

VENDOR SUSPENSION AND DEBARMENT 220-RICR-30-00-14

PUBLIC COMMENTS

Received from Construction Industries of Rhode Island

1) "The members of Construction Industries of Rhode Island are concerned that the proposed regulations authorize the purchasing agent to make subjective unilateral interpretations of vague and ambiguous criteria."

RESPONSE: 220-RICR-30-00-14 sets forth the objective criteria and grounds for suspension and debarment of a vendor in Rhode Island. With that being said, numerous amendments were made to the proposed regulation to make the criteria more transparent in response to this comment. See the accompanying "Concise Explanatory Statement" for a summary of all changes made.

2) "Also, there is no provision for due process before destroying a contractor's reputation and business."

RESPONSE: Section 14.6 of the proposed rule was updated extensively in response to this comment to enhance the due process afforded to vendors prior to suspension or debarment. In the final regulation, prior to suspension or debarment, vendors will receive notice of the intent to take such action in accordance with § 14.6(A) (except for cases of emergency, as outlined in § 14.6(B) and (C)). Vendors may request reconsideration of the intent to suspend or debar in accordance with § 14.6 and if such reconsideration is requested, the Purchasing Agent must notify the affected vendor of his or her final decision after such reconsideration. An appeal of the Purchasing Agent's final decision may then be sent to the Chief Purchasing Officer pursuant to § 14.6(D). Further, 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), a vendor may request an opportunity to be heard before the Purchasing Agent prior to the issuance of the reconsideration decision.

3) "RI Chapter 37-2-(b)(3) State Purchases, provides that purchasing policy should make as consistent as possible purchasing laws among the states. The Massachusetts Suspension and Debarment Statutes are specific and require conviction or clear and convincing evidence of a violation. In addition, they provide for notice to the contractor stating the reasons for proposed suspension or debarment and a formal hearing before action is taken."

RESPONSE: The standard for suspension in Massachusetts is when a contractor is "suspected upon adequate evidence" to have engaged in prohibited conduct. See M.G.L. ch. 29 § 29F(a). The evidentiary standard in Rhode Island's current and proposed regulation is higher than in Massachusetts, so no change was made. The standard for debarment in Massachusetts is conviction or "substantial evidence, as determined by a secretary or commissioner." See M.G.L. ch. 29 § 29F(c)(2). Section 14.5(C)(2) was amended to be consistent with the Massachusetts standard (see the accompanying "Concise Explanatory Statement" for a summary of all changes made.)

As to the second point in this comment, under the final regulation, notice will be sent to vendors prior to the suspension or debarment stating the rationale for that intention (see § 14.6(A)).

As to the third point in this comment, a hearing may be requested by the vendor if they are charged with fraud or dishonesty pursuant to §14.5(B)(3), §14.5(B)(7), § 14.5(C)(2)(b) or §14.5(C)(2)(f). This change is consistent with Rhode Island case law, specifically *Bradford Associates v. Department of Administration*, 772 A.2d 485 (R.I. 2001).

Received from Rhode Island Subcontractors Association

1) It is our opinion that the definitions of suspension are vague and arbitrary, including Section 14.5(b)(1), i.e. “Just cause for suspension shall be any cause for debarment pending on the severity of the violation,” which is extremely vague and ambiguous; subsection (b)(5), “Non-conformance on at least one contract,” is also vague and ambiguous, since non-conformance may be a miniscule matter.”

RESPONSE: Regarding § 14.5(B)(1), this language allows the Division of Purchases to be more lenient towards a vendor who has committed an offense that is grounds for debarment. With that being said, the regulatory language was amended to provide more specificity. See the accompanying “Concise Explanatory Statement” for a summary of all changes made.

Regarding § 14.5(B)(5), this language was updated in response to this comment to provide more specificity. The proposed language of “nonperformance on at least one contract” was amended to “material nonperformance on at least one contract.” This amendment was also made in § 14.5(C)(2)(c).