



COLORADO DEPARTMENT OF EDUCATION

201 East Colfax Avenue • Denver, Colorado 80203-1704
303.866.6600 • www.cde.state.co.us

William J. Moloney
Commissioner of Education

Dorothy Gotlieb
Deputy Commissioner

MEMORANDUM

CN06-G-009

TO: Nutrition Service Directors

FROM: Dan McMillan, Director, Nutrition and Transportation Unit

DATE: December 21, 2005

SUBJECT: Revised Debarment/Suspension Requirements in Child Nutrition Programs
Procurement

The U.S. Department of Agriculture has revised its rules relating to Debarment/Suspension requirements (7 CFR Part 3017). Previously, districts/sponsors were required to obtain a formal certification statement from each vendor/contractor that would certify that the company or individual had not been debarred or suspended by the federal government from taking part in any covered procurement. These requirements have been substantially modified to simplify the process.

The first change is to lower the previous dollar threshold. The certification requirement now applies to all procurements that exceed the district's/sponsor's small purchase threshold, or \$25,000, whichever is lower. It also applies to all contracts for audit services, regardless of dollar amount.

To ensure that the district/sponsor does not enter into a contract with a debarred or suspended company or individual, each district/sponsor must conform to one of three options for each covered procurement.

1. Check the "Excluded Parties List System" (EPLS). The EPLS is available on the Internet at: <http://epls.arnet.gov>. This is the simplest and recommended method. Document the date and results.
2. Collect a certification that the entity is neither excluded nor disqualified. The district/sponsor would need to devise its own form, as the previous federal form is obsolete.
3. Include a clause to this effect in the procurement document/contract.

Attached are revised pages for the *Administrator's Reference Manual*. Remove and dispose of current pages 24.7 through 24.12, and replace with the revised pages.

Please contact our office if you have any questions. We can be reached at 303.866.6661, or 888-245-6092 outside of the Denver metro area.

Attachments

PROCUREMENT

is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold).

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000).

(3) Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees).

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). All contracts and subgrants for construction or repair).

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by federal grant program legislation).

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers).

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention, which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized

representative to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000).

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

[53 FR 8044, 8087, Mar. 11, 1988, as amended at 60 FR 19639, 19641, Apr. 19, 1995]

PROCUREMENT

Debarment and Suspension

“Debarment and suspension” actions have received a lot of attention recently as a result of state and federal investigations and prosecutions of dairies, bakeries and related individuals involved in bid rigging on contracts to supply food products to local school districts participating in the National School Lunch and School Breakfast Programs. The purpose of this information is to explain how the USDA handles debarment and suspension actions and how these administrative actions affect school districts.

Debarment and suspension actions result in the exclusion of companies or individuals from participating in certain transactions involving federal nonprocurement programs at both the state agency and school district levels. These actions are not imposed as punishment but rather are initiated in the public interest and to protect the federal government.

In general, debarment and suspension actions are imposed on companies and individuals for causes set forth in the nonprocurement debarment and suspension regulations. Nonprocurement generally means activities that involve federal assistance other than direct federal procurement. Such causes include a conviction or civil judgment for violation of federal or state antitrust statutes as well as other offenses and activities indicating a lack of business integrity.

A school district is prohibited from contracting with a company or individual that has been debarred or suspended. This prohibition does not extend to contracts in existence at the time of the debarment/suspension. Rather, it applies to new contracts and extensions or renewals of existing contracts equaling or exceeding the district’s small purchase threshold or \$25,000 - whichever is lower. It also applies to contracts for audit services, regardless of dollar amount.

Furthermore, the prohibition does not apply to **proposed** debarments.

While a school district is prohibited from contracting with a company or individual that has been debarred or suspended, a debarment, suspension or **proposed** debarment action does not excuse a company or individual from fulfilling existing contracts involving federal nonprocurement programs.

However, as indicated above, the school district may not extend or renew an existing contract with a debarred or suspended company or individual.

To ensure that the school district does not enter into a contract with a debarred or suspended company or individual, each school district must conform to one of three options for each covered procurement.

1. Check the “Excluded Parties List System” (EPLS). The EPLS is available on the Internet at: <http://epls.arnet.gov>. This is the simplest and recommended method. Document the date and results.
2. Collect a certification that the entity is neither excluded nor disqualified. The school district would need to devise its own form, as the previous federal form is no longer in use.
3. Include a clause to this effect in the procurement document/contract.

Certification Regarding Lobbying

The “Certification Regarding Lobbying” form shall be completed only if the vendor is lobbying on behalf of a specific school district. *See certification regarding lobbying form on page 24.18.*

Disclosure of Lobbying Activities

The “Disclosure of Lobbying Activities” form must be completed to disclose lobbying activities pursuant to 31 U.S.C. 1352. *For form and instructions, see pages 24.19-24.20*

PROCUREMENT

National Food Service Management Institute Resources

- *Choice Plus: A Reference Guide for Foods and Ingredients*
- *Cooperative Purchasing for Child Nutrition Programs*
- *First Choice: A Purchasing Systems Manual for School Food Service- second edition now available*
- *Guide for Purchasing Foodservice Equipment*
- *NFSMI Insight – Purchasing Decisions for Cost-effective Implementation of the Dietary Guidelines for Americans*
- *Purchasing and the Dietary Guidelines*
- *Quality Receiving Practices for Healthy School Meals*
- *What's in a Lesson for What's in a Meal*