

# WAYNE STATE UNIVERSITY

## ADMINISTRATIVE POLICIES AND PROCEDURES MANUAL

### **2.8 Debarment Policy on Non-Responsible Vendor in Procurement Transactions**

#### **POLICY**

In order to ensure the effective and efficient administration of and maintain the integrity of Wayne State University's procurement practices, it is the policy of Wayne State University (the UNIVERSITY) to conduct business legally and only with responsible vendors. Toward this end, the UNIVERSITY shall have the discretion to exclude from participation in its procurement transaction and activities any vendor who is debarred pursuant to this Debarment Policy or who appears on any suspended, excluded or debarment list issued by any agency of any Federal, State or local government.

Debarment is a serious action that may lead to a vendor being excluded from procurement transactions with the UNIVERSITY for a period of up to three (3) years. Accordingly, this Debarment Policy provides a vendor subject to a debarment action with notice pursuant to which the seriousness of the vendor's acts or omissions and any mitigating factors will be considered in making any debarment decision. Debarment shall be used only in the public interest and for the UNIVERSITY's protection, not for purposes of punishment. The UNIVERSITY maintains a list of vendors that are debarred from doing business with the University.

#### **Applicability**

The Debarment Policy applies to: (1) any Vendor who has participated, is currently participating or may reasonably be expected to participate in a covered transaction, irrespective of the source of funding; (2) any Vendor who has participated, is currently participating or may reasonably be expected to participate in a related transaction, irrespective of the source of funding; (3) any principal of the Vendor described in (1) and (2) above; and (4) any affiliate of the Vendor described in (1), (2) or (3) above.

#### **Purpose**

The UNIVERSITY may debar a vendor from participating in the University bid process and from contract award. The purpose of the Debarment Policy is to protect the UNIVERSITY from business relations with dishonest, unethical, or otherwise irresponsible persons by:

- (a) Setting forth the acts or omissions that are grounds for debarment;
- (b) Providing for the maintenance and updating of a list of debarred participants and participants who are excluded from participation in covered transactions;
- (c) Setting forth the consequences of a debarment or voluntary exclusion;
- (d) Prescribing procedures to provide notice that the University shall use to debar any Vendor; and
- (e) Offering such other guidance as is necessary for the effective implementation and administration of this Debarment Policy.

#### **Reasons for Debarment**

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The causes of debarment set forth in this section are not intended to be an exhaustive list of the acts or omissions for which a Vendor may be debarred; grounds other than those enumerated in this section may be a basis for debarment. The UNIVERSITY may debar a vendor for any of the following reasons:

1. A finding by the UNIVERSITY's Director of Purchasing, upon recommendation by a UNIVERSITY or division officer, department director or business manager, that a vendor, or an officer or owner of a 25% or greater share of the vendor, has within the last three (3) years demonstrated a lack of integrity that could jeopardize the University's interest if the University were to contract with the vendor. Factors that may result in a finding that a vendor is not able to perform responsibly include, but are not limited to, any of the following:
  - a. A conviction of a criminal offense incident to the application for or performance of a contract or subcontract with the University or any of its agencies, authorities, boards, commissions, or departments.
  - b. A conviction of a criminal offense which negatively reflects on the vendor's business integrity, including but not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, negligent misrepresentation, price-fixing, bid-rigging, or a violation of state or federal anti-trust statutes.
  - c. A loss or suspension of a license or the right to do business or practice a profession, the loss or suspension of which indicates dishonesty, a lack of integrity, or a failure or refusal to perform in accordance with the ethical standards of the business or profession in question.
  - d. A conviction of a criminal offense or other violation of other state or federal law, as determined by a court of competent jurisdiction or an administrative proceeding, which in the opinion of the UNIVERSITY indicates that the vendor is unable to perform responsibly or which reflects a lack of integrity that could negatively impact or reflect upon the UNIVERSITY, including but not limited to, any of the following offenses under or violations of:
    - i. The Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.101 to 324.90106.
    - ii. A persistent and knowing violation of the Michigan Consumer Protection Act, 1976 PA 331, MCL 445.901 to 445.922.
    - iii. 1965 PA 166, MCL 408.551 to 408.558 (law relating to prevailing wages on state projects) and a finding that the vendor failed to pay the wages and/or fringe benefits due within the time period required.
    - iv. Repeated or flagrant violations of 1978 PA 390 MCL 408.471 to 408.490 (law relating to payment of wages and fringe benefits).
    - v. A willful or persistent violation of the Michigan Occupational Health and Safety Act, 1974, PA 154, MCL 408.10001 to 408.1094, including: a criminal conviction, repeated willful violations that are final orders, repeated violations that are final orders, and failure to abate notices that are final orders.
    - vi. A violation of federal or state civil rights, equal rights, or non-discrimination laws, rules, or regulations.

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2. A finding by the Director of Purchasing, upon recommendation by a division officer or department director, that the vendor is not able to perform responsibly, based upon any of the following:
  - a. Violation by the vendor of bid solicitation procedures or violations of the terms of a solicitation after bid submission.
  - b. Failure by the vendor to substantially perform or unsatisfactory performance of a University contract or subcontract according to project specifications and to its terms & conditions, and within specified time limits.
  - c. Refusal by the vendor to provide information or documents required by a contract, including but not limited to, information or documents necessary for the University to monitor contract compliance.
  - d. Failure by the vendor to respond to requests for information regarding vendor performance or accumulating repeated substantiated complaints regarding performance of a contract or purchase order.
  - e. Failure of the vendor to perform a University contract or subcontract in a manner consistent with any applicable state or federal law, rule, or regulation or University policy.
  - f. Failure to provide adequate support documentation as evidence of compliance with Prevailing Wage requirements, including Certified Payroll and copies of pay stubs for all employees working on University premises.
  - g. Negligence on the part of the contractor related to the work or any aspect of the contract, whether on a prime contractor or any of such contractor's subcontractors under its control.
  - h. Use by the contractor of forged or falsified documents for any reason, including the intent of deceiving the University and/or other parties.
  - i. Performance or conduct on one or more contracts or transactions which caused or may have caused a threat to the health or safety of the vendor's employees, any other persons involved with the transaction, the general public or property.
  - j. Violations of University Safety Requirements or of any other Contractors responsibilities as outlined in bid documents under either Section 00800 Supplementary General Conditions of the Contract for Construction or Section 01000 General Requirements or any other provisions in the bid documents.
  - k. Commission of any other act indicating a lack of business integrity or honesty, including, but not limited to, non-compliance with public policy, deficiencies in on-going contracts, false certifications or statements, fraud in performance or billing or lack of financial or technical resources.

### **Reporting Requirements**

To maintain status as an active vendor, the UNIVERSITY may require vendors to annually report the following:

1. All officers of the vendor.
2. All persons owning a 25% or greater interest in the vendor.

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3. Any conviction or violation of state or federal law as determined by a court of competent jurisdiction or in an administrative proceeding attributable to the vendor, an officer of the vendor, or a person owning a 25% or greater interest in the vendor within the last 3 years.

University Departments or Divisions shall report to the Director of Purchasing any convictions or violation of law, the department or agency becomes aware of, attributable to a vendor, an officer of the vendor, or a person owning a 25% or greater interest in the vendor, which in the opinion of the department or division may constitute grounds for debarment by the University.

### **Debarment Procedure**

The UNIVERSITY will issue a notice of proposed debarment to a vendor subject to debarment and any specifically named affiliates. All of the following shall be included in the notice:

1. A statement that proposed debarment action is being considered by the UNIVERSITY.
2. A description of the reasons for the proposed debarment in sufficient detail to put the contractor on notice of the conduct and causes upon which proposed debarment is based.
3. A statement indicating that within twenty (20) calendar days from the date of the notice, the contractor may submit, in writing, information in opposition to the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts and any mitigating circumstances.
4. Explanation that the vendor has twenty (20) calendar days to request a meeting for further discussion.
5. A statement that failure by the vendor to respond with a written request for a meeting within twenty (20) calendar days, will result in debarment by the UNIVERSITY without a meeting.
6. A description of the potential implications of debarment.

In actions based upon criminal conviction or civil judgment, or in which there is not a genuine dispute over material facts as determined by the Director of Purchasing, the Director of Purchasing shall make a recommendation for debarment to the Vice President for Finance and Facilities Management. This recommendation is based on all of the information in the administrative record, including any submission made by the vendor.

In actions in which there are disputed material facts, the Director of Purchasing shall schedule a meeting to gather facts from the vendor. Based on the results of this meeting, the Director of Purchasing shall make a recommendation for either debarment or for dismissal of the action to the Vice President for Finance and Facilities Management.

If debarment is imposed, the vendor and any affiliates involved shall be given prompt notice. The notice of debarment shall include the following information:

1. Reference to the notice of debarment.
2. Specific reasons for debarment.
3. The period and scope of debarment including the effective dates.
4. An explanation that the vendor has ten (10) business days after receipt of the notice of debarment to protest the debarment in writing to the Director of Purchasing.

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If debarment is not imposed, the Director of Purchasing shall promptly notify the vendor and any affiliates involved.

### **Debarment Protest**

A debarred vendor may protest the debarment action by written submission to the Director of Purchasing stating in detail the reasons that debarment is in error. The written protest shall be received within thirty (30) days after the date of the notice of debarment. The Director of Purchasing shall review all facts on which the debarment was based and the vendor's protest, and shall make a recommendation to the Vice President for Finance and Facilities & Management to either uphold or overturn the debarment. Any decision by the Vice President shall be made within 45 days of receipt of the written protest. The vendor shall be notified in writing of the decision.

The Director of Purchasing may reduce the debarment period, upon the debarred vendor's request, supported by documentation for the following reasons:

1. Newly discovered material evidence.
2. Reversal of the conviction or civil judgment upon which the debarment was based.
3. A good faith change in ownership or management.
4. Elimination of other causes for which the debarment was imposed.

### **Period of Debarment**

Debarment shall be for a period commensurate with the seriousness of the vendor's actions and causes for debarment not to exceed three (3) years. After the debarment period expires, the vendor may reapply for inclusion on bidder lists through the regular application process.

### **Effect and Scope Debarment**

Debarment affects all divisions or other organizational units of the vendor, unless the debarment decision is limited by its terms to specific divisions or organizational units. The debarment decision may extend to any affiliates of the vendor, if the affiliate is specifically named in the notice of debarment and given written notice of the proposed debarment and an opportunity to respond. Vendors debarred are excluded from receiving contracts, and University departments and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these vendors.

Notwithstanding the debarment or proposed debarment of a vendor, contracts or subcontracts in existence at the time a vendor is debarred may continue unless cancelled pursuant to the cancellation clause of the contract. Ordering activities may continue against existing contracts in the absence of cancellation. However, contracts with debarred vendors may not be renewed or otherwise extended.