



ADMINISTRATIVE RULES OF MONTANA



18.3.104 REASONS FOR DEBARMENT

- (1) A person may be debarred upon adequate evidence that the person:
 - (a) Has been convicted of, or has committed, one of the following offenses, whether a violation of any state's or federal law or regulation, within the prior three years:
 - (i) Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;
 - (ii) Violation of federal or state antitrust statutes, including those proscribing price-fixing between competitors, allocation of customers between competitors, and bid-rigging;
 - (iii) Embezzlement, theft, forgery, falsification or destruction of records, making false statements, receiving stolen property, making false, fraudulent or fictitious claims, bribery, or obstruction of justice;
 - (iv) Any act prohibited by state or federal law committed in any jurisdiction involving conspiracy, collusion, lying or material misrepresentation with respect to bidding on any public or private contract, or fraud;
 - (v) Any felony (federal or state) or other offense indicating a lack of business or personal integrity, or business or personal honesty that seriously and directly affects the present integrity of a person;
 - (vi) Violation of a prior federal or state suspension or debarment; or
 - (vii) Any other cause of a serious and compelling nature

which affects the responsibility of the contractor to be awarded contracts by the commission or department.
 - (b) Filed a false, fictitious or fraudulent claim to any federal or state agency in conjunction with: work performed on a department project; work performed for the department; or any claim that the department (or the state of Montana as the department's self-insuring entity) owes the person for purported acts of the department or one of its agents. If a contractor submits a claim, either under the department claims procedure, in a lawsuit against the department, or by any other means, which is not adequately and fully supported with factual evidence and cost data, it will be considered to be false, fictitious or fraudulent under these rules;
 - (c) Violated terms of a public agreement or contract, affecting his integrity for future contracts with the department or performance in department contracts. This includes:

- (i) a willful failure to perform in accordance with the terms of one or more public agreements or transactions, including contract requirements (i.e., standard specifications, special provisions, etc.) , or serious or repeated violations of specifications, bid requirements or claims procedures. If a person wishes to contract with the department or participate in projects, he must abide by the department's specifications and requirements, or will no longer be allowed the privilege;
 - (ii) a history of failure to perform or of unsatisfactory performance in one or more public agreements or transactions. This includes, among other possible examples, a common or repeated practice of a contractor submitting low bid and later submitting claims which are determined to be unfounded or unreasonable (i.e., claiming for work or conditions which were called for in or should reasonably have been anticipated for the project) , and a prime contractor = s repeated failure to promptly pay its subcontractors and/or suppliers after the prime has been paid by the project owner;
 - (iii) a failure to reimburse the department, after written demand is made, for an overpayment made by the department to the person under a contract;
 - (iv) a willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction; or
 - (v) serious or repeated violations of U.S. or Montana department of labor wage requirements.
- (d) Knowingly violated Montana or federal disadvantaged business enterprise (DBE) programs. It includes violations of the department's DBE program (i.e., establishing or dealing with a known DBE "front"; dealing with a DBE which he knows is not performing a "commercially useful function"; or performing part of the DBE's required work; or not making prompt payment as required by law to DBE subcontractors or suppliers) ;
 - (e) Has done, is doing, or is attempting to do business with, a debarred, suspended or otherwise ineligible person on a department project or contract while knowing of the debarment, suspension or ineligibility;
 - (f) Has not timely paid all required taxes (i.e., fuel taxes) , fees, charges or wages in connection with its work on a project(s) , or has not procured all legally-required permits or notices for the due and lawful prosecution of its work;
 - (g) Has not observed or complied with significant required laws or regulations in the accomplishment of its work; or
 - (h) For any other cause of so serious or compelling a nature that it affects the present responsibility of the person.
- (2) For purposes of these rules, an indictment or the filing of criminal charges of offenses enumerated in these rules against the person shall constitute adequate evidence for purposes of suspension.

Authorizing statute(s): 60-2-201 and 60-3-101, MCA

Implementing statute(s): 17-8-231, 18-1-102, 18-2-313, 60-2-111, 60-2-112, and 60-2-201, MCA

History: NEW, 1996 MAR p. 3133, Eff. 12/6/96; AMD, 2001 MAR p. 978, Eff. 6/8/01.