

CITY OF SAN DIEGO
ADMINISTRATIVE REGULATION

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1. PURPOSE

1.1. To provide policies and procedures for the *suspension* and *debarment* process.

2. SCOPE

2.1. This regulation applies to all City *departments* seeking to initiate a *debarment* against a *bidder* or *contractor* and applies to a *Debarment Hearing Board (Board)* and independent hearing officer, unless otherwise specified.

2.2. This regulation does not apply to appeals of unsatisfactory *final performance evaluations*, which are heard in accordance with section 22.0811 of the San Diego Municipal Code.

3. DEFINITIONS

3.1. All defined terms in Chapter 2, Article 2, Division 8 of the San Diego Municipal Code apply to this regulation and appear in italics in this regulation.

3.2. The Chief Operating Officer or designee is charged with carrying out the provisions of this regulation. The Chief Operating Officer will ensure that no one working within the line of supervision of the *department* requesting *suspension* or *debarment* participates in decisions to *suspend* or *debar*.

4. POLICY

4.1. Initiating Department's Roles

4.1.1. A *department* may recommend that the Chief Operating Officer *suspend* and *debar*, or *debars*, a *bidder* or *contractor*.

4.1.2. Any City *department* seeking to *debar* a *bidder* or *contractor* must first confer with the City Attorney's Office to determine the legal sufficiency and basis for the proposed *debarment* of a *bidder* or *contractor* before making its recommendation to initiate *suspension* or *debarment*.

(New Administrative Regulation, Issue 1, effective January 18, 2019)

Authorized

[Signature on File]
Chief Operating Officer

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4.2. Suspension Pending Debarment Decision

- 4.2.1. When a *department* seeks to *suspend* and *debar* a *bidder* or *contractor*, the *department* shall submit a written recommendation to the Chief Operating Officer. The recommendation must include evidence to support at least one of the grounds for *debarment* listed in Chapter 2, Article 2, Division 8 of the San Diego Municipal Code.
- 4.2.2. If the Chief Operating Officer determines that *adequate evidence* exists to *suspend* a *bidder* or *contractor*, the Chief Operating Officer shall notify the *bidder* or *contractor* with a letter of *suspension* which describes the evidence that formed the basis of the *suspension* and informs the *bidder* or *contractor* about the opportunity to appeal and the process for submitting a written request to appeal.
- 4.2.3. If the *bidder* or *contractor* submits a timely written request to appeal the *suspension*, then the Chief Operating Officer will conduct an informal meeting within seventy-two (72) hours, unless there is good cause as determined by the Chief Operating Officer to extend the time.
- 4.2.4. The appeal is an informal, non-evidentiary meeting. The meeting may include the *bidder* or *contractor* and, if requested by the Chief Operating Officer, a representative of the *department* who has knowledge regarding the basis for the proposed *suspension*.
- 4.2.5. The appeal is limited to the issue of the sufficiency of the evidence supporting the *suspension*.
- 4.2.6. The Chief Operating Officer will notify the *bidder* or *contractor* in writing of the City's final decision on the *suspension* and the basis for his or her decision.
- 4.2.7. When a *bidder* or *contractor* is *suspended*, the Chief Operating Officer should appoint a *Board* or an independent hearing officer to hear the *debarment* within a reasonable amount of time, based on the circumstances of the case, not to exceed 30 calendar days unless the *bidder* or *contractor* presents good cause to extend the time.
- 4.2.8. A *suspension* will stay in effect until a final decision on the proposed *debarment* is made.

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4.3. Permanent Debarment - Appointment of Independent Hearing Officer

- 4.3.1. A *department* may recommend to the Chief Operating Officer to permanently *debar* a *bidder* or *contractor*. The recommendation must be in writing and include evidence to support at least one of the grounds for *debarment* listed in Chapter 2, Article 2, Division 8 of the San Diego Municipal Code.
- 4.3.2. For any proposed permanent *debarment*, the Chief Operating Officer shall appoint an impartial independent hearing officer, except for *debarments* based on unsatisfactory *final performance evaluations*, which are heard in accordance with section 22.0811 of the San Diego Municipal Code. The Chief Operating Officer may *contract* for services for an independent hearing officer or may appoint an independent hearing officer from a list of qualified individuals maintained by the City.
- 4.3.3. All independent hearing officers who preside over hearings of permanent *debarment* must follow City policies, procedures, and regulations that govern permanent *debarment*.
- 4.3.4. If a *bidder* or *contractor* seeks to disqualify the independent hearing officer on the basis of bias, prejudice, or conflict of interest, the *bidder* or *contractor* must submit a written request to the Chief Operating Officer within five (5) calendar days of receiving notice of the hearing.
- 4.3.5. If the Chief Operating Officer determines that the request to disqualify the independent hearing officer has merit, the Chief Operating Officer shall replace the independent hearing officer or *contract* with another agency.

4.4. Less-Than Permanent Debarment – Appointment of Debarment Hearing Board

- 4.4.1. A *department* may recommend to the Chief Operating Officer to *debar* a *bidder* or *contractor* for two years, or three or more years. The recommendation must be in writing and include evidence to support at least one of the grounds for *debarment* listed in Chapter 2, Article 2, Division 8 of the San Diego Municipal Code.
- 4.4.2. The Chief Operating Officer shall appoint a three-member *Board* to hear *debarment* proceedings and shall designate one member as the chairperson.

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4.4.3. If a *bidder* or *contractor* seeks to disqualify any member of the *Board* on the basis of bias, prejudice, or conflict of interest, the *bidder* or *contractor* must submit a written request to the Chief Operating Officer within five (5) calendar days of receiving notice of the hearing. If the Chief Operating Officer determines that the request has merit, the Chief Operating Officer shall replace the disqualified *Board* member.

4.5. Notice for Debarment Hearings

4.5.1. The Chief Operating Officer shall serve written notice, as authorized under section 22.0806 of the San Diego Municipal Code, of the date, time, and location of the *debarment* hearing at least ten (10) calendar days prior to the date of the hearing.

4.5.2. The notice should include: (1) a statement that *debarment* is being considered; (2) the grounds for the proposed *debarment*, in terms sufficient to put the respondent on notice of the conduct or action(s) upon which it is based; (3) any supporting documentation to support the grounds for the proposed *debarment*; (4) the intended period of the *debarment*; (5) a reference to the San Diego Municipal Code on *debarment* procedures and this administrative regulation; and (6) if known, the name, address, and telephone number of any employee who has been designated to appear at the hearing on behalf of the City.

4.6. Representation by Counsel

4.6.1. Legal representation in *debarment* hearings is not required. However, both parties are entitled to legal representation, if desired. A City *department* may be represented by the City Attorney's Office. It is the *bidder's* or *contractor's* responsibility to obtain legal representation at its own expense if so desired. Alternatively, the *bidder* or *contractor* may designate an authorized representative (non-legal representative) either in person at the hearing, or by a signed written letter before the hearing.

4.6.2. Failure of the *person* recommended for *debarment* or his or her authorized representative to appear at a *debarment* hearing after notice is given constitutes a waiver of that *person's* right to contest the *debarment* recommendations. Failure to appear will result in the *department's* recommendation becoming the City's final decision.

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4.7. Presentation of Evidence

- 4.7.1. The parties must exchange all evidence and any documents or written legal arguments supporting the parties' position, along with the names and addresses of witnesses (collectively "evidence"), no later than five business days prior to the hearing date, unless otherwise directed by the *Board* or the independent hearing officer. A copy must also be submitted to the *Board* or the independent hearing officer. Evidence that is not timely submitted may not be introduced at the hearing.
- 4.7.2. The *Board* or the independent hearing officer may conduct a pre-hearing conference to deal with such matters as exploring a settlement, prepare stipulations, clarifying issues, hearing any preliminary motions (i.e., excluding certain evidence or limiting testimony of witnesses) and either disposing of them or taking them under advisement, and other such matters that will promote an orderly and efficient hearing.
- 4.7.3. The presentation of evidence, including allowing opening statements and closing arguments, is within the discretion of the *Board* or the independent hearing officer.
- 4.7.4. All testimony must be taken under oath administered by the *Board* or the independent hearing officer.
- 4.7.5. It is the *department's* burden to prove by a *preponderance of evidence* that *debarment* is appropriate.
- 4.7.6. The *Board* or the independent hearing officer may continue the hearing based on good cause shown by one of the parties to ensure a fair and orderly presentation of the evidence.

4.8. Conduct of Hearing

- 4.8.1. The proceedings shall be as informal as is compatible with the requirements of justice. The hearing need not be bound by the common law or statutory rules of evidence and procedure. Evidence may be oral or written. The *Board* or the independent hearing officer may make inquiry in the matter through oral testimony and records presented at the hearing.
- 4.8.2. The parties shall not engage in ex-parte communication with members of the *Board* or with the independent hearing officer.

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- 4.8.3. The *Board* or the independent hearing officer may consider hearsay evidence as part of the determination, except that no finding may be based solely on such hearsay evidence unless the hearsay evidence is supportive or supplementary to other legally competent evidence. Hearsay evidence may be admissible if the independent hearing officer or the *Board* determines that it is reliable.
- 4.8.4. All hearings shall be recorded. Any party may arrange for a certified stenographer to record the hearing. The requestor of the certified stenographer shall bear all recording costs and shall provide, at no cost, a complete copy of the hearing transcript to the *Board* or the independent hearing officer.
- 4.8.5. The *Board* or the independent hearing officer may ask questions, seek clarification, and request additional information from the parties at any time during the hearing.

4.9. Decision

- 4.9.1. The *Board* or the independent hearing officer may uphold or deny the *department's* recommendation for *debarment*.
- 4.9.2. If *debarment* is upheld, but the evidence presented supports a different duration of *debarment*, the *Board* or the independent hearing officer may increase or decrease the duration of *debarment*. The duration of *debarment* shall not be less than one year.
- 4.9.3. The *Board* or the independent hearing officer shall determine all factual issues raised in the hearing and include findings of fact in a written decision to support its conclusions.
- 4.9.4. For hearings before the *Board*, the decision must be made by a majority of the *Board* members.
- 4.9.5. The written decision shall be prepared and mailed no later than thirty (30) calendar days after the conclusion of the hearing. If the *Board* or the independent hearing officer determines that the complexity of the case requires additional time in which to render a decision, the time may be extended by another thirty (30) calendar days. Notice of such extension shall be promptly served upon the parties.

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4.9.6 The written decision shall be mailed to the parties in accordance with the notice procedures in Chapter 2, Article 2, Division 8 of the San Diego Municipal Code and is final on the date it is mailed.

4.10. Appeal Process

4.10.1. All *debarment* decisions shall be final and shall constitute exhaustion of remedies by the *bidder* or *contractor*. Either party may seek writ review of the *debarment* decision.

4.11. Creation of List of Debarred and Suspended Persons

4.11.1. The Purchasing and Contracting Department shall create and maintain a list of names, addresses, and applicable *debarment* or *suspension* commencement and expiration dates of all *debarred* or *suspended bidders* and *contractors*. The Purchasing and Contracting Department shall publish this list on the City's website. The Purchasing and Contracting Department shall review the list annually and make any necessary updates, and add *debarred* or *suspended bidders* and *contractors* upon final decision from the *Board* or the independent hearing officer.

5. RESPONSIBILITY

5.1 Department

5.1.1 The *department* must submit to the Chief Operating Officer, in writing, any recommendation to *suspend* and *debar*, or *debar*, including confirmation that the *department* conferred with the City Attorney's Office as required under section 4.1.2 of this regulation, and must represent the City at the hearing.

5.2 Bidder or Contractor

5.2.1. A *bidder* or *contractor* must timely notify the Chief Operating Officer in writing to appeal a *suspension*.

5.2.3. A *bidder* or *contractor* must be present at the *debarment* hearing. Failure to appear constitutes a waiver to contest the *debarment* recommendations. Failure to appear will result in the *department's* recommendation becoming the City's final decision.

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5.3. Chief Operating Officer

5.3.1. The Chief Operating Officer is responsible for providing an informal meeting for *suspensions*.

5.3.2. The Chief Operating Officer is responsible for providing a hearing, arranging for a *Board* or independent hearing officer, and providing notice to all parties of the hearing date and the final written decision for *debarment* hearings.

5.4. Board or Independent Hearing Officer

5.4.1. The *Board* or the independent hearing officer is responsible for ensuring that an administrative record is properly recorded and all evidence admitted during the hearing is maintained.

5.4.2. The *Board* or the independent hearing officer is responsible for following City policies, procedures, and regulations that govern *debarment*.

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APPENDIX

Legal References

Chapter 2, Article 2, Division 8 of the San Diego Municipal Code
Council Policy 000-29

Forms

None

Subject Index

Debarment Policy
Debarment Roles
Debarment Hearing Procedures

Administering Department

Purchasing & Contracting