of the secretary's determination in writing. If the determination is to impose debarment, the determination shall set forth the period of time the contractor or contractors are to be debarred from bidding on contracts or subcontracts of the secretary and the reasons for debarment.

(c) Period. The secretary shall impose debarment for a period commensurate with the seriousness of the causes but this period shall not exceed 36 months. The secretary may reduce the period upon the contractor's request, supported by documentation, for reasons including, but not limited to:

- (1) newly discovered evidence;
- (2) reversal of the conviction or judgment upon which the debarment was based; and
- (3) elimination of other causes for which the debarment was imposed.

(d) Scope. The determination made by the secretary may include all known affiliates of the contractor, provided that each decision to include an affiliate is made only after allowing the affiliate to participate in the hearing, with all the procedural rights of a contractor.

(Authorized by K.S.A. 68-410, K.S.A. 1982 Supp. 68-404; implementing K.S.A. 68-402, 68-407, 68-410, K.S.A 1982 Supp. 68-404; effective May 1, 1983.)

***** Authenticated Kansas Administrative Regulation *****