

## ***ENVIRONMENTAL VIOLATIONS MAY LEAD TO DEBARMENT***

On January 2, 2003, Governor Jennifer Granholm issued Executive Order (EO) No. 2003-1, which provides, in part, that certain state contractors can be debarred for certain environmental violations. “Debarment” is defined in the EO as “to suspend, revoke, or prohibit the privilege of contracting with the State of Michigan for the provision of goods or services.” Debarment does not, however, relieve the State from any existing contractual obligations.

### **WHO CAN BE DEBARRED**

Debarment can apply to a vendor (defined as “a person or entity that has contracted with or seeks to contract with the State of Michigan for the provision of goods or services”), if that vendor, an officer of the vendor, or an owner of a 25% or greater interest in the vendor has violated environmental laws as described below.

### **WHY THEY CAN BE DEBARRED**

Debarment is possible if a vendor has “[b]een convicted of any...offense, or violated any other state or federal law, as determined by a court of competent jurisdiction or an administrative proceeding, which, in the opinion of the Department, indicates that the vendor is unable to perform responsibly or which reflects a lack of integrity that could negatively impact or reflect upon the State of Michigan. An offense or violation under this subdivision may include, but is not limited to, an offense under or violation of: the Natural Resources and Environmental Protection Act . . . (NREPA). Any such violation that has occurred “within the past three years” can be grounds for debarment.

The provision above makes it clear that debarment can arise from a criminal conviction or finding of violation, whether in a court or administrative forum. But several questions remain: First, it is not clear exactly which forum’s laws must be involved. For example, the phrase “any

other state...law” could be interpreted to mean Michigan laws, i.e., the word “state” refers to the State of Michigan. But it could just as well be interpreted to mean the laws of any state, which would give the debarment provision a very wide scope. Another uncertainty is which of those other state or federal laws would be considered to indicate that the vendor “is unable to perform responsibly” or that the vendor lacks integrity.

## **PROCEDURE**

To initiate debarment proceedings, the Department of Management and Budget (DMB) must send the vendor a notice indicating the grounds for debarment and the procedure for requesting a hearing. In order to secure a hearing, a vendor must file a written request within 20 days after receiving the notice. If a final decision to debar is issued, the period can be of any length, but not to exceed 8 years. After the debarment period has expired, the vendor can once again pursue contracting with the State. The EO apparently leaves the formulation of other procedural issues such as the burden and standard of proof to the DMB, as the EO does not provide a detailed procedural framework.

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