

Suspension and Debarment Policy

Kentucky Housing Corporation, as the housing finance agency for the Commonwealth of Kentucky, is charged with the allocation and administration of multiple federal and state programs to create and preserve affordable housing units and to provide assistance to persons trying to obtain safe, quality, and affordable housing. We take that responsibility very seriously, and in our desire to maintain the highest level of program integrity, we make every attempt to insure that the individuals, agencies, or organizations that participate in these programs operate in an honest and ethical manner.

Therefore, parties may be subject to having funds/draws withheld for minor noncompliance with program guidelines or refusal to provide proper documentation. Any parties found to be in consistent noncompliance with program guidelines or that demonstrate flagrant or serious incident(s) of misuse of funds will not be allowed to participate in KHC programs.

Any person or agency that, except for good cause shown, shall have committed, or failed to perform, as the context may require, one or more of the following acts or omissions, may be subject to suspension and/or debarment by the Kentucky Housing Corporation ("KHC") and prohibited from doing further business with or entering into any contractual relationship with KHC.

Section 1: Suspension

A person or agency shall have all draws withheld from any and all program areas of KHC if they are suspended by any area of the Corporation. Suspension may occur as a result of a pattern of noncompliance or a single instance of flagrant noncompliance with the terms and conditions of KHC's policies, procedures, program guidelines or agreement(s).

Specific grounds for suspension may include (but is not limited to) the following:

- (1) Failure to comply with one or more applicable Program requirements;
- (2) Failure to meet one or more of the commitments made in the approved or modified Program application;
- (3) Evidence that a crime or fraud may have occurred;
- (4) Lack of progress toward completion of project(s) resulting in multiple extensions or recapture of funds;
- (5) Failure to provide requested documentation or reports within a timely manner;
- (6) Failure to address compliance issues or findings after repeated attempts by KHC staff to have such issues or findings corrected.

The suspension period may continue until all items have been corrected or issues resolved.

Section 2. Debarment

If a person or agency is debarred from doing business with KHC, the debarment shall apply to all program and operational areas of the Corporation. A debarment will result in the inability to apply for any new funding, contracts, or other business relationships with KHC for 24 months, but in some cases the debarment may be permanent. If an individual is debarred from KHC, that debarment will continue to be applicable, regardless of any other employer or business with whom the individual may be affiliated with the future.

Specific grounds for debarment may include (but is not limited to) the following:

(A). Conviction or Civil Judgment for:

- (1) Acts of fraud or a criminal offense as an incident to obtaining, attempting to obtain, or performing of a public or private contract;
- (2) Acts of embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice, or any other offense indicating a lack of business integrity or honesty;
- (3) Violation of any federal or state antitrust statute;
- (4) Violation of the federal Anti-Kickback Acts, 18 U.S.C. section 874 and 40 U.S.C. section 3145;
- (5) Violation of any of the laws governing the conduct of elections of the federal government or the Commonwealth of Kentucky;
- (6) Violation of any federal or Kentucky laws governing discrimination and civil rights;
- (7) Violation of any laws governing hours of labor and wage standards;
- (8) Violation of any laws governing the conduct of occupations or professions or regulated industries; or
- (9) Any other offense, or violation of any other law(s) which may indicate a lack of responsibility, business integrity, or business honesty that seriously and directly affects the present responsibility of a person or agency.

(B). Violation of the terms of any transaction, contract, agreement, or program funded or administered by KHC, including but not limited to:

- (1) A willful failure to perform in accordance with the terms of one or more transaction, contract, agreement, or program funded or administered by KHC;
- (2) A history of failure to perform or of unsatisfactory performance in one or more transactions, contracts, provided that such failure or unsatisfactory performance has occurred within a reasonable time preceding the determination to debar and was caused by acts within the control of the person to be debarred;
- (3) A willful violation of a statutory or regulatory provision or program requirement;

(C). Any conduct specified in 200 KAR 5:315 constituting grounds for disciplinary action by the Kentucky Finance and Administration Cabinet (see Attachment A);

(D). If at any time, debarment by any instrumentality, department, or agency of the Commonwealth of Kentucky, any other state, or any other instrumentality, agency, or department of the United States government occurs;

(E). Knowingly doing business with a debarred or ineligible person or agency;

(F). Any other cause affecting the responsibility of a person that is of such a serious and compelling nature in the discretion of the KHC Executive Director as to warrant debarment, even if such has not been or may not be prosecuted as a violation of any law or contract.

(G). Any act by any person or agency of any of the grounds for debarment under subsection (2) may be imputed to an affiliate of a person or agency where such conduct was accomplished within the course of the affiliate's official duty or was effected by the person or agency with the knowledge of the affiliate.

Section 3. Period of Debarment

Any person or agency determined to have committed any act as provided in Section 2 may, in the discretion of the KHC Executive Director, be debarred from doing any business or entering into any contractual relationship with KHC for a period of twenty-four (24) months. In its discretion, KHC may extend the term of debarment to be permanent upon evidence which demonstrates an egregious misuse of KHC or government funding or other serious incidents of misconduct.

Section 4. Prevailing Wage Violations

Any person or agency determined by the Kentucky Labor Cabinet to have violated the prevailing wage requirements of KRS Chapter 337 shall be debarred and suspended from doing any business or entering into any contractual relationship with KHC effective the date KHC receives notice from the Labor Cabinet that the person or agency has been determined to have violated the prevailing wage law, and until the time the Labor Cabinet has determined the person or agency has determined the person or agency to be in compliance with the requirements of the law or for twenty-four months, whichever period shall be longer.

Section 5. Preliminary Determination

A preliminary written determination shall be made concerning the facts of any allegation or claim that a person or agency has committed any act as provided in any of the above sections before any suspension or debarment action is taken against the person or agency. The preliminary determination shall be submitted by a KHC Deputy Executive Director to an attorney in KHC's Legal Department for consideration of a debarment action. Notice of proposed debarment shall be sent to the person or agency at the address shown in KHC's records by certified mail, return receipt requested. The person or agency shall have ten (10) working days to respond to the preliminary determination and shall send such response to the KHC attorney. KHC's attorney shall review the preliminary written determination and response. Upon completion of the review, the KHC attorney shall issue a final finding concerning debarment or suspension, and send the finding to the party or agency by certified mail, return receipt requested.

Section 6. Appeal Process

A person or agency against whom a debarment or suspension action has been taken may appeal the action to the KHC Executive Director. The appeal shall be filed within the office of the KHC Executive Director within ten (10) working days after the date of notice of the disciplinary action has been received by the person or agency as shown by the certified mail receipt. The appeal shall be filed in writing and shall state facts showing cause why the debarment or suspension action should be set aside. An appeal constituting a general denial of the charges contained in the notice of debarment shall be peremptorily dismissed. The appellant may request an informal hearing to be conducted before the Executive Director or his designee. At the informal hearing, the Deputy Executive Director shall present the evidence that led to the debarment and appellant shall present information for an appeal. A decision reached after an informal hearing shall be made by the Executive Director and he or his designee shall issue a report and decision concerning the action taken, provided to the party or agency by certified mail, return receipt requested.

A person or agency against whom a debarment or suspension action has been taken may make a final appeal of the action to the KHC Board of Directors. The appeal shall be filed with the board chair within fifteen (15) working days after the date of notice by the Executive Director has been received by the person or agency as shown by the certified mail receipt. The appeal shall be filed in writing and shall state facts showing cause why the debarment or suspension action should be set aside. An appeal constituting a general denial of the charges contained in the notice of debarment shall be peremptorily dismissed. Once a complete review and decision has been made by the KHC Board of Directors, a report and final decision will be provided to the party or agency by certified mail, return receipt requested.

Section 7. Does Not Preclude Other Action

The debarment action shall not preclude the taking by KHC of any other action, based on the same facts, as may be otherwise available, either at law or in equity, including suits for damages or actions for specific performance.

Section 8: Publication of List

Upon exhaustion of the above appeal process, KHC will publish a list of persons or agencies that have been debarred on its website at www.kyhousing.org.

Section 9: Reinstatement

A person or agency may have a suspension or debarment lifted and be reinstated, allowing it/them to apply for funding or conduct business with KHC again under the following circumstances:

- (1) A written request must be submitted to KHC for review by the Credit Committee;
- (2) Circumstances constituting grounds for reinstatement may include, but not be limited to:
 - a. A change in the staff or management of the agency or organization;
 - b. A change in the board of directors of the agency or organization;
 - c. A repayment of any outstanding funds that were due or recaptured by KHC;
 - d. Evidence that the agency took appropriate action to correct the cause for debarment and the risk to KHC or its funding sources is negligible if business relations resume;

Section 10: Probationary Period

A person or agency that has been debarred and reinstated shall remain under a probationary period for the term of the initial debarment. Any violations that occur during the probationary period will result in immediate reinstatement of the debarment and extend the term to its original timeframe.

Section 11: Publication of Policy

This Suspension and Debarment Policy is available on Kentucky Housing Corporation's website at www.kyhousing.org.

ATTACHMENT A

200 KAR 5:315. Disciplinary action for failure to perform.

RELATES TO: KRS 45A.080, 45A.085, 45A.185, 45A.190, 45A.230, 45A.325

STATUTORY AUTHORITY: KRS 45A.035(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.035 authorizes the Secretary of the Finance and Administration Cabinet to promulgate administrative regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). KRS 45A.035(2)(b) requires the cabinet to promulgate administrative regulations governing prequalification, suspension, debarment, and reinstatement of prospective bidders. This administrative regulation establishes those requirements.

Section 1. Any bidder or contractor to the Commonwealth of Kentucky who, except for good cause shown, shall have committed, or failed to perform, as the context may require, one or more of the following acts or omissions, may be subject to disciplinary action by the Finance and Administration Cabinet as set forth in Section 2 of this administrative regulation. Specific grounds for disciplinary action shall include:

- (1) Failure to post bid or performance bonds, or to provide alternate bid or performance guarantee in a form acceptable to the purchasing agency in lieu of a bond, as required by a solicitation;
- (2) Substitution of commodities without the prior written approval of the purchasing agency;
- (3) Failure to comply with the terms and conditions of a solicitation or contract, including failure to complete performance within the time specified in the contract;
- (4) Failure to replace inferior or defective materials, supplies or equipment immediately after notification by the purchasing agency or the agency to which the materials, supplies, or equipment have been delivered;
- (5) Refusal to accept a contract awarded pursuant to the terms of a solicitation, or following the close of competitive negotiations;
- (6) Falsifying invoices, or making false representations to any state agency or official, about any payment under a contract, or to procure award of a contract, or to induce a modification in the price or the terms of a contract to the contractor's advantage;
- (7) Collusion or collaboration with another bidder or other bidders in the submission of bids for the purpose of reducing competition;
- (8) Failure to report, or to pay the Kentucky Revenue Cabinet any sales or use taxes as may be due in connection with a procurement contract as provided by law; and
- (9) Failure to comply with the prevailing wage law requirements of state or federal laws as may be applicable to any public works contract of the Commonwealth or any political subdivision or public authority.

Section 2. (1) Any contractor determined to have committed any act prohibited, or to have failed to perform any act required by Section 1(1) to (5) of this administrative regulation may, in the discretion of the commissioner of the department having jurisdiction over the procurement, be placed on probation, or suspended from bidding to the Commonwealth of Kentucky, or a combination of suspension from bidding and probation, for not more than twelve (12) months.

(2) Any contractor determined to have committed any act prohibited by Section 1(6), (7), or (8) of this administrative regulation may, in the discretion of the commissioner of the department having jurisdiction over the procurement, be placed on probation, or suspended from bidding to the Commonwealth of Kentucky, or a combination of suspension from bidding and probation, for not more than twenty-four (24) months.

(3) Any contractor, or any subcontractor to a contractor, determined by the Labor Cabinet to have violated the prevailing wage requirements of KRS Chapter 337 shall be suspended from bidding to the Commonwealth of Kentucky, or participating in a public works contract of the Commonwealth of Kentucky, effective on the date the Finance and Administration Cabinet receives notice from the Labor Cabinet that the contractor or subcontractor has been determined to have violated the prevailing wage law, and until the time the Labor Cabinet has determined the contractor or subcontractor to be in compliance with the requirements of the law.

Section 3. Except for the grounds stated in Section 1(5) and (9) of this administrative regulation, a preliminary written determination shall be made concerning the facts of any allegation or claim that a bidder or contractor has either committed an act prohibited, or failed to perform an act required, by Section 1 of this administrative regulation before any disciplinary action is taken against the contractor. The preliminary determination shall be submitted to the General Counsel of the Finance and Administration Cabinet, for review prior to the administration of any disciplinary action as authorized by Section 2 of this administrative regulation. Notice of disciplinary action shall be sent to the bidder or contractor at the address shown in the cabinet's records by certified mail, return receipt requested.

Section 4. A bidder or contractor against whom disciplinary action has been taken under this administrative regulation may appeal the action to the Secretary of the Finance and Administration Cabinet. The appeal shall be filed in the office of the secretary within ten (10) working days after the date of notice of the disciplinary action has been received by the bidder or contractor as shown by the certified mail receipt. The appeal shall be filed in writing and shall state facts showing cause why the disciplinary action should be set aside. An appeal constituting a general denial of the charges contained in the notice of disciplinary action, unless supported by specific facts rebutting the charges, shall be preemptorily dismissed. The appellant may request either a formal hearing pursuant to KRS Chapter 13B, or an informal hearing to be conducted by the commissioner of the department having jurisdiction over the particular procurement activity or function, or his designee. A written report of the substance of the matters raised in an informal hearing shall be prepared and submitted to the secretary recommending that the appeal be sustained or denied. The rules of evidence shall not apply in informal hearings conducted under this section and any matter considered pertinent to the issues of the hearing shall be admissible.

Section 5. No purchase shall be made by any state agency from a bidder or contractor who has been suspended from bidding. All state agencies shall be promptly informed about bidders or contractors suspended from bidding.

Section 6. The administration of disciplinary action against a bidder, potential bidder or contractor under this administrative regulation shall not preclude the taking of other action by the Commonwealth, based on the same facts, as may be otherwise available, either at law or in equity, including suits for damages or actions for specific performance. (5 Ky.R. 579; Am. 952; 6 Ky.R. 11; eff. 7-17-79; 18 Ky.R. 1367; eff. 1-10-92; 30 Ky.R. 683; 1469; eff. 1-5-2004.)