



Vendor Debarment and Suspension Policy

Mayor Frank G. Jackson

EFFECTIVE DATE: July 20, 2011

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Vendor Debarment and Suspension Policy

1. General; Purpose of Policy

a) In contracting with private parties to carry out its usual daily operations, the City of Cleveland (the "City") has legal and ethical responsibilities to its citizens to secure the best bargain for the goods, services, labor and materials it needs. For that reason, the City strives to solicit bids and proposals from and award contracts only to responsible and qualified firms or persons. From time to time, the exercise of due care requires the City to suspend or debar, either temporarily or permanently, a defaulting, unfaithful, or non-performing party to a City contract. The purpose of this document is to set forth the policies and procedures to be followed in all cases to determine when and how to suspend or debar a contracting party (generally, a "Contractor") and what conditions apply to a suspension or debarment.

b) Debarred and suspended Contractors are not eligible to submit bids, offers, or proposals to, or to receive any contract from, the City. Accordingly, a City department may not solicit or accept a bid, offer, proposal, or other contract prerequisite from, recommend an award to, or execute a contract with any debarred or suspended contractor.

2. Authority to Debar or Suspend

a) Under Charter Section 108 and Sections 181.08 and 181.10 of the Codified Ordinances of Cleveland, Ohio, 1976 ("C. O."), the City may award contracts for the purchase of goods and services only to a *lowest and best bidder*. Under Charter Section 167 and Section 185.01 C.O., contracts for Public Improvements may be awarded only to the *lowest responsible bidder*. Sections 181.27 and 185.08 C.O. both prohibit a contract award to any person, firm, or corporation *that is in arrears to the City, has defaulted on any debt, contract or obligation owed to the City, or has failed to perform faithfully any previous City contract*.

b) To carry out the letter and spirit of those sections, the City may need to investigate the background and qualifications of persons or firms doing business with the City to obtain all information necessary to make reasoned administrative

decisions, after due process, and take administrative actions necessary to protect the best interests of the City, up to and including debarment.

c) Debarment and suspension have serious consequences for the debarred or suspended person or firm and, therefore, should be taken only when required for protection of the City's best interests. These actions are not to be construed as punishment. Rather, they are remedies available to the City in addition to, but not as substitutes for, other remedies such as the rejection of bids, cancellation of contracts for non-responsive or irresponsible performance, or filing a claim or an action for recovery under a contract or the bond(s) guaranteeing contract performance. The City will also retain all other rights and remedies it has under any federal, state, or local statutes or ordinances and under the contract.

d) Debarment is available with respect to any type of City contract or transaction, including but not limited to public improvement, procurement of goods or services, professional services, concession agreement, or lease, irrespective of the form, e.g., written contract, purchase order, electronic, or authorized verbal order. In addition, the City may debar a firm for a period of up to 2 years for violation or default of its obligations under the *Cleveland Area Business Code* (see C.O. Chapter 187) and for a period of up to 5 years if a Contractor is convicted of violating the *Fannie M. Lewis Cleveland Resident Employment Law* (see C.O. Chapter 188).

3. Authority: The Commissioner of Purchases and Supplies

a) The Commissioner of Purchases and Supplies ("Commissioner") may suspend or debar a Contractor from eligibility for award of a City contract as provided in this Policy.

b) When an emergency occurs or exists requiring an immediate purchase under the authority of Section 181.12 C.O. to prevent an interruption of public service that would endanger public health, safety or welfare, the Commissioner may solicit a bid or an offer from, or enter into contract with a debarred or suspended Contractor when no other reasonably available course of action is possible.

4. Imputed Liability

a) The City will impute to the Contractor all liability, and hold a Contractor liable to the City, for all acts of an owner, officer, principal, director, shareholder, partner, agent, employee, associate, representative, affiliate, subcontractor, or supplier of the Contractor, or other person(s) acting on behalf of the Contractor in performance of a City contract. The City will consider a Contractor's receipt

and acceptance of any benefit derived under or arising out of performance of a City contract including, but not limited to, compensation, as evidence of its approval, ratification, knowledge of and/or acquiescence in the act of any of the above-mentioned persons that may be a basis for debarment or suspension.

b) Partnerships/Joint Ventures. The City will consider the act of one Contractor in a partnership or a joint venture or any person in a relation to it named in sub-section a) above acting on behalf of that Contractor as the act of every other partner or joint venturer.

c) Affiliates. Debarment of a Contractor shall include debarment of any of its divisions, organizational elements, or any wholly-owned or controlled affiliate or subsidiary that participated in performance of the City contract.

5. Restrictions on Contracting and Subcontracting

a) The City will not accept or approve a bid, proposal, or other communication intended to be the basis of a City contract, or enter into any contract for goods or services, including professional services, or a public improvement, or granting a concession, permission, privilege, or license, or other privilege or right, with a bidder, proposer, or other Contractor, person, or firm that is debarred or suspended by the City, the state of Ohio, or the federal government.

b) The City will not approve for participation in the performance or benefits of a City contract or for grant of a concession, permission, privilege, or license, or other privilege or right, whether as partner, affiliate, subcontractor, supplier, or otherwise, any firm that is debarred or suspended by the City, the state of Ohio, or the federal government .

c) The list of *Vendors Ineligible to Contract or Subcontract with the City* may be accessed at:

<http://www.city.cleveland.oh.us/CityofCleveland/Home/Business/BusinesswithCOC>

or may be furnished in other form upon request to the Commissioner.

The State of Ohio *Certified Search for Unresolved Findings for Recovery* may be accessed at:

www.auditor.state.oh.us/resources/findings/certified/default.aspx.

The Federal government *Excluded Parties List System (EPLS)* may be accessed at:

<https://www.epls.gov>.

d) The City shall neither accept nor be liable for any increase in costs, or other expenses, delay, loss, or subsequent ineligibility to contract with the City, incurred by a Contractor as a result of the City rejecting any proposed person, firm, partner, affiliate, subcontractor or supplier that is debarred or suspended after the submission of a bid, proposal, or other communication leading to a contract, but before the approval or award of the contract.

6. Reasons for Suspension or Debarment

- a) The City may suspend or debar a person or firm if any of the following occur within the three (3) years immediately prior to the City's determination to suspend or debar the person or firm:
1. Conviction of a crime or misdemeanor incident to seeking, executing, or performing a public or private contract or any subcontract to the public or private contract;
 2. Conviction, whether under federal, state or local law, of embezzlement, theft, perjury, forgery, falsification or destruction of records, receiving stolen property, conflict of interest or any other offense of moral turpitude, business ethics, integrity or honesty;
 3. Conviction under federal, state or local law pertaining to submission of bids or proposals for a public contract;
 4. Violation of the ethical standards set forth in the Ohio Revised Code or any rules, regulations or code of ethics applicable to the person or firm;
 5. Filing of a lawsuit against the City that a court finds to be frivolous or filed in bad faith;
 6. Violation of contract terms, conditions, or provisions, as set forth below, of a character which the Commissioner, in consultation with the contracting department director, determines to be so serious as to justify debarment;
 7. Failure, absent good cause, to perform any City contract according to its specifications, terms, and conditions, including the time to complete performance. A finding of non-compliance by the Director of OEO, with subsequent notification of the contractor by OEO and then a failure to correct may be considered a failure to perform on the contract;
 8. A record of repeated failure within the last three years to perform or of unsatisfactory performance under one or more contracts, or a recurrence of marginal performance in one or more contracts, except when the failure to perform or unsatisfactory performance is

determined by the City to have been caused by acts beyond control of the Contractor;

9. Breach of contract or default or failure to cure deficiencies or discrepancies in performance after notice and opportunity to cure under the contract terms; or
10. Any other cause the Commissioner determines to be sufficiently serious and compelling as to represent lack of good faith or responsibility by a City Contractor including, but not limited to, debarment by any other governmental entity.

b) The City may suspend or debar, without additional review, a Contractor or prospective Contractor currently suspended or debarred by any of the following:

1. The United States Government or any agency thereof;
2. The State of Ohio; or
3. Any of the 50 states or any department, political subdivision, agency, district, or other authority thereof having jurisdiction and control over Contractor.

7. Period of Debarment

a) The Commissioner shall fix the debarment period at a specific duration not exceeding five (5) years from the debarment determination, according to the guidelines in sub-section b) of this section, unless the reason(s) for debarment remain(s) fundamentally unchanged after expiration of the debarment period. In that case, the Commissioner may extend the debarment period until occurrence of an event set forth in Section 15 a) below.

b) Except when the Commissioner determines that mitigating or aggravating circumstances existed that justify deviation from the following guidelines, the Commissioner shall fix the debarment period according to the reason in sub-section 6. a), as follows:

1. Reason 1, 2, or 3 - five (5) years;
2. Reason 4 or 5 - three (3) years;
3. Reason 6,7,8 or 9 - two (2) years; and,
4. Reason 10 - two (2) to five (5) years, depending upon the circumstances and the gravity of the cause.

8. Suspension

a) The Commissioner, upon concurrence of the Director of Law, may immediately suspend a Contractor from eligibility for award of a City contract upon finding probable cause for debarment, pending the debarment

determination. "Probable cause", as used in this Policy, means a preponderance of evidence that demonstrates a reasonable probability that the facts upon which suspension is based are true. The Contractor will be suspended for the lesser of an initial period of 90 calendar days or until the Commissioner makes a final determination with respect to the debarment. The Commissioner may extend the initial suspension period by up to three (3) additional 30 calendar-day periods. During the period of suspension, the City will not solicit bids or proposals from or approve or award a contract to the suspended person or firm, and will not open or consider for a contract any bid or proposal received.

b) The Commissioner shall send written notice of suspension, with a copy of his/her determination, to the suspended Contractor or prospective Contractor by certified mail, return receipt requested, or other method providing proof of receipt. The notice shall inform the Contractor of the provisions in sub-section a) above.

9. Request for Hearing

A Contractor or prospective Contractor receiving a *Notice of Suspension* and/or a *Notice of Proposed Debarment* may, within 10 calendar days after receipt of a *Notice*, submit a written objection and request for a hearing to the Commissioner. If the Contractor or prospective Contractor submits a timely request, the Commissioner will hold a hearing on the objection within a reasonable time after receipt of the request, but not more than 30 days, unless the Contractor and the Commissioner agree otherwise. If the Contractor does not submit a timely objection and request, it waives any right to objection or a hearing, and the City may make a final decision as set forth in Section 11, **Decision**.

10. Hearing

The Commissioner shall send a written notice, by certified mail, return receipt requested, or other method providing proof of receipt, stating the date, time, and place of the hearing. The Commissioner or his/her designee shall be the hearing officer. A hearing shall be informal and shall afford the Contractor a reasonable opportunity to show why the City should not suspend or debar Contractor from eligibility to bid or propose to, or enter into contract with, the City. The Commissioner shall permit the Contractor to furnish, at a time before or during the hearing, as the Commissioner determines, such other documentation as the Contractor wishes to establish facts relevant to the determination of suspension or debarment.

11. Decision

a) Within ten (10) calendar days after the hearing, unless circumstances require otherwise or the Commissioner needs time to investigate further, the Commissioner shall issue a final written determination to the Contractor including a recommendation of any action(s) the City should take consistent with the determination and the reasons for the determination and recommended action(s). If unable to issue a determination within 10 days, the Commissioner shall give the Contractor a written notice of delay stating the reason and when the determination will issue. The Commissioner shall concurrently copy the determination or the delay notice to the contracting department director(s) and the Director of Law.

b) Existence of reason for debarment of a Contractor does not necessarily require the City to determine to suspend or debar. In determining whether to suspend or debar a Contractor, the City shall consider the seriousness of the Contractor's actions or failure to act together with any mitigating factors.

12. Appeal

The decision of the Commissioner shall be final. The decision may be appealed in writing to the Board of Zoning Appeals within ten (10) calendar days after receipt of the decision.

13. List of Vendors Ineligible to Contract or Subcontract with the City

a) The Commissioner shall maintain, disseminate, and make publicly available a current list of debarred and suspended persons and firms (*List of Vendors Ineligible to Contract or Subcontract with the City* (the "List")). The List shall clearly state the name of each suspended or debarred person or firm(s), the date of the debarment or suspension determination, and the term of debarment or suspension.

b) The Commissioner will update the List within three (3) working days after any official debarment, suspension or reinstatement action.

c) Publication on the City of Cleveland website will satisfy the publication requirements of subsection a) above of this Section.

d) The Commissioner shall establish procedures for the internal distribution and use of the List to ensure adherence to the policy set forth in Section 5 above precluding soliciting, accepting offers from, or contracting with a debarred or suspended Contractor.

e) The Commissioner may, with concurrence of the contracting department director, respond to inquiries concerning the List.

14. Reduction or Termination of Debarment Period ; Reinstatement

Upon occurrence of an event set forth in sub-section a) below, a debarred Contractor may, in writing, request that the Commissioner reduce or terminate the debarment period and, subject to Contractor first satisfying the requirements of sub-section b), reinstate the Contractor to eligibility.

a) Upon a debarred Contractor's request, the Commissioner, with concurrence of the contracting department director, may reduce or terminate a debarment period by reason of:

1. Discovery of new material evidence pertaining to the reason(s) for debarment;
2. Reversal of a conviction or civil judgment that was the basis for debarment;
3. *Bona fide* change in business ownership; and
4. Cure or elimination of all reasons for which debarment was imposed.

b) Expiration of the debarment alone does not reinstate a Contractor's eligibility to contract with the City. Before granting a Contractor's reinstatement request, the Commissioner shall require, as applicable:

1. Prompt and complete financial restitution to the City, including all expenses the City incurred to complete any contract on which Contractor has defaulted or breached, and all interest computed on late payments;
2. Written proof of completion of all criminal sentences and payment of all penalties;
3. Written proof of payment of all civil penalties imposed, such as fines or damages;
4. Payment of all currently due City taxes;
5. Elimination of current suspension or debarment by any other public entity;
6. If a Contractor has had a complete or significant (over 50%) change of ownership since debarment, proof that all debarred parties have no financial or management participation in control or conduct of Contractor's business;
7. Three (3) references, at least one of which must be a public entity, confirming that Contractor has satisfactorily performed a similar contract within the immediately preceding two (2) years; and,

8. Evidence of the Contractor's financial capacity to perform a City contract of the type it customarily would seek, including but not limited to, two (2) years' audited financial statements or comparable business documents. Access to the Contractor's place(s) of business must be provided to City representatives during usual business hours to visit, inspect, and evaluate Contractor's conduct of business and operational capacity.

15. Contract Requirement

The Commissioner and all contracting departments shall distribute and disseminate this Policy to all present and prospective Contractors and subcontractors by reference in *Invitations to Bid* and *Requests for Proposals*, at all Pre-bid, Pre-proposal, or other similar meetings preceding a City contract, by or through the City's website, official City publications, with all notices of suspension or debarment, or other means sufficient to enable compliance. After notice of the Policy, a Contractor is responsible for conforming to the Policy. A Contractor's failure or refusal to apprise itself of or to understand this policy shall not excuse compliance where it is required to establish, preserve, or implement any right or privilege afforded or sought under it.