



ADMINISTRATIVE RULES OF MONTANA



18.3.103 SCOPE

- (1) During a period of debarment by the department, another Montana state government agency, any other state, or the federal government, a debarred person may not participate in work, contracts or projects with the department, whether or not the department knew of the debarment or debarment action, aside from projects or contracts already awarded to a person at the time it is debarred.
- (2) A person submitting a bid on a federal-aid project must certify compliance with Part XI of the Federal Highway Administration Form FHWA 1273 (Required Contract Provisions, Federal-Aid Construction Contracts) and provide certification to the department that all subcontractors, material suppliers, vendors and other lower tier participants used are in full compliance with Part XI of the Form FHWA 1273. A person submitting a bid to the department on a federal-aid contract must make its certification part of every subcontract, material supply agreement, purchase order or other covered lower tier transaction. "Covered lower tier transactions" include primary purchase of materials for contract items incorporated into the work. A copy of the Form FHWA 1273 may be obtained from department offices at 2701 Prospect Avenue, Helena, MT 59620-1001.
- (3) Debarment is distinct from a commission finding of nonresponsibility. The commission has the authority and ability in its discretion to find a person nonresponsible for purposes of disallowing a bid on a project or contract, or prohibiting a person from otherwise participating in a project or contract (e.g., as a subcontractor, supplier, etc.) without conducting debarment proceedings.
- (4) Debarment applies both to a firm and individuals. In the case of the former, it may be applied against any or all businesses in which a firm has involvement (i.e., joint ventures) , or over which it has ownership or control (i.e., subsidiaries) . In the case of the latter, debarment may be applied to and enforced against any and all businesses in which the individual has any level of interest, ownership, or control.
- (5) If debarred by the federal government or any Montana government agency, a person may not bid on or otherwise participate in any department project or contract in any capacity (prime contractor, subcontractor, supplier, etc.) , including as a separate contractor for a utility to relocate utilities required by a department project, until after the completion of the entire debarment period, whether or not the department debar the person. Debarment proceedings may proceed even if the person ceases doing business during the proceedings.
- (6) If a person is debarred by any agency of the federal government for any period, the department may debar it for a period up to that set by the federal government without need for further debarment proceedings. The only evidence required in a debarment hearing in a case based on an existing debarment will be a certified copy of an order, agency letter or other final action declaring the debarment in the other jurisdiction. That will not prevent the person from

presenting evidence to dispute the proposed debarment or its length. If the person is debarred by a branch or agency other than of the Montana or federal government (i.e., another state, a county, etc.) , or if the department may wish a debarment period exceeding that set by the other Montana agency or the federal government, the department must hold debarment proceedings before increasing the debarment period.

- (7) A person planning to bid on or participate in a department contract or work, or who has already bid on or is participating in a department contract or work, must immediately notify the director in writing of any debarment or suspension against it, or of any debarment or suspension proceedings pending against it in any jurisdiction.

Authorizing statute(s): 60-2-201 and 60-3-301, MCA

Implementing statute(s): 60-2-111 and 60-2-112, MCA

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