

Article 2: Administrative Code

Division 8: Debarment

(“*Budget Estimate*” added 1-22-1952 by O-5046 N.S.)
(Retitled to “*Debarment*” on 4-15-1996 by O-18283 N.S.)

§22.0801 Purpose and Intent

- (a) In order to promote integrity in the City’s contracting processes and to protect the public interest, the City shall only do business with responsible *bidders* and *contractors*.
- (b) This Division sets forth the grounds for *debarment* and *suspension*.

(“*Statement of Purpose*” repealed and “*Statement of Purpose*” added 9-3-2002 by O-19093 N.S.)

(“Retitled from “*Statement of Purpose*” to “*Purpose and Intent*” and amended 8-10-2016 by O-20715 N.S.; effective 9-9-2016.)

§22.0802 Definitions

All defined terms in this Division appear in italics. For purposes of this Division:

Adequate evidence means information sufficient to support the reasonable belief that a particular act or omission has occurred.

Affiliate means:

- (a) the assignee, successor, subsidiary of, or parent company, of another *person*; or,
- (b) a *controlling stockholder* of a *person*; or,
- (c) a *person* who has the same or similar *management* of the *debarred* corporate or other legal entity; or,
- (d) a *person* who directly or indirectly controls, or has the power to control, another *person*, or is directly or indirectly controlled by another *person*. Indicia of control include interlocking *management* or ownership, identity of interests among *relatives*, shared facilities and equipment, and common use of employees; or,

- (e) a business entity organized following the *debarment, suspension*, or proposed *debarment* of a *person* which has the same or similar *management*, ownership or principal employees as the *bidder* or *contractor* that was *debarred, suspended* or proposed for *debarment*, or the *debarred person* or the business entity created after the *debarment, suspension*, or proposed *debarment* operates in a manner designed to evade the application of this Division or to defeat the purpose of this Division.

Bidder means a *person* who submits a bid, proposal, or other document to the City seeking award of a *contract*. The term *bidder* does not include a *subcontractor*.

Contract means any written agreement between the City and a *person* for public works, goods, services, franchise, or consultant services.

Contractor means a *person* who has contracted with the City to provide public works, goods, services, franchise, or consultant services for or on behalf of the City. The term *contractor* includes a *subcontractor*, vendor, franchisee, consultant, or any of their respective officers, directors, shareholders, partners, managers, employees, or other individuals associated with the *contractor, subcontractor, consultant*, or vendor.

Controlling stockholder means a stockholder who:

- (a) owns more than 25% of the voting stock of a corporation; or,
- (b) notwithstanding the number of shares that the stockholder owns, has the power to direct or control the direction of the *management* or policies of a corporation.

Debar or *Debarment* means an action taken by the City which results in a *bidder* or *contractor* being prohibited from any of the following: bidding or proposing on a *contract*; being awarded a *contract*; or performing work on a *contract* for a defined period of time. A *bidder* or *contractor* subject to such prohibition is *debarred*.

Debarment Hearing Board means a board established by the City Manager to hold hearings, to take evidence, and to make *debarment* determinations for the City.

Department means a City department acting through the department director or designee.

Final Performance Evaluation means a City-issued final evaluation of a *contractor's* overall performance which is generally issued subsequent to completion of performance on the *contract*.

Management means the officers, partners, owners, foremen, or other individuals responsible for a corporate or other legal entity's financial and operational policies and practices.

Person has the same meaning as that in San Diego Municipal Code section 11.0210. In addition, if a *person* is a corporate or other legal entity, it includes individuals who constitute the *person's management*. It also includes any individual or other legal entity that

- (a) Directly or indirectly (e.g. through an *affiliate*), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a *contract*, or a subcontract under a *contract*; or
- (b) conducts business, or reasonably may be expected to conduct business, with the City as an agent or representative of another *person*.

Preponderance of the evidence means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

Prime contractor means a *person* who enters a *contract* directly with the *City*.

Relative means:

- (a) an individual related by consanguinity within the second degree as determined by the common law; or,
- (b) a spouse; or,
- (c) an individual related to a spouse within the second degree as determined by the common law; or,
- (d) an individual in an adoptive relationship within the second degree as determined by the common law; or
- (e) any individual considered to be "family" in commonly understood terms of the word.

Subcontractor means:

- (a) a *person* who contracts directly with a *prime contractor* but not directly with the *City*; or,
- (b) any *person* under contract with a *prime contractor* or another *subcontractor* to provide any service, materials, labor or otherwise perform on a *contract*.

Suspend or *Suspension* means the *debarment* of a *bidder* or *contractor* for a temporary period of time pending the completion of an investigation and any proceedings before a *Debarment Hearing Board* or independent hearing officer and any appeals therefrom.

(“*Definitions*” repealed and “*Definitions*” added 9-3-2002 by O-19093 N.S.)
(Amended 8-10-2016 by O-20715 N.S.; effective 9-9-2016.)

§22.0803 Scope of Division

- (a) This Division establishes procedures for determining whether a *bidder* or *contractor* is to be *debarred*, *suspended*, or both.
- (b) This Division sets forth the grounds for *debarment* and *suspension*.
- (c) The City Manager shall adopt procedures and regulations to implement this Division, including procedures for the conduct of *debarment* hearings, *suspension* meetings, and appeals of *final performance evaluations*.

(“*Debarment Procedures for Procurement and Public Works Contracts*” repealed;
“*Scope of Division*” added 9-3-2002 by O-19093 N.S.)
(Amended 8-10-2016 by O-20715 N.S.; effective 9-9-2016.)
(Amended 6-4-2020 by O-21193 N.S.; effective 7-4-2020.)

§22.0804 Debarment Hearing Board

- (a) Upon a recommendation from a *department* for *debarment* other than *debarments* set forth in sections 22.0808(a)(1) and 22.0808(a)(2), the City Manager shall appoint a *Debarment Hearing Board* to hear and determine whether a *bidder or contractor* should be *debarred*.
- (b) The City Manager shall appoint three individuals to serve on each *Debarment Hearing Board*. These individuals may be City employees, but shall not be employees who have participated in the decision to recommend the *debarment*, or employees who work in the department recommending *debarment*.

(“*Debarment Procedures for Materials, Supplies, Equipment, Insurance or Personal Service Contracts*” repealed; “*Debarment Hearing Board to be Established*” added 9-3-2002 by O-19093 N.S.)

(Retitled from “*Debarment Hearing Board to be Established*” to “*Debarment Hearing Board*” and amended 8-10-2016 by O-20715 N.S.; effective 9-9-2016.)

§22.0805 Suspension While Debarment Proceedings are Pending

- (a) The City Manager may *suspend* a *bidder or contractor* pending a *debarment* decision if the City Manager determines that *adequate evidence* of one of the grounds for *debarment* listed in section 22.0807 exists.
- (b) The City Manager shall, upon 72 hours’ notice, provide a *suspended bidder or contractor* with an opportunity to appeal the *suspension* at an informal meeting.
- (c) The City Manager shall notify the *bidder or contractor* of the *suspension* in accordance with section 22.0806.
- (d) The *suspension* is effective until a final *debarment* decision is issued.

(“*General*” repealed; “*Suspension Once City Manager Decides to Recommend Debarment*” added 9-3-2002 by O-19093 N.S.)

(Retitled from “*Suspension Once City Manager Decides to Recommend Debarment*” to “*Suspension While Debarment Proceedings are Pending*” and amended 8-10-2016 by O-20715 N.S.; effective 9-9-2016.)

(Amended 6-4-2020 by O-21193 N.S.; effective 7-4-2020.)

§22.0806 Notices Required Under This Division

- (a) Notice shall be by any of the following methods:
- (1) Personal delivery with service effective on the date of delivery; or,
 - (2) Certified mail, postage prepaid, return receipt requested. Simultaneously, the same notice may be sent by regular mail. If a notice that is sent by certified mail is returned unsigned, then service shall be deemed effective five calendar days after mailing by regular mail, provided the notice that was sent by regular mail is not returned; or
 - (3) Regular mail, if not returned, with service effective five calendar days after mailing; or,
 - (4) Publication. Service shall be deemed effective on the first date of publication.
- (b) Proof of delivery of notice shall be made by the certificate of any officer or employee of the City or by declaration under penalty of perjury of any person over the age of eighteen years. The proof of delivery shall show that delivery was done in conformity with this Division.
- (c) The failure of any *person* to receive any notice served in accordance with this Division shall not affect the validity of any *debarment* proceedings.
(“List of Debarred Contractors” repealed; “Notices” added 9-3-2002 by O-19093 N.S.)
(Retitled from “Notices” to “Notices Required Under This Division” and amended 8-10-2016 by O-20715 N.S.; effective 9-9-2016.)

§22.0807 Grounds for Debarment

- (a) Grounds for Permanent Debarment
- (1) A judgment, settlement, stipulation, plea agreement, final conviction, including a plea of nolo contendere, or final unappealable civil judgment, of any of the grounds listed below, constitutes grounds for permanent *debarment* of the *bidder* or *contractor* who is subject to, or the *affiliate* of, the *bidder* or *contractor* who is subject to the judgment, settlement, stipulation, plea agreement, final conviction, or final unappealable civil judgment:

- (A) under any local, state, or federal law or regulation for embezzlement, theft, bid rigging, perjury, forgery, bribery, falsification or destruction of records, conspiracy, collusion, or receiving stolen property; or,
 - (B) any offense, action, or inaction indicating a lack of business integrity or business honesty; or,
 - (C) for commission of a criminal offense arising out of obtaining or attempting to obtain a public or private *contract* or *subcontract*, or in the performance of such *contract* or *subcontract*.
- (2) A Fair Political Practices Commission enforcement order against a *bidder* or *contractor*, either following a hearing or by stipulation, imposing a penalty for a violation of California Government Code sections 84300(c) or 84301, or a City of San Diego Ethics Commission enforcement order against a *bidder* or *contractor*, either following a hearing or by stipulation, imposing a penalty for a violation of San Diego Municipal Code sections 27.2941, 27.2943, or 27.2944.
- (3) The *bidder* or *contractor* violated San Diego Charter section 97.
- (4) The *bidder* or *contractor* has engaged in any corrupt practice in bidding, award, administration, or performance of a *contract*.
- (5) The *bidder* or *contractor* operates in a manner designed to evade the application of this Division or to defeat the purpose of this Division.
- (6) The City has issued the *bidder* or *contractor* four or more *final performance evaluations* with a rating of unsatisfactory in any four year period.
- (7) The *person* has committed an act or omission so serious or compelling in nature that it affects the present responsibility of the *bidder* or *contractor* to be awarded a *contract* or to participate as a *subcontractor*.
- (b) Grounds for Debarment of Three Years or More
- (1) The *bidder* or *contractor* willfully breaches a material term of a *contract*.

- (2) Violation of a local, state, or federal law or regulation applicable to a *contract* other than those identified in section 22.0807(a).
- (3) The *bidder* or *contractor* used substandard materials, or has failed to furnish or install materials in accordance with *contract* requirements, even if the discovery of the defect is subsequent to acceptance of the work and expiration of the warranty, if such defect is because of intentionally deficient or grossly negligent performance of the *contract*.
- (4) The *bidder* or *contractor* submits materially false information to the City pertaining to:
 - (A) the City's evaluation of the *bidder* or *contractor* as a Minority Business Enterprise, Woman Business Enterprise, Disadvantaged Business Enterprise, Small Local Business Enterprise, Emerging Local Business Enterprise, or Disabled Veteran Business Enterprise;
 - (B) the City's prequalification or eligibility process; or,
 - (C) the *bidder's* or *contractor's* statement of gross income submitted under the City's Minor Public Works Construction Project Program.
- (5) The *bidder* or *contractor* has not implemented its Equal Employment Opportunity Plan, or taken corrective action after sufficient notice by the City.
- (6) The *bidder* or *contractor* has engaged in unlawful discrimination in employment.
- (7) The *bidder* or *contractor* has received three or more *final performance evaluations* with a rating of unsatisfactory in any three year period.
- (8) The *bidder* or *contractor* fails to pay prevailing or living wages, or fails to comply with the City of San Diego's Earned Sick Leave and Minimum Wage Ordinance.
- (9) The *bidder* or *contractor* violates a material provision of any settlement of a *debarment* action.

(c) Grounds for Debarment of Two Years

A *bidder* or *contractor* may be *debarred* for two years if a *bidder* or *contractor* has received two or more *final performance evaluations* with a rating of unsatisfactory in any two-year period.

(d) Grounds for Debarment of One Year

- (1) The *bidder* or *contractor* made two or more claims of computational or other error in a bid to the City within a two-year period.
- (2) The *bidder* or *contractor* failed to timely submit bond, *contract*, insurance documents, or any other documentation required as a condition of award or performance of a *contract*.

(“*Effect of Listing*” repealed; “*Grounds for Debarment*” added 9-3-2002 by O-19093 N.S.)

(Amended 1-24-2005 by O-19353.)

(Amended 8-10-2016 by O-20715 N.S.; effective 9-9-2016.)

(Amended 6-4-2020 by O-21193 N.S.; effective 7-4-2020.)

§22.0808 Debarment Proceedings before a Debarment Hearing Board

- (a) The *Debarment Hearing Board* shall hear all recommendations for *debarment* other than:
 - (1) permanent *debarment*, which are heard in accordance with section 22.0809; and
 - (2) *debarment* based on unsatisfactory *final performance evaluations*, which are heard in accordance with section 22.0811.
- (b) The *Debarment Hearing Board* shall determine by a *preponderance of the evidence* whether a *bidder* or *contractor* is to be *debarred* and for what length of time in accordance with this Division. The *Debarment Hearing Board* may increase, decrease, or accept the *department*’s recommendation of the length of *debarment*. The *debarment hearing board* may not impose less than the length of *debarment* specified in section 22.0807(b) and (d).
- (c) The *Debarment Hearing Board*’s decision on *debarment* must be in writing and is final.

- (d) The failure of a *person* recommended for *debarment* to appear at a *debarment* hearing after notice under section 22.0806 constitutes a waiver of that *person's* right to contest the *debarment* recommendation, and the *department's* recommendation shall become final.

(“Continuation of Existing Contracts” repealed; “Debarment Proceedings before the Debarment Hearing Board or City Council” added 9-3-2002 by O-19093 N.S.)
(Retitled from “Debarment Proceedings before the Debarment Hearing Board or City Council” to “Debarment Proceedings before a Debarment Hearing Board” and amended 8-10-2016 by O-20715 N.S.; effective 9-9-2016.)

§22.0809 Debarment Proceedings before an Independent Hearing Officer

- (a) The City Manager shall appoint an independent hearing officer.
- (b) An independent hearing officer shall hear all recommendations that include one or more grounds for permanent *debarment*, except for *debarments* based on unsatisfactory *final performance evaluations*, which are heard in accordance with section 22.0811.
- (c) The independent hearing officer shall determine by a *preponderance of the evidence* whether a *person* is to be *debarred* and for what length of time, in accordance with this Division. The independent hearing officer may increase, decrease, or accept the *department's* recommendation of the length of *debarment*. The independent hearing officer may not reduce the length of a permanent *debarment* if the hearing officer determines a violation identified in section 22.0807(a) occurred, or impose less than the length of debarment specified in section 22.0807(b) and (d).
- (d) The independent hearing officer’s decision on *debarment* must be in writing and is final.
- (e) The failure of a *person* recommended for *debarment* to appear at a *debarment* hearing after notice under section 22.0806 constitutes a waiver of that *person's* right to contest the *debarment* recommendation, and the *department's* recommendation shall become final.
- (f) Notwithstanding (d) and (e), any decision by an independent hearing officer that *debars a bidder or contractor* based on collusion is not final and shall be referred to the City Council to permanently *debar* that *bidder or contractor* in accordance with Charter section 97. The City Council may adopt or deny the independent hearing officer’s finding of collusion. The City Council’s decision is final.

(“*Scope of Debarment*” repealed; “*Debarment Hearing Board’s Authority to Debar; Debarment Hearing Board’s Decision Final*” added 9-3-2002 by O-19093 N.S.)
(Retitled from “*Debarment Hearing Board’s Authority to Debar; Debarment Hearing Board’s Decision Final*” to “*Debarment Proceedings before an Independent Hearing Officer*” and amended 8-10-2016 by O-20715 N.S.; effective 9-9-2016.)
(Amended 6-4-2020 by O-21193 N.S.; effective 7-4-2020.)

§22.0810 Imputation of Knowledge and Conduct

- (a) The fraudulent, criminal, or other serious misconduct of any officer, director, shareholder, partner, employee, or other individuals associated with a *bidder* or *contractor* may be imputed to the *bidder* or *contractor* when the conduct occurred in connection with the individual’s performance of duties for, or on behalf of, the *bidder* or *contractor*, or with the *bidder’s* or *contractor’s* knowledge, approval, or acquiescence. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.
- (b) The fraudulent, criminal, or other serious misconduct of a *bidder* or *contractor* may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the *bidder* or *contractor* who participated in, knew of, or had reason to know of the *bidder’s* or *contractor’s* conduct.
- (c) The fraudulent, criminal, or other serious misconduct of one *bidder* or *contractor* participating in a joint venture or similar arrangement may be imputed to other participating *bidders* or *contractors* if the conduct occurred for, on approval of, or acquiescence of these *bidders* or *contractors*. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(“*Appeals to City Council from Certain Decisions of Debarment Hearing Board*” added 9-3-2002 by O-19093 N.S.)
(Retitled from “*Appeals to City Council from Certain Decisions of Debarment Hearing Board*” to “*Imputation of Knowledge and Conduct*” and amended 8-10-2016 by O-20715 N.S.; effective 9-9-2016.)

§22.0811 Appeal of Final Performance Evaluations

- (a) A *bidder* or *contractor* may appeal a *final performance evaluation* with a rating of unsatisfactory on a public works *contract* or an architectural or engineering consultant *contract* to the City Engineer.
- (b) A *bidder* or *contractor* may appeal a *final performance evaluation* with a rating of unsatisfactory on a goods, services, or non-engineering, non-architectural consultant *contract* to the Purchasing Agent.
- (c) A *bidder* or *contractor* must submit an appeal in writing to the City Engineer or Purchasing Agent within sixty days after notice of the *final performance evaluation* pursuant to section 22.0806. Evaluations may not be appealed after sixty days from the date of such notice.
- (d) The decision of the City Engineer and the Purchasing Agent to uphold an unsatisfactory performance evaluation or a *debarment* determination shall be issued to the *bidder* or *contractor* in writing and are final.
- (e) The City Manager may, upon recommendation of the City Engineer or Purchasing Agent, *debar* a *bidder* or *contractor* who has received an unsatisfactory *final performance evaluation*. This determination shall be in writing and is final.

*(“Submission of Argument on Appeal” added 9-3-2002 by O-19093 N.S.)
(Retitled from “Submission of Argument on Appeal” to “Appeal of Final Performance Evaluations” and amended 8-10-2016 by O-20715 N.S.; effective 9-9-2016.)*

§22.0812 Judicial Review

California Code of Civil Procedure section 1094.6 governs judicial review of a final *debarment* decision.

*(“Standard of Proof” added 9-3-2002 by O-19093 N.S.)
(Retitled from “Standard of Proof” to “Judicial Review” and amended 8-10-2016 by O-20715 N.S.; effective 9-9-2016.)*

§22.0813 Creation of List of Debarred and Suspended Persons

- (a) The City Manager shall create, maintain, and make publicly available a list of the names, addresses, and applicable *debarment* or *suspension* commencement and expiration dates of all *debarred* or *suspended bidders* and *contractors*.

- (b) The City Manager shall establish procedures to provide for the effective use of the list to ensure that the City does not do business with *bidders* or *contractors* who have been *debarred* or *suspended*.

(*"Imputation of Knowledge and Conduct"* added 9-3-2002 by O-19093 N.S.)
(Retitled from *"Imputation of Knowledge and Conduct"* to *"Creation of List of Debarred and Suspended Persons"* and amended 8-10-2016 by O-20715 N.S.; effective 9-9-2016.)

§22.0814 Effect of Debarment or Suspension

- (a) *Bidders* and *contractors* who have been *debarred* or *suspended* are excluded from submitting bids, submitting responses to requests for proposal or qualifications, receiving *contract* awards, executing *contracts*, participating as a *subcontractor*, employee, agent or representative of another *person* contracting with the City.
- (b) The City shall not accept, evaluate for award, or include any proposals, quotations, bids, or offers from any *debarred* or *suspended bidders* and *contractors*.
- (c) The City shall not award or approve the award of a *contract* or execute a *contract* under which a *debarred* or *suspended bidder* or *contractor* is intended to participate as a *subcontractor* or material supplier.
- (d) A *prime contractor* shall not employ, subcontract with, or purchase materials or services from a *debarred* or *suspended bidder* or *contractor*.
- (e) The City Manager shall report *debarments* under this Division to the appropriate local, state, and federal agencies and authorities.

(*"Judicial Review"* added 9-3-2002 by O-19093 N.S.)
(Retitled from *"Judicial Review"* to *"Effect of Debarment or Suspension"* and amended 8-10-2016 by O-20715 N.S.; effective 9-9-2016.)

§22.0815 Effect of Debarment or Suspension on an Affiliate

- (a) *Affiliates* are debarred or suspended to the same extent as the *debarred* or *suspended bidder* or *contractor*.
- (b) A *bidder* or *contractor* may appeal the City's determination that the *bidder* or *contractor* is an *affiliate* in writing to the City Manager within sixty days after notice of the *affiliate's debarment* pursuant to section 22.0806.

(c) An *affiliate* may not appeal the *debarment* of any other *bidder* or *contractor* underlying the *affiliate's debarment*.

(d) The decision of the City Manager shall be issued to the *bidder* or *contractor* who is an *affiliate* in writing and is final.

(“*Effect of Debarment or Suspension on an Affiliate*” added 8-10-2016 by O-20715 N.S.; effective 9-9-2016.)

§22.0816 Effect of Debarment by Another Governmental Agency

The City Manager may *debar a bidder or contractor* who has been debarred by another governmental agency until the term of the debarment by the other governmental agency expires. The City Manager’s decision under this section is final, and not subject to a hearing before the *Debarment Hearing Board* or an independent hearing officer.

(“*Effect of Debarment by Another Governmental Agency*” added 8-10-2016 by O-20715 N.S.; effective 9-9-2016.)

§22.0817 Liability for Increased Costs

Any *bidder or contractor* who enters into a *contract*, either directly as a *prime contractor* or indirectly as a *subcontractor*, during a period of *suspension or debarment* imposed upon that *bidder or contractor*, shall be liable to the City for increased costs incurred as a result of replacing the *debarred or suspended bidder or contractor*.

(“*Liability for Increased Costs*” added 8-10-2016 by O-20715 N.S.; effective 9-9-2016.)

§22.0818 Effect of Debarment or Suspension on Existing Contracts

(a) The City may continue or terminate *contracts* or subcontracts it has with a *debarred or suspended bidder or contractor* that are in existence at the time the *bidder or contractor* is *debarred or suspended*.

(b) The City shall not renew or otherwise extend the duration of current *contracts*, or consent to subcontracts, with *debarred or suspended bidders or contractors*, unless the City Manager certifies in writing compelling reasons for such renewal or extension.

(c) The City may contract with another *person* to perform public works, goods, services, or consultant services that a *debarred contractor* had been hired to perform.

(“*Effect of Debarment or Suspension on Existing Contracts*” added 8-10-2016 by O-20715 N.S.; effective 9-9-2016.)

§22.0819 Agreement Not to Bid or Submit Proposals in Lieu of Debarment or Suspension

- (a) The City may offer a *bidder* or *contractor* the opportunity to execute a written agreement not to bid or submit proposals or perform any work on *contracts* in lieu of the City's pursuing *debarment* or *suspension*.
- (b) This agreement not to bid or submit proposals for *contracts* in lieu of the City's pursuing *debarment* or *suspension* does not constitute a *debarment*.

(“Creation of List of Debarred and Suspended Persons” added 9-3-2002 by O-19093 N.S.)

(Renumbered from former Section 22.0820, retitled from “Creation of List of Debarred and Suspended Persons” to “Agreement Not to Bid or Submit Proposals in Lieu of Debarment or Suspension” and amended 8-10-2016 by O-20715 N.S.; effective 9-9-2016.)