

## **ARTICLE 8. DEBARMENT PROCEDURE**

*NOTE: IC 4-4-3 was repealed by P.L.4-2005, SECTION 148, effective February 9, 2005.*

### **Rule 1. Scope and Definitions**

#### **55 IAC 8-1-1 Scope of action**

Authority: IC 4-4-3-8; IC 4-4-3-21

Affected: IC 4-4

Sec. 1. These proceedings apply to any federal or state program administered by the Indiana department of commerce. (*Indiana Economic Development Corporation; 55 IAC 8-1-1; filed Jul 29, 1985, 2:42 pm: 8 IR 1701; readopted filed Dec 2, 2001, 12:30 p.m.: 25 IR 1267*)

#### **55 IAC 8-1-2 Definitions**

Authority: IC 4-4-3-8; IC 4-4-3-21

Affected: IC 4-4

Sec. 2. "Debarment" means the exclusion from participation in any such program for the period of time specified in accordance with 55 IAC 9 [sic., 55 IAC 8].

"Department" means the Indiana department of commerce.

"Division" means the division of internal audit, or its successor, of the department.

"Person" whenever used in this procedure means any person, firm, association, partnership or corporation. It shall also include all political subdivisions and their affiliated entities against which any state or federal agency may make an order or determination. (*Indiana Economic Development Corporation; 55 IAC 8-1-2; filed Jul 29, 1985, 2:42 pm: 8 IR 1701; readopted filed Dec 2, 2001, 12:30 p.m.: 25 IR 1267*)

### **Rule 2. Causes for Debarment**

#### **55 IAC 8-2-1 Causes for debarment**

Authority: IC 4-4-3-8; IC 4-4-3-21

Affected: IC 4-4

Sec. 1. A person may be debarred if any of the following have occurred within a reasonable period of time before institution of debarment proceedings:

(1) Serious or repetitive violation of any federal or state law, or department program regulation or instruction.

(2) Serious or repetitive failure to perform contractual obligations or carry out representations or warranties to the department or to any grantee under any program administered by the department.

(3) Acts of misconduct indicating a lack of business integrity directly affecting responsibility to participate in department programs, including but not limited to false representation, embezzlement, theft, forgery, fraud, negligent service, bribery, falsification of records, and receiving stolen property.

(4) Serious or repetitive violation of any nondiscrimination or equal opportunity requirements in connection with any program administered by the department.

(5) Debarment from any agency of the federal government or of any state government.

(*Indiana Economic Development Corporation; 55 IAC 8-2-1; filed Jul 29, 1985, 2:42 pm: 8 IR 1701; readopted filed Dec 2, 2001, 12:30 p.m.: 25 IR 1267*)

### **Rule 3. Procedure for Debarment**

#### **55 IAC 8-3-1 Notice of recommended debarment**

Authority: IC 4-4-3-8; IC 4-4-3-21

Affected: IC 4-4

Sec. 1. The initial determination of the department, entitled Notice of Recommended Debarment, shall be mailed to the person

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against whom debarment is recommended, in writing and signed by the director of the division, and shall include the following:

- (1) a statement indicating that as a result of an investigation made by the department, debarment is recommended and would be exclusion from participation in all department programs;
- (2) one or more of the grounds stated in 55 IAC 9-2-1 [*sic.*, 55 IAC 8-2-1];
- (3) a short, plain statement of the reasons for the recommended debarment; and
- (4) a statement that the person has the right to file a written objection within fifteen (15) days with the director of the division; and if no written objection is timely filed, the determination of debarment shall be made.

*(Indiana Economic Development Corporation; 55 IAC 8-3-1; filed Jul 29, 1985, 2:42 pm: 8 IR 1702; readopted filed Dec 2, 2001, 12:30 p.m.: 25 IR 1267)*

**55 IAC 8-3-2 Pre-hearing conference**

Authority: IC 4-4-3-8; IC 4-4-3-21

Affected: IC 4-4

Sec. 2. (a) Any person who has received an initial determination recommending debarment is entitled to a pre-hearing conference to discuss all charges, provided that the conference is requested in the objection filed pursuant to 55 IAC 9 [*sic.*, 55 IAC 8].

(b) The pre-hearing conference shall be an informal proceeding, scheduled by and involving the director of the division.

(c) If after the pre-hearing conference, the initial determination is settled or adjusted, a written synopsis shall be prepared by the department and submitted to the person for approval. This synopsis shall be filed with the director of the division within ten (10) days following mailing of the synopsis. The person's failure to file the synopsis within ten (10) days of mailing by the department is evidence of approval by the person.

(d) If any person, after being duly notified, fails to appear at a pre-hearing conference that person shall be deemed to have waived their request for a pre-hearing conference. *(Indiana Economic Development Corporation; 55 IAC 8-3-2; filed Jul 29, 1985, 2:42 pm: 8 IR 1702; readopted filed Dec 2, 2001, 12:30 p.m.: 25 IR 1267)*

**55 IAC 8-3-3 Hearing; recommendations**

Authority: IC 4-4-3-8; IC 4-4-3-21

Affected: IC 4-4

Sec. 3. (a) A hearing officer, appointed by the director of the department, shall conduct the debarment hearing.

(b) Upon conclusion of the hearing, the hearing officer shall issue recommendations to the director of the department as to the determination of debarment, which shall not exceed three (3) years.

(c) Any interested and affected person may file with the department his objections to the entry of such determination within ten (10) days thereafter. *(Indiana Economic Development Corporation; 55 IAC 8-3-3; filed Jul 29, 1985, 2:42 pm: 8 IR 1702; readopted filed Dec 2, 2001, 12:30 p.m.: 25 IR 1267)*

**55 IAC 8-3-4 Final order**

Authority: IC 4-4-3-8; IC 4-4-3-21

Affected: IC 4-4; IC 4-21.5

Sec. 4. The director of the department, or his designee, shall issue a final order pursuant to IC 4-22-1 [*Repealed by P.L.18-1986, SECTION 2. See IC 4-21.5.*]. *(Indiana Economic Development Corporation; 55 IAC 8-3-4; filed Jul 29, 1985, 2:42 pm: 8 IR 1702; readopted filed Dec 2, 2001, 12:30 p.m.: 25 IR 1267)*

**55 IAC 8-3-5 Judicial review**

Authority: IC 4-4-3-8; IC 4-4-3-21

Affected: IC 4-4; IC 4-21.5

Sec. 5. For any procedure not specifically provided in 55 IAC 9 [*sic.*, 55 IAC 8], the provisions of the Administrative Adjudication Act, IC 4-22-1-1 [*Repealed by P.L.18-1986, SECTION 2. See IC 4-21.5.*] shall be followed. Any person aggrieved

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by the final order or determination made by the department shall be entitled to judicial review thereof in accordance with said provisions. (*Indiana Economic Development Corporation; 55 IAC 8-3-5; filed Jul 29, 1985, 2:42 pm: 8 IR 1702; readopted filed Dec 2, 2001, 12:30 p.m.: 25 IR 1267*)

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