

Committee Report

Management Committee



Committee Meeting Date: January 10, 2024

For the Metropolitan Council: January 24, 2024

Business Item: 2024-18

FM 14-3 Vendor Suspension & Debarment Policy and Procedure

Proposed Action

That the Metropolitan Council adopt FM 14-3 Vendor Suspension & Debarment Policy.

Summary of Management Committee Discussion/Questions

No outstanding questions or comments.

Motion by Osman, seconded by Lee. Motion carried.



Business Item

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FM 14-3 Vendor Suspension & Debarment Policy and Procedure

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|----------------------------------|---|
| District(s), Member(s): | All Districts; All Members |
| Policy/Legal Reference: | Minn. Stat. §§ 473.123 Subd. 4(d) |
| Staff Prepared/Presented: | Jody Jacoby, Chief Procurement Officer 651-602-1359 |
| Division/Department: | Regional Administration/Procurement |

Proposed Action

That the Metropolitan Council adopt FM 14-3 Vendor Suspension & Debarment Policy.

Background

The Council does not currently have a Vendor Suspension & Debarment Policy. Adopting this policy and its supporting Debarment and Suspension procedure will help to prevent waste, fraud, and abuse in procurement and non-procurement actions. These actions are intended to ensure that only responsible Entities work on or perform on contracts with the Metropolitan Council ("Council"). Debarred Entities are Entities that have been formally Debarred under this Policy. If an Entity is Suspended or Debarred, the Suspension or Debarment applies to all future contracts and purchase orders with the Council during the term of the Suspension or Debarment. For existing contracts, the Council may exercise applicable contract conditions, as appropriate.

This Policy will enable the Regional Administrator to Suspend or Debar an entity, vendor, or individual ("Entity") from responding to solicitations, receiving an award of contracts, working as a subcontractor or supplier, or selling any products or services to the Metropolitan Council. The Vendor Suspension & Debarment procedure provides causes for Suspension or Debarment, factors considered when determining the length of Debarment, and provides the Entity with written notice and an opportunity to be heard. A set of reasons or a logical basis for a course of action; the justification; and explanation of the reasons.

Rationale

Minnesota Statutes section 473.123, subdivision 4(d), permits the Metropolitan Council to adopt policies and procedures governing its operations. This policy aligns with best practices and legal requirements.

Thrive Lens Analysis

This new policy will further advance the Thrive outcomes of Stewardship and Prosperity by ensuring the Council manages its financial resources by conducting business with reputable Vendors. This is critical to the long-term prosperity of the Council by establishing a pool of Vendors that are reliable, follow the law, and are accountable which is fundamental to the Council's daily efficient operation.

Funding

No funding is tied to the proposed action.

Small Business Inclusion

This policy impacts all businesses that bid work and perform on Council contracts/projects including certified small businesses.



POLICY

Vendor Suspension & Debarment

14-3

Category: Financial Management

Business Unit Responsible: RA: Procurement

Policy Owner: Chief Procurement Officer

Policy Contact: Jody Jacoby, Chief Procurement Officer, Procurement Department
Contract Management Support Unit, Procurement Department

Synopsis: This Policy outlines the vendor Suspension and Debarment process for the Metropolitan Council.

POLICY

The Regional Administrator may Suspend or Debar an entity, vendor, or individual (“Entity”) from responding to solicitations, receiving an award of contracts, working as a subcontractor or supplier, or selling any products or services to the Metropolitan Council as provided in this policy.

PURPOSE & SCOPE

The purpose of this policy and its supporting Debarment and Suspension procedure is to prevent waste, fraud, and abuse in procurement and non-procurement actions. These actions are intended to ensure that only responsible Entities work on or perform on contracts with the Metropolitan Council (“Council”). Debarred Entities are Entities that have been formally Debarred under this Policy. If an Entity is Suspended or Debarred, the Suspension or Debarment applies to all future contracts and purchase orders with the Council during the term of the Suspension or Debarment. For existing contracts, the Council may exercise applicable contract conditions, as appropriate.

The Vendor Suspension & Debarment procedure provides causes for Suspension or Debarment, factors considered when determining the length of Debarment, and provides the Entity with written notice and an opportunity to be heard.

IMPLEMENTATION & ACCOUNTABILITY

Implementation

All employees are responsible for adhering to this policy. The Chief Procurement Officer will implement this Policy and make changes in accordance with established Council review procedures.

PROCEDURES

1. FM 14-1a Vendor Suspension & Debarment Procedure

DEFINITIONS

See FM 14-3a Vendor Suspension & Debarment Procedure for definitions relating to this policy.

RESOURCES

Related Policies

1. [FM 14-1 Procurement Policy](#)

Internal Resources

1. [Procurement \(MetNet\)](#)

HISTORY

Version 1 – Approval Date

Not Set

Last Reviewed Date

Not Set

Next Content Review Date

Not Set

Former Reference

x-x

Version

1

PROCEDURE

Vendor Suspension & Debarment

FM 14-3a

Category: Financial Management

Business Unit Responsible: RA: Procurement

Procedure Owner: Chief Procurement Officer

Procedure Contact: Jody Jacoby, Chief Procurement Officer, Procurement Department
Contract Management Support Unit, Procurement Department

Synopsis: This Procedure outlines the Vendor Suspension and Debarment process

GOVERNING POLICY

- FM 14-3 Vendor Suspension & Debarment Policy

SUSPENSION AND DEBARMENT PROCEDURE

Suspension

The Council, acting through the Regional Administrator, may Suspend an entity if after written notice and an opportunity to be heard, the Council determines by a preponderance of the evidence that Entity engaged in conduct that would subject it to Debarment. An Entity may be Suspended while the Council determines whether the Entity is Debarred. A suspended Entity may not respond to solicitations, be awarded a contract or subcontract, or sell any products or services to the Council during the term of the Suspension. A Suspension may not exceed six months unless the Entity is proposed for Debarment by the federal government, State of Minnesota, or other governmental entity and in that event, the Suspension must not exceed the length of time necessary for the federal government, State, or other entity to issue a final order.

Debarment

- A. The Council may Debar an Entity if it determines based on a preponderance of the evidence that any of the following occurred:
- 1) Conviction for commission 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 the contract or subcontract;
 - 2) Conviction under state or federal statutes for embezzlement, theft, forgery, bribery, false claims, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty that affects responsibility as an Entity;

- 3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
- 4) A material contract violation as detailed in (a) and (b):
 - a) Failure without good cause to perform according to the specifications, time limits, or terms or conditions in a Council contract; or
 - b) A record of failure to perform, or of unsatisfactory performance, according to the terms of one or more Council contracts or as measured by standard commercial practices; or
- 5) Any other cause the Council determines to be serious and compelling including, but not limited to, threatening, abusive, or intimidating behavior; collusion with other Entities to restrain competition; giving false information in an Entity's business filings, response to a solicitation, or in the course of performance of a Council contract; violating terms of a Suspension; and all acts that would disqualify the Entity as a responsible Entity including Debarment by another governmental entity if found to be under the same or similar circumstances that would call for Suspension or Debarment under this policy.

B. If an Entity is Debarred by other governmental entities the following may apply:

- 1) Any Entity Debarred by the federal government, the State, or any of its departments, commissions, agencies, or other political subdivisions, may be Debarred by the Council under the same terms as the original Debarment.
- 2) If the Entity is Debarred by any other governmental entity, it may be a cause for Suspension until a determination can be made by the Council whether the Debarment applies under applicable Minnesota law and this policy.

Contract Management Support Unit ("CMSU")

The CMSU will gather and organize information related to the Suspension or Debarment of an Entity. Information will be gathered from, but is not limited to, business units, and the Director of the Office of Equity and Equal Opportunity or their delegate. The CMSU will organize all information and present it to the Chief Procurement Officer for their review and determination.

Notice and Opportunity to be Heard

The Chief Procurement Officer will provide a written notice of intent to Suspend or Debar to the Entity which:

- A. states the reasons and factual and legal basis for the proposed action;
- B. gives the proposed length of time of the Suspension or Debarment; and
- C. informs the Entity of their rights to a hearing under this procedure.

The Chief Procurement Officer may send the written notice to the Entity electronically, in-person, or by United States mail.

The Entity has 20 calendar days from the date the notice of intent to Suspend or Debar is sent to request an informal hearing in writing with the Regional Administrator. If the Entity does not timely request a hearing, the Entity is Suspended or Debarred as provided in the notice.

The Entity's request for a hearing must detail the factual and legal basis of the Entity's response to the notice of intent to Debar. The Regional Administrator will schedule a hearing date providing the Entity at least 14 calendar days' notice before the hearing. The Chief Procurement Officer and the Entity must provide any exhibits they intend to use at the hearing to the other party and the Regional Administrator at least 7 calendar days before the hearing.

The hearing may be held in-person or virtually. The hearing will be recorded. At the hearing, the Chief Procurement Officer and the Entity will present their factual and legal positions on Debarment and the Regional Administrator may ask any questions. The hearing is an informal hearing and the rules of evidence do not apply.

Within 42 calendar days after the hearing, the Regional Administrator will issue a written decision on the Debarment or Suspension. If the Regional Administrator determines that the Entity is Suspended or Debarred, the decision will provide the factual and legal basis for the decision. The Regional Administrator’s decision is the final administrative decision of the Council.

Length of Debarment

An Entity may be Debarred for not less than one year, nor more than three years unless a longer time is in effect under Debarment Causes, Section B, Subsection 1 of this procedure. Factors that will be considered in determining the length of the Debarment include the Entity’s past performance, the nature and pervasiveness of the Entity’s conduct, and the cost to the Council associated with correcting the problem.

Public List of Debarred and Suspended Entities

The Council will maintain a public list of all Suspended and Debarred Entities. The Council will retain records concerning Suspensions and Debarments. The records will be maintained for at least ten years following the end of a Suspension or Debarment.

Any vendor debarred by the federal government, the state of Minnesota, or any of its departments, commissions, agencies, or political subdivisions, is automatically debarred by the division under the same terms and limits of the original debarment. The Chief Procurement Officer will provide the State of Minnesota the Council’s list of Suspended and Debarred Entities.

Implementation & Accountability

Council Staff will:

- Identify entities or individuals who are in violation of this procedure.
- Review past contractor performance prior to recommending contract awards or executing amendments, assignment agreements, etc.
- Monitor vendor performance.
- Maintain a contract folder and document violations of this policy that may lead to Suspension or Debarment for all contracts.
- Enter relevant vendor information into associated vendor files and update relevant Metropolitan Council systems, databases, etc.

Semi-annually, the Chief Procurement Officer’s designated representatives will review the Suspended and Debarred list, Entity files, and will follow up on documented violations or other performance deficiencies which may warrant Suspension or Debarment. Individuals or Entities submitting proposals or bids are required to disclose past performance as a part of their response if requested in the solicitation.

METROPOLITAN COUNCIL ROLES & RESPONSIBILITIES

| Role | Responsibilities |
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| Chief Procurement Officer | Determine whether there is cause to Suspend or Debar an entity or individual from receiving solicitations, the award of contracts, or selling any products or services to the Metropolitan Council. May receive requests for review and reconsideration from Suspended or Debarred individuals or entities and provide written decisions to interested parties. |
| Office of General Counsel | Provide legal advice to the Chief Procurement Officer and Regional Administrator. |
| Regional Administrator | Conduct the informal hearing and issue the written decision after an informal hearing. |
| Contract Management Support Unit | Gather and organize information related to the potential Suspension or Debarment of an Entity for the Chief Procurement Officer to review. |
| Director of the Office of Equity and Equal Opportunity | Review the information gathered by the CMSU and provide an impact statement, if applicable, regarding the Suspension or Debarment of an Entity. |

Definitions

Chief Procurement Officer – " Chief Procurement Officer" means the Chief Procurement Officer for the Council or person with written delegation of authority from the Chief Procurement Officer.

Bid or Proposal – “Bid” or “Proposal” means a bid, proposal, or any other response to a solicitation submitted by or on behalf of a person or other Entity seeking a contract award from the Council.

Contract – “Contract” means any agreement to provide goods to, or perform services for or on behalf of, the Council.

Debarment - "Debarment" means the disqualification of a person from responding to solicitations, the award of a contract by a governmental body, or selling any products or services to the Council for a specified time commensurate with the seriousness of the offense, the failure, or the inadequacy of performance.

Director of the Office of Equity and Equal Opportunity – “Director of the Office of Equity and Equal Opportunity” means the Director of the Office of Equity and Equal Opportunity for the Council or person with written delegation of authority of the Director of the Office of Equity and Equal Opportunity.

Regional Administrator – “Regional Administrator” means the Regional Administrator for the Council or person with written delegation of authority from the Regional Administrator.

Suspension – "Suspension" means to be temporarily Suspended from responding to solicitations, the award of a contract, or selling any products or services to the Council while the Chief Procurement Officer determines if there is probable cause for Debarment.

Entity – “Entity” means contractor, consultant, subcontractor, entity, individual, grantees, or any of their respective officers, directors, partners, managers, employees, or other individuals associated with the Entity.

RESOURCES

Related Policies

- FM 14-3 Vendor Debarment Policy

Keywords:

HISTORY**Version 1 – Approval Date**

Not Set – Insert high level comments of changes made.