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## Procedure for Disqualification or Suspension

### Sec. 4a-63-1. Definitions

The following definitions apply to sections 4a-63-1 to 4a-63-5, inclusive, of the regulations of Connecticut state agencies:

(a) "Agency" includes any officer, department, board, council, commission, institution or other agency of the executive department of the state government.

(b) "Bid" means an offer, submitted in response to an invitation to bid, to furnish supplies or services to the State under certain prescribed conditions at a stated price.

(c) "Bidder" means any person, firm or corporation submitting bids on an invitation to bid, oral or written, issued by the Commissioner.

(d) "Bureau" means Bureau of Purchases, Department of Administrative Services.

(e) "Commissioner" means the Commissioner of Administrative Services, State of Connecticut.

(f) "Contract" means the agreement reached when the State accepts an offer of a bidder to furnish supplies or services at a stated price in response to an invitation to bid.

(g) "Contractor" means any person, firm or corporation to whom a contract is awarded against a bid submitted.

(h) "Disqualification" means the prohibition of any person, firm or corporation from bidding on State contracts in response to an invitation to bid.

(i) "Invitation to bid" means the document which states, for information of prospective suppliers, the terms and conditions under which a specified procurement will be made in a particular instance.

(j) "Probable Cause" means reasonable grounds for believing the charges for disqualification are well-founded.

(k) "Purchasing Agency" means a state agency acquiring or attempting to acquire goods and services.

(l) "State" means the State of Connecticut.

(m) "Suspension" means the prohibition of any person, firm or corporation from being considered for the awarding of any contract.

(Effective November 7, 1991)

### Sec. 4a-63-2. Application

These regulations are adopted under section 4a-52 (13) of the Connecticut General Statutes and apply to all disqualifications or suspensions of certain persons, firms or corporations by the Commissioner.

(Effective November 7, 1991)

### Sec. 4a-63-3. Suspension

(a) **Initiation.** After consulting with the purchasing agency, if any, and the Attorney General, the Commissioner may suspend a person, firm or corporation from being considered for a contract award for supplies, materials, equipment or contractual services if the Commissioner, in writing, determines that there is probable cause for disqualification as set forth in subsection (a) of section 4a-63 of the Connecticut General Statutes. No such determination shall be made without first allowing such person, firm or corporation an opportunity to present evidence that no such probable cause exists.

(b) **Suspension Notice.** A written notice of suspension shall be sent to the suspended person, firm or corporation by certified mail, return receipt requested. The notice shall state:

- (1) The reasons for suspension, and any laws on which the suspension is based.
- (2) The length of the suspension period, not to exceed three months.
- (3) That the suspended person, firm or corporation will not be considered for such a contract award during the suspension period.

(c) **Effect of Decision.** A person, firm or corporation shall be suspended on the date of receipt of the written notice. The suspension period shall remain in effect during any appeals.

(d) **Appeal of Suspension.** Within fifteen days after the receipt date of a suspension notice, a suspended party may file a request for Commissioner review of the suspension decision. In connection with any such request, the Commissioner shall:

- (1) Provide suspended parties an opportunity to show compliance with all lawful requirements for contract award status.
  - (2) Further explain the basis for suspension.
  - (3) Explain how a suspended party can improve performance and regain contract award status.
  - (4) Resolve any related matter raised by a suspended party which the Commissioner may wish to address.
  - (5) If justifiable, revoke or modify the suspension.
- (Effective November 7, 1991)

#### **Sec. 4a-63-4. Disqualification**

(a) **Initiation of Disqualification Action.** After consultation with the purchasing agency and the Attorney General, the Commissioner shall send written notice of the proposed disqualification to the person, firm or corporation. Causes for disqualification are those set forth in subsection (c) of section 4a-63 of the Connecticut General Statutes. The notice shall:

- (1) State that the disqualification is being considered.
- (2) Set forth the reasons for disqualification.
- (3) State that the person, firm or corporation may request an opportunity to be heard by the Department of Administrative Services, provided that the request is received by the Commissioner within ten days after the person, firm or corporation receives notice of proposed disqualification.

Such notice shall also be sent to the purchasing agency and to the Attorney General.

(b) **Request for Opportunity to be Heard.** A person, firm or corporation that has been notified of a proposed disqualification action may request in writing an opportunity to be heard. Such request must be received by the Commissioner within ten days of the date of receipt of notice of the proposed action under subsection (a) of this section. If no request is received within the ten day period a final determination shall be made as prescribed in subsection (g) of this section after consultation with the Attorney General and the affected purchasing agency.

(c) **Notice of Opportunity to be Heard.** If an opportunity to be heard is requested, the Commissioner may appoint a hearing officer to conduct the hearing. Such appointed hearing officer shall recommend a final decision to the Commissioner. The Commissioner may act as the hearing officer. The hearing officer shall send a written notice by certified mail, return receipt requested, to the person, firm or corporation. The notice shall include:

- (1) The time, place and nature of the hearing.
- (2) The legal authority and jurisdiction under which the hearing is to be held.
- (3) References to statutes and regulations involved.

(4) A short, plain statement of the matters asserted by the purchasing agency. If the agency is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished. Copies of the notice shall be sent to the purchasing agency and the Attorney General's Office.

(d) **Authority of the Hearing Officer.** The hearing officer in the conduct of the hearing shall have, among other powers, the authority to:

(1) Hold informal conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding either by consent of the parties or upon such officer's own motion.

(2) Require parties to state their positions with respect to the various issues in the proceeding.

(3) Require parties to produce for examination those relevant witnesses and documents under their control.

(4) Rule on motions and other procedural items on matters pending before such officer.

(5) Regulate the course of the opportunity to be heard and conduct of participants during the hearing.

(6) Receive, rule on, exclude, or limit evidence, and limit lines of questioning or testimony which are irrelevant, immaterial or unduly repetitious.

(7) Fix time limits for submission of written documents in matters before such officer.

(8) Impose appropriate sanctions against any party or person failing to obey an order under these procedures, which sanctions may include:

(A) Refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence.

(B) Excluding all testimony of a disrespectful or evasive witness.

(C) Expelling any party or person from further participation in the opportunity to be heard at the hearing.

(9) Take official notice of any material fact not appearing in evidence in the record, if such fact is among the traditional matters of judicial notice.

(e) **Pre-hearing Procedure.** Anytime after notice of proposed disqualification and before a disqualification hearing, the Commissioner or his appointee may order, or the person, firm or corporation may request, an internal pre-hearing conference, the granting or denial of which shall be solely within the discretion of the Commissioner or his appointee. Such conference may be held to:

(1) Give the person, firm or corporation an opportunity to show that he or she or it has voluntarily corrected conditions complained of by a purchasing agency.

(2) To narrow the scope of the disputed areas.

(3) To stipulate the facts.

(4) To stipulate as to the authenticity of documents to be offered into evidence.

(5) To discuss the possibility of an informal disposition of the complaint.

A pre-hearing conference need not be recorded, but a written record will be made of any stipulations as to facts, documents and qualifications of expert witnesses. Written records will be signed by persons, firms or corporations, or their counsel, and by the Commissioner or his appointee.

(f) **Hearings; Procedures.**

(1) Hearings shall be as informal as may be reasonable and appropriate under the circumstances and in accordance with due process requirements. The weight to

be attached to evidence presented in any particular form will be within the discretion of the hearing officer. Stipulations of facts agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate such testimony that would be given by a witness if the witness were present. The hearing officer may require evidence in addition to that offered by the parties.

(2) The proceedings may be recorded but need not be transcribed except at the request of the person, firm or corporation. A record of those present, identification of any written evidence presented, and copies of all written statements and a summary of the hearing shall be sufficient record.

(3) Opening statements may be made unless a party waives this right.

(4) Witnesses shall testify under oath or affirmation. All witnesses may be cross-examined.

(g) **Determination of Hearing Officer; Final Decision.** The hearing officer shall prepare a written determination recommending a course of action. Such determination shall be given to the Commissioner. Copies of the determination shall also be sent to the person, firm or corporation, the Attorney General and the affected purchasing agency. The bidder or contractor shall have ten days from the date of the written determination to file comments upon the hearing officer's determination. The Commissioner shall issue a final written decision. Said decision shall be issued within ninety days of the last day of the hearing. Both the hearing officer's determination and the final decision shall recite the evidence relied upon. When disqualification is recommended or ordered, the length of the disqualification (not to exceed two years), and the reasons for such action shall be set forth. In addition, the final determination shall inform the disqualified person, firm or corporation of its rights to judicial review under section 4-183 of the Connecticut General Statutes.

(h) **Effect of Disqualification Decision.** A disqualification decision will take effect on the date of issuance by the Commissioner. After the disqualification decision takes effect, the person, firm or corporation shall remain disqualified until ordered otherwise by the Commissioner or in accordance with the provisions of section 4-183 of the Connecticut General Statutes, or until the disqualification period specified in the decision expires.

The disqualification decision shall in no way relieve any person, firm or corporation from monetary obligations to the State, imposed by the Bureau in the form of penalties for the disqualified party's failure to successfully complete any contract.

(Effective November 7, 1991)

#### **Sec. 4a-63-5. Maintenance of list of disqualified and suspended persons, firms or corporations**

The Commissioner shall maintain an updated list of disqualified and suspended persons, firms or corporations. The list and any updates thereto shall be supplied to all agencies.

(Effective November 7, 1991)