

**RULES
OF
TENNESSEE HOUSING DEVELOPMENT AGENCY**

**CHAPTER 0770-2-1
UNACCEPTABILITY FOR EMPLOYMENT ON PROJECTS FUNDED BY
TENNESSEE HOUSING DEVELOPMENT AGENCY**

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0770-2-1-.01 SCOPE.

- (1) These rules prescribe procedures and circumstances where a person, firm, agency, corporation, association, partnership, developer, contractor, architect, real estate agent, individual or legal entity or an affiliate of an individual or legal entity may be ineligible for participation in any financing through the Tennessee Housing Development Agency or any programs operated by the Agency. The word person includes any of the aforementioned. The Board of Directors of the Tennessee Housing Development Agency may take action resulting in debarment.
 - (a) Debarment means exclusion from employment on THDA projects or contracts or participation in THDA financing or programs for a reasonable, specified period of time commensurate with the seriousness of the offense or the failure or inadequacy of performance generally not to exceed five years. Debarment also means exclusion from participation by reason of ineligibility under regulations of the United States Department of Housing and Urban Development.
 - (b) For the purposes of this chapter, the term “contract crime” shall mean fraud, bribery, collusion or conspiracy involving violation of federal or state criminal statutes in connection with any public contract or any contract in reference to THDA financing or programs.
- (2) This chapter applies to any person, firm or corporation or assets of any corporation which has been convicted of, has admitted to, or has pleaded guilty or nolo contendere to any contract crime or which assets thereof were utilized or involved in any contract crime.
- (3) This chapter may apply to any corporation or its assets if any of its officers, directors, shareholders active in management or person holding any similar executive position in the corporation has been convicted of, has admitted to, or has pleaded guilty or nolo contendere to any contract crime or which assets thereof were utilized or involved in any contract crime.
- (4) This chapter may apply to any partnership or assets of any partnership if any partner has been convicted of, has admitted to, or has pleaded guilty or nolo contendere to any contract crime or which assets thereof were utilized or involved in any contract crime.
- (5) This chapter may apply to any joint venture, other association, person, legal entity or the assets of any joint venture, association, person or legal entity, if any joint venturer, any managing agent, any person entitled to share in the proceeds and engaged in the active management thereof, or any person holding an executive position thereof has been convicted of, has admitted to, or has pleaded guilty or nolo contendere to any contract crime, or which assets thereof were utilized in any contract crime.
- (6) This chapter may apply to any corporation or assets of any corporation if the illegal acts of any of its officers, directors, shareholders active in management or person holding any similar executive position

(Rule 0770-2-1-.01, continued)

in it were directly or indirectly responsible for a conviction, admission, plea of guilty or nolo contendere to a contract crime by any other firm, corporation, venture, person or legal entity or which assets thereof were utilized or involved in any contract crime by any other firm, corporation, joint venture, person or legal entity.

- (7) This chapter may apply to any partnership or assets of any partnership if the illegal acts of any partner were directly or indirectly responsible for a conviction, admission, plea of guilty or nolo contendere to a contract crime by any other firm, corporation, or joint venture, person or legal entity or which assets thereof were utilized or involved in any contract crime by any other firm, corporation, joint venture, person or legal entity.
- (8) This chapter may apply to any joint venture, association, person, legal entity or assets of any joint venture association, person or legal entity if the illegal acts of any joint venturer, managing agent, person entitled to share in the proceeds and engaged in the active management thereof, or person holding an executive position were directly or indirectly responsible for a conviction, admission, plea of guilty or nolo contendere to a contract crime by any other firm, corporation or joint venture, person or legal entity or which assets thereof were utilized or involved in any contract crime by any other firm, corporation, joint venture, person or legal entity.

Authority: T.C.A. §13-23-115. **Administrative History:** Original rule filed September 29, 1981; effective December 29, 1981.

0770-2-1-.02 ADDITIONAL CAUSES AND CONDITIONS APPLICABLE TO DETERMINATION OF DEBARMENT.

In addition to the grounds set out in 0770-2-1 above and subject to the following conditions, THDA may also debar a person in the public interest for any of the following causes:

- (1) Violation of contract provisions, asset forth below, of a character which is regarded by the Agency to be so serious as to justify debarment action:
 - (a) Willful failure to perform in accordance with the specifications or within the time limit provided in the contract.
 - (b) A record of failure to perform, or of unsatisfactory performance, in accordance with the terms of one or more contracts: Provided, that such failure or unsatisfactory performance has occurred within a reasonable period of time preceding the determination to debar. Failure to perform or unsatisfactory performance which the contractor can show was caused by events beyond its control which were not reasonably foreseeable shall not be considered to be a basis for debarment provided that no fault or negligence of the firm or individual was involved.
 - (c) Violation of any contractual provision against contingent fees.
 - (d) Payment or acceptance of a contingent fee, which is paid in violation of any contractual or statutory provision against contingent fees.
 - (e) Violation of the contractual provision requiring affirmative action to provide equal opportunity in the participant's own employment practices.
- (2) Violation of any law, regulation, or procedure relating to the application for financial assistance, insurance, or guarantee or to the performance of obligations incurred pursuant to a grant of financial assistance, or conditional or final commitment to insure or guarantee.

(Rule 0770-2-1-.02, continued)

- (3) Making or procuring to be made any false statement for the purpose of influencing in anyway the action of THDA.
- (4) Any other cause of such serious compelling nature, affecting responsibility, as maybe determined by the Board, to warrant debarment.

Authority: T.C.A. §13-28-115. *Administrative History:* Original rule filed September 29, 1981; effective December 29, 1981.

0770-2-1-.03 PROCEDURE.

- (1) All invitations forbids or proposals shall require each respondent to state whether or not such respondent, its employees, agents, independent contractors and proposed subcontractors have been convicted of or have pled guilty or nolo contendere to any contract crime, or any felony, or any misdemeanor other than minor traffic offenses.
- (2) In the event that the Tennessee Housing Development Agency shall learn, in whatever manner, that any person is subject to this chapter, the Tennessee Housing Development Agency shall immediately notify such person in writing. The notice shall advise such person:
 - (a) of the nature of this chapter and its application to such person;
 - (b) that such person is unacceptable for employment on any contract involving a Tennessee Housing Development Agency project for a period of 60 days from receipt of notice;
 - (c) that if such person is currently providing services to the Tennessee Housing Development Agency under any contract, the obligations under such contract are not affected;
 - (d) that such person may within 15 days provide to the Tennessee Housing Development Agency such information and statements as such person desires the Tennessee Housing Development Agency to consider in determining whether such person should be debarred from contracting in connection with any financing through the THDA or any programs operated by the Agency projects and the length of the debarment to be imposed under this chapter;
 - (e) that such person may within sixty (60) days request a hearing before the Board of Directors to show cause why such person should not be debarred from employment on any contract on any Tennessee Housing Development Agency financing or programs or to present evidence for consideration by the Tennessee Housing Development Agency as to the length of the debarment to be imposed hereunder. An expedited hearing shall be held within a reasonable time with the Uniform Administrative Procedures Act, as amended, Section 4-5-101, et seq., used as a guideline for questions of procedure and admissibility of evidence, with the period of unacceptability set out in rule 0770-2-1-.03(2)(b) being extended until such time as the Tennessee Housing Development Agency or a Court having proper jurisdiction rules otherwise; and
 - (f) of the length of debarment which will automatically be imposed for failure to comply with either of the procedures outlined in Rule 0770-2-1-.03(2)(d) and (e).
- (3) The Tennessee Housing Development Agency shall conduct such investigation as it shall deem necessary and proper and shall in any event consider any information and statements submitted.

(Rule 0770-2-1-.03, continued)

- (4) The Board of Directors may elect to hear the case before the full board with the hearing examiner; before a committee of the board with the hearing examiner; or, have the hearing examiner to sit alone on the case.

Authority: T.C.A. §13-23-115. **Administrative History:** Original rule filed September 29, 1981; effective December 29, 1981.

0770-2-1-.04 PENALTY.

- (1) Failure of any person receiving notice hereunder to respond as set forth in either Rule 0770-2-1-.03(2)(d) or (e) shall result in automatic debarment of such person from employment on any contract on any Tennessee Housing Development Agency project for a period of five (5) years commencing with the termination of the sixty (60) day period set out in Rule 0770-2-1-.03(2)(b).
- (2) In the situation where any person receiving notice hereunder responds pursuant only to Rule 0770-2-1-.03(2)(d), the Tennessee Housing Development Agency, after considering the results of the investigation and any information and statements submitted, shall within sixty (60) days of the notice required by Rule 0770-2-1-.03(2) notify in writing such person either that the Tennessee Housing Development Agency deems such person not subject to this chapter or that such person is unacceptable for employment on any contract on any Tennessee Housing Development Agency project for a period determined in the sole discretion of the Board of Directors, but not less than one (1) year nor more than five (5) years.
- (3) Should any person receiving notice hereunder respond pursuant to Rule 0770-2-1-.03(2)(e), the Board of Directors of the Tennessee Housing Development Agency, after considering the entire record, shall within sixty (60) days of the hearing issue its final decision or order in writing notifying such person either that the Tennessee Housing Development Agency deems such person not subject to this chapter or that such person is unacceptable for employment on any contract on any Tennessee Housing Development Agency financing or programs for a period determined in the sole discretion of the Board of Directors but not less than one (1) year nor more than five (5) years.
- (4) In any event, the period for which a person is unacceptable for employment on contracts on Tennessee Housing Development Agency financing or programs may be increased or decreased in individual cases at any time, if in the judgment of the Board of Directors compelling reasons warrant such action.

Authority: T.C.A. §13-23-115. **Administrative History:** Original rule filed September 29, 1981; effective December 29, 1981.

0770-2-1-.05 NO LIMITATION.

This chapter in no way limits the discretion of the Tennessee Housing Development Agency to accept or reject proposals in order to insure that accepted proposals are fair and reasonable to the State.

Authority: T.C.A. §13-23-115. **Administrative History:** Original rule filed September 29, 1981; effective December 29, 1981.