

Michigan Office of Administrative Hearings and Rules
Administrative Rules Division (ARD)

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REQUEST FOR RULEMAKING (RFR)

1. Department:

Technology, Management and Budget

2. Bureau:

Purchasing Division

3. Promulgation type:

Full Process

4. Title of proposed rule set:

Vendor Debarment

5. Rule numbers or rule set range of numbers:

R 18.101 - R 18.120

6. Estimated time frame:

6 months

Name of person filling out RFR:

Stephen Davis

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7. Describe the general purpose of these rules, including any problems the changes are intended to address.

Most State of Michigan vendors are upstanding corporate citizens that provide needed goods and services to the State, create jobs, and make Michigan a better place to live. However, vendors that commit serious or repetitive violations of the law present significant risks to the State and its citizenry, as well as reputational harm.

The purpose of this rule is to allow the Department of Technology, Management and Budget (DTMB) to exercise its authority under MCL 18.1264. That statute allows DTMB to debar a vendor from participating in the bid process and from contract award upon notice and a finding that the vendor is not able to perform responsibly, or that the vendor, or an officer or an owner of a 25% or greater share of the vendor, has demonstrated a lack of integrity that could jeopardize the state's interest if the state were to contract with the vendor.

8. Please cite the specific promulgation authority for the rules (i.e. department director, commission, board, etc.).

DTMB has rulemaking authority under MCL 18.1131(2), which states that DTMB "...may promulgate rules as necessary to implement this act. The rules shall be promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328."

This rule is necessary to implement DTMB's debarment authority under MCL 18.1264.

A. Please list all applicable statutory references (MCLs, Executive Orders, etc.).

PA 431 of 1988, section 18.1131 and 18.1264 of the Michigan Compiled Laws.

B. Are the rules mandated by any applicable constitutional or statutory provision? If so, please explain.

No.

9. Please describe the extent to which the rules conflict with or duplicate similar rules, compliance requirements, or other standards adopted at the state, regional, or federal level.

The proposed rule does not conflict with any known rules or regulations. The federal General Services Administration processes suspension and debarment cases as required by federal law.

10. Is the subject matter of the rules currently contained in any guideline, handbook, manual, instructional bulletin, form with instructions, or operational memoranda?

No.

11. Are the rules listed on the department's annual regulatory plan as rules to be processed for the current year?

No.

12. Will the proposed rules be promulgated under Section 44 of the Administrative Procedures Act, 1969 PA 306, MCL 24.244, or under the full rulemaking process?

Full Process

13. Please describe the extent to which the rules exceed similar regulations, compliance requirements, or other standards adopted at the state, regional, or federal level.

The proposed rule provides for up to 5 years of debarment, where the comparable Federal rule limits it to 3 years. The difference is due to the fact that the majority of State of Michigan contracts end up lasting 5 years, so a 3 year debarment would likely not be much of a penalty as it would allow the debarred vendor to bid again on the next contract cycle. This would put the debarred vendor in the same situation as a vendor that simply did not win the contract.

Additionally, the proposed rule allows DTMB to debar a vendor for "serious or repetitive failure to perform contractual obligations" and for "any other cause so serious and compelling as to affect responsibility as a state supplier, including debarment by another government entity." The federal rule focuses solely on criminal behavior, convictions and fraud.

14. Do the rules incorporate the recommendations received from the public regarding any complaints or comments regarding the rules? If yes, please explain.

DTMB has not received any complaints or comments on the topic from the public.

15. If amending an existing rule set, please provide the date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed the regulatory activity covered by the rules since the last evaluation.

No.

16. Are there any changes or developments since implementation that demonstrate there is no continued need for the rules, or any portion of the rules?

No.

17. Is there an applicable decision record (as defined in MCL 24.203(6) and required by MCL 24.239(2))? If so, please attach the decision record.

No