
SUSPENSION, DEBARMENT, AND INELIGIBILITY

A. Purpose

This Section is being established to prescribe the policies and procedures governing the Debarment and Suspension of Vendors by Memorial Healthcare System.

B. Definitions

The words and acronyms defined below shall have the meanings ascribed to them wherever they appear in this Section regardless of whether they are capitalized unless (a) the context in which they are used clearly requires a different meaning or (b) a different definition is prescribed for a particular subsection herein. Words capitalized but not defined shall have the meanings ascribed to them in the Business and Procurement Code. All other words not defined shall be given their common and ordinary meaning unless the context in which they are used requires otherwise. When the context requires, the gender of all words consists of the masculine, feminine, and neuter, the number of all words includes the singular and plural, and, when appropriate, the form of a word consists of the past tense, present participle, or gerund.

"Affiliate" means two or more Contractors, whereby one Contractor, directly or indirectly, controls the other Contractor(s) or has the ability to control the other Contractor(s), or where all the Contractors are controlled by or have the ability to be controlled by the same Contractor. Such indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a Contractor organized following the Debarment, Suspension, or proposed Debarment of a Vendor which has the same or similar management, ownership, or principal employees as the Vendor that was Debarred, Suspended, or proposed for Debarment.

"CFO" means the (1) Chief Financial Officer who oversees and is responsible for all of Memorial's financial matters or (2) a designee (other than the CPO) authorized by the Chief Financial Officer to consider and decide an administrative appeal of a Debarment decision.

"Contractor" means any natural person, corporation, company, general or limited partnership, firm, association, organization, business concern, or other legal business entity.

"CPO" means (1) the Chief Procurement Officer or (2) a designee authorized by the Chief Procurement Officer to impose Debarment.

"Debar" means the temporary or permanent exclusion of a Vendor following an investigation or when the procedures herein have concluded.

"Preponderance of the Evidence" means proof that, when compared with any opposing information or facts, leads to the conclusion that the fact at issue is more likely true than not.

"Suspend" means the temporary and immediate exclusion of a Vendor to address an immediate need for protection, pending the completion of an investigation, or at the conclusion of the procedures herein.

"Vendor" means any Contractor that, directly or indirectly (e.g., through an Affiliate), (1) submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a contract from Memorial, including a contract for carriage or commercial bills of lading, or a subcontract under a Memorial contract; or (2) conducts business, or reasonably may be expected to conduct business, with Memorial as an agent or representative of another Vendor.

C. Policy

Memorial shall only solicit offers from, award contracts to, and consent to subcontracts with responsible

Vendors. Because doing business with Memorial is not a right but a privilege afforded to Vendors, those Vendors that are Suspended or Debarred consistent with the procedures herein are precluded from responding to competitive solicitations and doing business with Memorial.

D. Authority

Consistent with Section VII.3. of the Business and Procurement Code, the CPO, and any designee authorized by the CPO, has the discretionary authority to and may Suspend or Debar any Vendor from responding to competitive solicitations or from doing business with Memorial. The CPO is responsible for determining whether Suspension or Debarment is in Memorial's interest. The CPO may, in Memorial's interest, Suspend or Debar a Vendor for any of the causes and using the procedures set forth herein. The existence of a cause for Suspension or Debarment, however, does not necessarily require that the Vendor be Suspended or Debarred. Rather, the CPO may consider the seriousness of the Vendor's acts or omissions and any remedial measures or mitigating factors when making any such decision.

E. Effect of Suspension of Debarment

A Vendor's Suspension or Debarment, or proposed Suspension or Debarment, shall be effective throughout Memorial and all of its departments, divisions, facilities, and wholly owned affiliates and subsidiaries unless compelling reasons exist that justify continued business dealings between Memorial and the Vendor. Unless otherwise determined by the CPO to be in Memorial's interest, a Vendor that is Suspended or Debarred may not respond to any Memorial competitive solicitation, do business with Memorial, or perform services or be approved as a subcontractor on any Memorial contract for the duration of the Suspension or Debarment. If a Vendor is Suspended or Debarred, the Suspension or Debarment is imputed to all divisions and organizational elements of the Vendor and includes the Vendor's Affiliates and all entities for which the Vendor serves as an officer or principal, unless the Debarment decision is limited by its terms to specific divisions, organizational elements, or commodities. The fraudulent, criminal, or other seriously improper conduct of a Vendor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the Vendor who participated in, knew of, or had reason to know of the Vendor's conduct. Also, the fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a Vendor may be imputed to the Vendor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Vendor, or with the Vendor's knowledge, approval, or acquiescence. A Vendor's acceptance of the benefits derived from such conduct shall be evidence of such knowledge, approval, or acquiescence. The fraudulent, criminal, or other seriously improper conduct of one Vendor participating in a joint venture or similar arrangement may be imputed to other participating Vendors if the conduct occurred for or on behalf of the joint venture or similar arrangement or with the knowledge, approval, or acquiescence of those Vendors. Acceptance of the benefits derived from such conduct shall be evidence of such knowledge, approval, or acquiescence.

F. Procedure

1. Suspension.

(a) Purpose of Suspension.

A Suspension is a temporary administrative action imposed on a Vendor by the CPO to protect Memorial, pending the results of an investigation or when it is in Memorial's interest. A Suspension may be imposed immediately and prior to any notice or hearing.

(b) Grounds for Suspension.

The CPO may immediately Suspend a Vendor when the CPO determines it is in Memorial's interest to impose a Suspension (1) to protect Memorial or its officers, employees, patients, or visitors; (2) if the CPO has reasonable grounds to believe that the Vendor has engaged in acts of fraud, theft, dishonesty, or a violation of federal or state law; (3) if the CPO has reasonable grounds to believe that the Vendor

has violated one or more Memorial policies; (4) if the Vendor becomes insolvent, files for bankruptcy proceedings, compounds its debts, assigns over its estate or effects for payment of its debts, or has a receiver or trustee appointed over its property; (5) if Memorial is investigating the Vendor for Debarment and the CPO believes it in Memorial's interest to Suspend the Vendor for the duration of the investigation; (6) if Debarment proceedings against the Vendor have been commenced; or (7) for any other reason the CPO believes is in Memorial's interest or which affect the Vendor's responsibility as a Memorial Vendor, including, without limitation, the commission or omission of an act that is grounds for Debarment.

(c) Suspension Procedures.

Suspension shall be imposed on the basis of adequate evidence, pending the completion of an investigation or Debarment proceedings, when it has been determined that immediate action is necessary to protect Memorial's interest. In assessing the adequacy of the evidence, the CPO shall consider how much information is available, how credible it is given the circumstances, whether or not material allegations are corroborated, and what inferences can reasonably be drawn as a result. Notice of a Vendor's Suspension shall be provided to the Vendor by email or mail prior to or after the imposition of the Suspension as is reasonably practicable under the circumstances. The notice shall state the grounds for the Suspension and offer the Vendor the opportunity to respond in writing. The CPO may also hold a meeting with the Vendor to discuss those grounds if the CPO determines a meeting is appropriate. The CPO's decision following a Vendor's response, as applicable, shall be the final decision regarding the Suspension of the Vendor, and there are no appeals.

(d) Duration of Suspension.

The period of Suspension shall be commensurate with the seriousness of the grounds and shall be for a temporary period pending the completion of the investigation and any ensuing legal proceedings, including any applicable administrative appeals, unless sooner terminated by the CPO. A Vendor may not be Suspended for longer than six (6) months unless (1) the CPO determines it is in Memorial's interest based on the grounds for the Suspension; (2) Memorial is still investigating the matter; or (3) Debarment proceedings have been commenced against the Vendor, in which case the Suspension may last until the Debarment proceedings, including any applicable appeals, have concluded.

2. Debarment.

(a) Purpose of Debarment.

While Suspension is a temporary and immediate measure that may be imposed on a Vendor prior to notice and a hearing, a Debarment may be permanent or imposed on a Vendor for a longer period and is only imposed following notice and an opportunity for a hearing.

(b) Grounds for Debarment.

A Vendor may be Debarred for any of the following:

- (1) When a Vendor, or an officer, director, owner, member, partner, or management-level employee of a Vendor is convicted of a criminal offense relating to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- (2) When a Vendor, or an officer, director, owner, member, partner, or management-level employee of a Vendor engages in any activities prohibited under the Federal Physician Self-Referral Law (the Stark Law), 42 U.S.C. § 1395nn, the Federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b), or any similar state statutes and regulations including, without limitation, the Florida Patient Brokering Act, § 817.505, Florida Statutes;
- (3) When a Vendor, or an officer, director, owner, member, partner, or management-level employee

of a Vendor is or has received notice that they will be suspended, debarred, excluded, or otherwise rendered ineligible to participate (including revocation of enrollment and billing privileges) in any federal or state health care program, including, but not limited to, the Medicare and Medicaid, or is ineligible to receive or do business with any federal funds or grants and has or will be placed on the U.S. General Services Administration, System for Award Management (SAM) Excluded Party Database or similar database or list;

- (4) When a Vendor, or an officer, director, owner, member, partner, or management-level employee of a Vendor is convicted of a crime of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of integrity or honesty;
- (5) When a Vendor, or an officer, director, owner, member, partner, or management-level employee of a Vendor commits any offense indicating a lack of business integrity or business honesty that directly affects the present responsibility of a Vendor or subcontractor;
- (6) When a Vendor, or an officer, director, owner, member, partner, or management-level employee of a Vendor is convicted under state or federal antitrust statutes relating to the submission of bids or proposals for a government contract;
- (7) When a Vendor, or an officer, director, owner, member, partner, or management-level employee of a Vendor has repeated negative interactions with Memorial's staff and employees that relate to or adversely affect the Vendor's performance, or which disrupt Memorial's operations;
- (8) When a Vendor, or an officer, director, owner, member, partner, or management-level employee of a Vendor violates the provisions, specifications, and conditions of any contract or subcontract with Memorial, which violation is of a character that the CPO determines to justify Debarment action, including, but not limited to, (i) providing inferior or inadequate commodities or services; (ii) deliberate or willful failure, without good cause, to perform in accordance with terms of a contract or within the time for performance required by the contract; or (iii) a history of failure to perform or of unsatisfactory performance of one or more contracts;
- (9) Failure of a Vendor awarded a contract to provide any required bonds, insurance, or other certificates after demand by Memorial;
- (10) Suspension or Debarment of another entity of which any of the Vendor's principals or officers were principals or officers at the time of the Suspension or Debarment unless there is clear evidence that the Suspension or Debarment resulted from conduct that did not involve such principal or officer;
- (11) Violation of the Code of Ethics, Integrity, and Professional Conduct set forth in Section IV. of the Business and Procurement Code or as otherwise set forth under Florida law;
- (12) Violation of the Cone of Silence set forth in Section V.D.2. of the Business and Procurement Code on two (2) or more occasions;
- (13) The making of false statements or material misrepresentations in response to or related to a competitive solicitation or other bidding procedure;
- (14) The Suspension or Debarment of the Vendor by another governmental entity; or
- (15) Any other cause the CPO determines to be so serious and compelling as to affect the Vendor's responsibility as a Memorial Vendor or subcontractor.

(c) Debarment Procedures.

(1) Notice.

The CPO shall provide written notice by email or U.S. Mail to any Vendor under review for potential Debarment. The notice shall state the grounds for the potential Debarment and offer the Vendor thirty (30) days to respond to those grounds in writing with any specific information that raises a genuine dispute over the material facts. When notice is sent by email, the notice shall be deemed delivered and received by the Vendor the following calendar day. When notice is sent by U.S. Mail, the notice shall be deemed delivered and received by the Vendor two (2) business days following the CPO's deposit of the notice with the U.S. Mail.

(2) Vendor Response.

Vendors shall be given thirty (30) days to respond following receipt of notice of Debarment from the CPO. If the CPO determines it is appropriate, the CPO may hold a meeting with the Vendor to discuss the grounds for Debarment. A Vendor's failure to respond in writing within thirty (30) days or to attend a meeting at the request of the CPO shall constitute a waiver of any future response and/or appeal and the CPO's Debarment decision shall be final.

(3) Decision by the CPO.

When determining whether the Debarment of a Vendor is appropriate, the CPO shall make a decision based on all the information in the administrative record and may rely on any facts or information gathered from any source during the investigation (including hearsay evidence), along with the Vendor's written response (if the Vendor responded) and/or the facts or information gathered from the meeting with the Vendor if a meeting is held. The CPO may reject any findings or information, in whole or in part, if the CPO determines them to be arbitrary and capricious or clearly erroneous. The CPO may solicit assistance from any individual or department and refer matters involving disputed material facts to another official for findings of fact.

In any Debarment action where the grounds are based on a Vendor's conviction or civil judgment, such conviction or civil judgment shall serve as a rebuttable presumption of a Vendor's wrongdoing. In any action in which the proposed Debarment is not based upon a conviction or civil judgment, the cause for Debarment must be established by a Preponderance of the Evidence. Before arriving at any Debarment decision, the CPO may consider factors such as the following:

- i. Whether the Vendor had effective standards of conduct and internal control systems in place at the time of the activity, which constitutes cause for Debarment, or had adopted such procedures prior to any investigation of the activity cited as a cause for Debarment;
- ii. Whether the Vendor brought the activity cited as a cause for Debarment to the attention of the appropriate Memorial official in a timely manner;
- iii. Whether the Vendor has thoroughly investigated the circumstances surrounding the cause for Debarment and, if so, made the result of the investigation available to the CPO;
- iv. Whether the Vendor cooperated fully with Memorial during the investigation and any court or administrative action;
- v. Whether the Vendor has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or administrative costs incurred by Memorial, and has made or agreed to make full restitution;

- vi. Whether the Vendor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for Debarment;
- vii. Whether the Vendor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for Debarment and the Vendor has implemented or agreed to implement remedial measures and programs to prevent recurrence, including any identified or suggested by Memorial, or has agreed to institute new or revised review and control procedures and ethics training programs; and
- viii. Any other aggravating or mitigating factors derived from the investigation, the Vendor's conduct, or submitted by the Vendor in response to the proposed Debarment action.

The existence or nonexistence of any mitigating factors or remedial measures outlined in this paragraph is not necessarily determinative of a Vendor's present responsibility. Accordingly, if a cause for Debarment exists, the Vendor has the burden of demonstrating, to the satisfaction of the CPO, its present responsibility and that Debarment is not necessary.

After consideration of the administrative record, the facts and information gathered, the Vendor's written response (if submitted) and/or the meeting with the Vendor if held, and the above factors, the CPO may Debar the Vendor from consideration for award of future Memorial contracts.

(4) Notice of the CPO's Decision.

The CPO shall notify the Vendor of the CPO's decision to Debar or not Debar the Vendor. If the CPO determines that Debarment is warranted, the CPO shall send by mail or email the CPO's Debarment decision, which shall: (a) state the reasons for the action taken, (b) the period of Debarment, including effective dates, and (c) inform the Vendor of its rights to administrative appeal, as applicable.

(5) Administrative Appeal Procedures.

i. Right of Administrative Appeal.

Any Vendor who has received an adverse determination of Debarment, unless waived as provided in Section F.2(c)(2), may submit a written appeal of that determination to the CFO.

ii. Time for Administrative Appeal.

An administrative appeal must be received by the CFO within fourteen (14) calendar days after the date of the CPO's Debarment determination. If such administrative appeal is not received in writing within fourteen (14) calendar days after the date of the CPO's Debarment determination, such appeal shall be deemed waived and the CPO's Debarment determination shall be final unless waived by the CFO for good cause.

iii. Form of Administrative Appeal.

All administrative appeals must be made in writing, and the facts and arguments upon which the appeal is based must be stated along with the email address of the appealing Vendor. Appeals shall be limited to the scope of the CPO's Debarment determination, and the CPO may submit a written response to a Vendor's appeal. If the CFO determines it is appropriate, the CFO may request an appellate hearing with the Vendor and the CPO and request the submission of supplemental information or responses from the Vendor. If the CFO requests a hearing and the Vendor does not attend or if the CFO requests supplemental information or responses from the Vendor and the Vendor does not submit such information or respond to the CFO's request, the appeal shall be deemed waived, and the CPO's decision shall be

deemed final.

- a. Standard of Review. The CFO's review shall be limited to whether the appealing Vendor was afforded procedural due process and/or whether the CPO's determination was arbitrary, capricious, or unsupported by competent evidence, which means relevant evidence that a reasonable person might accept as adequate to support a conclusion.
- b. Decisions. The CFO shall consider the administrative record below, along with the CPO's written decision, the Vendor's written appeal, the CPO's written appeal (if submitted), any supplemental information or responses submitted by the Vendor (if requested by the CFO), and the information gathered at the appellate hearing (if requested by the CFO). Within sixty (60) days after the written appeal is filed, the CFO shall issue a final written order, including the CFO's findings of fact and final determination. The CFO shall uphold or deny the appeal but may not grant any additional, alternative, or supplemental relief to the appealing Vendor.

(d) Duration of Debarment.

A Vendor shall be Debarred commensurate with the seriousness of the grounds for any period determined by the CPO to be in Memorial's interest, and, if the grounds for the Debarment are willful or egregious or if the CPO determines it is in Memorial's interest, a Vendor may be Debarred indefinitely, or until the Vendor is reinstated in accordance with Section F. 3 below.

3. Reinstatement.

Vendors may submit a request for reinstatement to the CPO prior to or following the Debarment period consistent with the procedures outlined below. The CPO may reinstate a Vendor, reduce the Debarment period, or reduce the scope of the Debarment based upon a Vendor's reinstatement request. Any reinstatement decisions are at the sole discretion of the CPO and are based on Memorial's interest. There is no appeal of any reinstatement decisions.

- (a) Request for Reinstatement Prior to Expiration of the Debarment Period. Vendors submitting reinstatement requests prior to the expiration of the Debarment period must submit their request to the CPO in writing, and the request must contain the name, address, telephone number, and email address of the Vendor requesting reinstatement and must be supported by adequate documentation as determined by the CPO. Requests for partial or whole reinstatements prior to the expiration of the Debarment period may be submitted and may be considered (i) if there is newly discovered material evidence that was not available at the time of the initial Debarment action; (ii) if there is a reversal of the conviction or civil judgment upon which the Debarment was based; (iii) if there is a bona fide change in ownership or management of the Vendor sufficient to justify a finding of present responsibility; (iv) if the grounds for which the Debarment was imposed has been eliminated; or (v) for any other reason the CPO deems appropriate in Memorial's interest.
- (b) Request for Reinstatement Following the Expiration of the Debarment Period. After the conclusion of a Debarment period, a Debarred Vendor that wishes to be reinstated must submit a written request to the CPO. The written request must include the following information and be supported by adequate documentation as determined by the CPO:
 - (1) The name, address, and telephone number of the Vendor requesting reinstatement;
 - (2) A factual statement indicating how the circumstances that led to the Debarment have been cured or otherwise addressed and what controls have been put in place to prevent further circumstances from recurring;
 - (3) A list of all contracts and projects for which the Vendor performed work for Memorial in the five

- (5) years preceding the Vendor's Debarment;
- (4) A list of government projects or contracts awarded or completed during the two (2) years immediately preceding the submittal of the reinstatement request; and
 - (5) Any other information or documentation that the CPO may request from the Vendor to determine the Vendor's present responsibility and suitability for reinstatement.