

100875 Suspension and Termination

(a)

High Risk. The Department may designate a contractor as a high risk agency and impose special conditions/restrictions on the agency's contract(s) if it is determined that one or more of the following conditions exists: (1) The contractor has a history of unsatisfactory performance (noncompliance with contractual terms); (2) The contractor is not financially stable; (3) The contractor's management system does not meet the management standards set forth in regulatory standards for the administration of federally funded grants; (4) The contractor has not conformed with terms and/or conditions of previous award(s); or (5) The contractor is otherwise not responsible.

(1)

The contractor has a history of unsatisfactory performance (noncompliance with contractual terms);

(2)

The contractor is not financially stable;

(3)

The contractor's management system does not meet the management standards set forth in regulatory standards for the administration of federally funded grants;

(4)

The contractor has not conformed with terms and/or conditions of previous award(s); or

(5)

The contractor is otherwise not responsible.

(b)

Should a high risk designation be warranted because the conditions identified in subsection (a) are found to exist, the Department shall notify the contractor in writing of the following and grant the contractor thirty (30) days to implement corrective action or provide evidence which rebuts the designation. (1) The rationale for the high risk designation; (2) The nature of the special contract condition(s) and/or restriction(s) being imposed; (3) The reason(s) for imposing the special condition(s) and/or restriction(s); (4) The corrective actions which must be taken and the time allowed for completing the corrective actions before the special conditions are removed; (5) The procedures for requesting reconsideration of the condition(s)/restriction(s) imposed.

(1)

The rationale for the high risk designation;

(2)

The nature of the special contract condition(s) and/or restriction(s) being imposed;

(3)

The reason(s) for imposing the special condition(s) and/or restriction(s);

(4)

The corrective actions which must be taken and the time allowed for completing the corrective actions before the special conditions are removed;

(5)

The procedures for requesting reconsideration of the condition(s)/restriction(s) imposed.

(c)

If the contractor fails to provide evidence warranting reconsideration of the

designation within the time specified in subsection (b), the agency will be provided official notice of the high risk designation. Notification will also be distributed to all other known funding sources of the contractor.

(d)

Should the Department determine that contract(s) will be awarded or continued once an agency has been designated high risk, special conditions and/or restrictions which correspond to the high risk condition shall be imposed. Special conditions or restrictions may include but are not limited to the following: (1) Require payment on a reimbursement basis; (2) Limit the term of the contract within the funding period; (3) Require additional financial reports; (4) Require frequent on-site review; or (5) Require the contractor to obtain technical or management assistance. If the Department is notified by a separate funding source that it has designated a contractor high risk, the Department may impose special conditions and/or restrictions on the contractor.

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Limit the term of the contract within the funding period;

(3)

Require additional financial reports;

(4)

Require frequent on-site review; or

(5)

Require the contractor to obtain technical or management assistance. If the Department is notified by a separate funding source that it has designated a contractor high risk, the Department may impose special conditions and/or restrictions on the

contractor.

(e)

The removal of the high risk designation can only be accomplished by the contractor providing proof of corrective action deemed satisfactory by the Department. DEO will notify other funding sources of the high risk designation removal.

(f)

Notice of Intent to Suspend. Should a contractor fail to address and remedy the conditions which led to its high risk designation within the time frame specified pursuant to subsection (b)(4), DEO shall notify the contractor in writing that it intends to suspend a contract(s) in whole or in part, unless good cause is shown why the contract(s) should not be suspended. The notice shall specify the grounds for the proposed suspension, the proposed effective date of the suspension, the time frame within which the contractor must respond to the notice and the action necessary to adequately correct the deficiency which led to the initiation of the suspension process.

(g)

Informal Meeting on Suspension. The contractor shall have a right to submit documentation in opposition to the intended suspension and to request an informal meeting to show cause why such suspension should not occur. The period of time within which the contractor may submit such documentation or request the informal meeting shall be specified in the notice of intent to suspend and shall be no less than five (5) working days after the notice has been sent. Should the contractor request a meeting, the responsible Department official shall set a time and place for the meeting, which shall not be less than five (5) working days following the receipt of the contractor's request. In lieu of the right of the contractor

to request an informal meeting, the Department may on its own initiative establish a time and place for such a meeting. In no event, however, shall such a meeting be scheduled less than seven (7) working days after the notice of intent to suspend has been sent to the contractor. The Department official may extend the periods of time or dates previously referred to and shall notify the contractor, in writing, of any such extension.

(h)

Department Review of Suspension Documents. DEO shall consider any material presented during the course of the informal meeting provided for in subsection (g) of this section, as well as any showing that the contractor has adequately corrected the deficiency which led to the initiation of suspension proceedings. If after considering the material presented the Department concludes that the contractor has failed to show cause why the contract should not be suspended, the Department may suspend the contract in whole or in part and under such terms and conditions as the Department may specify.

(i)

Suspension. Should the Department determine suspension is warranted under subsection (h), notice of suspension shall be promptly transmitted to the contractor and shall become effective upon delivery. Suspension shall not exceed a ninety (90) calendar day period unless, during such period of time, termination proceedings are initiated or the Department and the contractor agree to a continuation of the suspension for an additional period of time. (1) During the period of suspension, no new expenditures shall be made by the contractor, and no new obligations shall be incurred in connection with the suspended program except as specifically authorized in writing by DEO. Expenditures to fulfill legally enforceable commitments made prior to the notice of suspension, in good faith and

in accordance with the contractor's approved work program and not in anticipation of suspension or termination, shall not be considered new expenditures. However, funds shall not be recognized as committed solely because the contractor has obligated them by contract or otherwise to another party. (2) The Department may modify the terms, conditions and nature of the suspension or rescind the suspension action at any time upon the Department's initiative or upon a satisfactory showing that the contractor has adequately corrected the deficiency which led to the suspension and that repetition is not threatened. A suspension partly or fully rescinded may, at the discretion of DEO, be reimposed with or without further proceedings. However, the total time of suspension may not exceed ninety (90) calendar days unless termination proceedings are initiated in accordance with DEO policies and procedures governing the termination of contracts or unless DEO and the contractor agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension shall remain in full force and effect until such proceedings have been fully concluded.

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(j)

Termination. Should a contractor substantially breach the terms and conditions of its contract so as to warrant termination, whether or not the contract has been suspended, the Department shall state that there appear to be grounds which warrant termination and shall set forth the specific reasons therefore. (1) Notice of Termination. A notice shall advise the contractor that the matter has been set down for hearing at a stated time and place, the nature of the hearing, and the legal authority under which the hearing is to be held. The notice shall also specify the facts upon which the proposed termination has been based and the requirements which the contractor has allegedly violated. (2) Termination Hearing. Hearings shall be scheduled for the earliest practicable date, but not less than thirty (30) days after issuance of the notice of termination. Any such hearing shall afford the contractor a full and fair opportunity to demonstrate that it is in compliance with all applicable laws, regulations, and other requirements. The hearing shall be open to the public unless the presiding officer, for good cause shown, determines

otherwise. Both the Department and the contractor are entitled to present their case by oral or documentary evidence, to submit rebuttal evidence and to conduct such examination and cross-examination as may be required for a full and true disclosure of the facts bearing on the issues. Any person or organization who wishes to participate in the hearing shall apply for permission to do so from the Department. The Department shall permit or deny such participation and shall give written notice of the decision to the applicant and the contractor, and, in the case of denial, a brief statement of the reasons therefore. (3) The decision of the Department shall be made no later than ten (10) days following the hearing. The decision shall be in writing and shall set forth the findings of fact and conclusions. It shall state whether the Department has accepted or rejected each finding of fact or conclusions. (4) In the event of termination, DEO may proceed to provide services in the area served by the terminated contractor in the manner prescribed in Section 100820 of this Chapter. (5) DEO shall retain lien rights on all funds advanced and/or all property provided. (6) Upon termination of any agreement, DEO, unless expressly granted in writing, shall not pay contractor for any obligations incurred after the effective date of such termination.

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