

MINNETONKA PUBLIC SCHOOLS

Policy # 731: DEBARMENT POLICY ON NON-RESPONSIBLE VENDOR IN PROCUREMENT TRANSACTIONS

I. Policy

- A. It is the policy of the Minnetonka Independent School District 276 to maintain the integrity of the District's procurement process by conducting business legally and only with responsible vendors. Toward this end, the District has the discretion to exclude from participation in its procurement transactions 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.
- B. Debarment is a serious action that may lead to a vendor being excluded from procurement transactions with the District 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 District's protection, not for purposes of punishment. The District maintains a list of vendors that are debarred from doing business with the District.

II. Definitions

"Affiliate" means vendors who are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or a third person controls or has the power to control both. Evidence of control includes, but is not limited to, interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees; or a business entity organized following the debarment of a vendor which has the same or similar management, ownership or principal employees as the suspended or debarred vendor.

"Covered Transaction" means and includes any contract under District procurement programs to which the District is a party for the performance of construction, repair, maintenance, furnishing of goods, and contracts for professional services and labor. ***"Covered Transaction"*** includes contracts between a contractor and a subcontractor even if the subcontractor has no written agreement with the District.

"Debarred vendor" means a vendor and any of its affiliates which are debarred according to this Debarment Policy.

"District" means Minnesota Independent School District 276, including any of its departments or divisions.

"Person" means any individual, corporation, partnership, association, unit of government or legal entity, however organized.

“Principal” means an officer, director, owner, partner, key employee or other Person within a vendor with primary management or supervisory responsibilities, or a Person who has critical influence on or substantive control over a Covered Transaction, whether or not employed by the vendor.

“Vendor” means any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. **“Vendor”** also includes any person who acts on behalf of or is authorized to commit a person in a covered transaction as an agent or representative of another person.

III. Applicability

This Debarment Policy applies to all vendors and their affiliates.

IV. Purpose

The District may debar a vendor from participating in the District procurement process and from contract award. The purpose of this debarment policy is to protect the District 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;
- D. Prescribing procedures to provide notice that the District 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.

V. Reasons for Debarment

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 District may debar a vendor for any of the following reasons:

- A. A finding by the School Board that a vendor or one of its principals has within the last three (3) years demonstrated a lack of integrity that could jeopardize the District’s interest if the District 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:
 1. A conviction of a criminal offense incident to the application for or performance of a contract or subcontract with the District.
 2. 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.

3. 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.
 4. 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 District indicates that the vendor is unable to perform responsibly or which reflects a lack of integrity that could negatively impact or reflect upon the District.
- B. A finding by the School Board that the vendor is not able to perform responsibly, based upon any of the following:
1. Violation by the vendor of bid solicitation procedures or violations of the terms of a solicitation after bid submission.
 2. Failure by the vendor to substantially or satisfactorily perform according to project specifications, time limits, and/or any other contract or subcontract terms and conditions.
 3. Refusal by the vendor to provide information or documents required by a contract, including but not limited to, information or documents necessary for the District to monitor contract compliance.
 4. 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.
 5. Failure of the vendor to perform a District contract or subcontract in a manner consistent with any applicable federal or state law, rule, or regulation or District policy.
 6. Failure to provide adequate support documentation as evidence of compliance with wage requirements, including certified payroll and copies of pay stubs for all employees working on District premises.
 7. 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.
 8. Use by the contractor of forged or falsified documents for any reason, including the intent of deceiving the District and/or other parties.
 9. Performance or conduct on one or more contracts or transactions which caused or may have caused a threat to the property or the health and/or safety of the vendor's employees, any other persons involved with the transaction or the general public.
 10. Violation of any District polices or any other provisions in the procurement documents.
 11. 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.

VI. Debarment Procedure

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

1. A statement that proposed debarment action is being considered by the District.
 2. A description of the reasons for the proposed debarment in sufficient detail to put the vendor on notice of the conduct and causes upon which proposed debarment is based.
 3. A statement indicating that within ten (10) calendar days from the date of the notice, the vendor 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. An explanation that the vendor has ten (ten) 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 ten (10) calendar days, will result in debarment by the School Board without a meeting.
- B. 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 Board, it will make decisions for debarment. This conclusion will be based on all of the information in the administrative record, including any submission made by the vendor.
- C. If debarment is imposed, the vendor and any known 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 District.
 - (a) If debarment is not imposed, the District shall promptly notify the vendor and any known affiliates involved.
 - (b) When additional affiliates of the vendor become known to the District, the District shall provide subsequent notice to all such affiliates in accordance with a of this section.

VII. Period of Debarment

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

VIII. Effect and Scope Debarment

- A. Debarment affects all divisions or other organizational units of the debarred 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. Debarred vendors are excluded from receiving contracts, and the District shall not solicit offers from, award contracts to, or consent to subcontracts with debarred vendors.

- B. 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.

Approved March 19, 2009