

# Chicago Public Schools Policy Manual

**Title:** DEBARMENT POLICY

**Section:** 401.6

**Board Report:** 08-1217-PO1

**Date Adopted:** December 17, 2008

## Policy:

### THE CHIEF EXECUTIVE OFFICER RECOMMENDS:

That the Board amend the Debarment Policy adopted by Board Report 08-0602-PO1.

**PURPOSE:** The purpose of the amendments is to clarify certain provisions in the policy and to correct typographical errors.

**EFFECTIVE DATE:** These amendments shall become effective on the date adopted by the Board.

**DESCRIPTION:** In summary, the amendments clarify that the Debarment Policy:

1. Allows debarment of current vendors as well as past and prospective vendors.
2. Allows debarment for assisting or facilitating another's improper conduct.
3. Allows the use, in a debarment proceeding, of any information gathered by the Office of the Inspector General in connection with an investigation.

## DEBARMENT POLICY

### Section 1. GENERAL INFORMATION

#### Section 1.1. *Policy Statement*

(a) To ensure the effective and efficient administration of its procurement practices, the Board of Education of the City of Chicago ("Board") seeks to do business only with responsible persons. Toward this end, the Board shall have the discretion to remove and exclude from participation in its procurement transactions and activities any person who is debarred pursuant to this Debarment Policy.

(b) Debarment is a remedial measure designed to protect the integrity of the Board's procurement practices and the public's confidence in the Board's fiscal responsibility. It is not intended to be punitive. If imposed, debarment may lead to a permanent exclusion from procurement transactions with the Board. This Debarment Policy establishes the circumstances under which debarment may be sought and the procedures that will be used to impose it.

#### Section 1.2. *Purpose and Applicability*

This Debarment Policy and the procedures it entails have been adopted by the Board to further its goal of protecting the Board from engaging in business relations with dishonest, unethical, or otherwise irresponsible individuals by:

- (a) identifying the kinds of acts or omissions that constitute grounds for debarment;
- (b) describing the procedures the Board will use to debar any person;
- (c) setting forth the consequences of voluntary exclusion, interim constraints, and debarment; and
- (d) providing for the maintenance of lists of voluntarily excluded, constrained and debarred persons.

### **Section 1.3. Scope**

(a) This policy applies to all vendors and other persons involved or seeking to be involved in any Board contract or a related transaction, and to all Board contracts, without regard to either the source of funds or the amount involved. It also applies to any procurement program, activity, transaction, invoice, purchase order or agreement between a vendor and the Public Building Commission of Chicago related to construction, demolition, rehabilitation, renovation or repair of or any other work on any school.

(b) This policy does not restrict the ability of the Board's Chief Purchasing Officer to make determinations pertaining to the responsibility or responsiveness of a vendor or other person on a contract-by-contract basis for any reason, including those stated in Section 2 of this Policy; to suspend a vendor number; or to reject any and all bids pursuant to the applicable provisions of the Illinois School Code, Board Rules, or any other provision of law or legally permissible reason.

(c) This policy does not restrict the Chief Purchasing Officer's ability to apply lesser sanctions than debarment when appropriate.

(d) This policy does not restrict the authority of the Board's Office of the Inspector General to conduct investigations and make reports, pursuant to the Illinois School Code, 105 ILCS 5/34-13.1.

(e) This policy does not restrict the authority of the Board to discipline or discharge employees pursuant to its "Employee Discipline and Due Process" policy, Board Report number 04-0728-PO1, and any amendments thereto.

(f) This policy supersedes the *Debarment Policy on Non-Responsible Persons in Procurement Transactions*, adopted March 22, 2000, by Board Report 00-0322-PO1, and shall be effective as of June 2, 2008.

### **Section 1.4. Definitions**

(a) "Affiliate" is 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 but are not limited to, common or interlocking management or ownership, officers, or directors, identity of interests among relatives, shared facilities and equipment, or common use of employees or agents. "Affiliate" also means a business entity organized during or following any investigation or proceeding, or organized following the debarment or proposed debarment of a person, which has the same or similar management, ownership, or principal employees as the person who was investigated, part of the proceeding, debarred, or proposed for debarment, or which operates in a manner designed to evade application of these debarment rules.

(b) "Board" means the Board of Education of the City of Chicago, but also includes its departments, operational elements and schools, Chicago Public Schools, and School District 299.

(c) "Board Contract" is any procurement program, activity, transaction, invoice, purchase order or agreement between the Board and a vendor, including all amendments and modifications to and extensions of a Board contract, regardless of the type, amount or source of funding, and regardless of whether the contract is void or voidable by the Board.

(d) "Chief Administrative Officer" ("CAO") means the individual appointed by the Board as its Chief Administrative Officer, or that individual's designee. The Chief Purchasing Officer may not serve as the CAO's designee for purposes of this Policy.

(e) "Chief Purchasing Officer" ("CPO") means the individual appointed by the Board as its Chief Purchasing Officer, or that individual's designee.

(f) "Civil Enforcement Action" means any judicial or administrative proceeding, filed by any governmental entity or agency other than the CPO, for the purpose of civilly enforcing any statute, rule, regulation, or law for the causes for debarment described in Section 2 of this Policy.

(g) "Civil Judgment" means the disposition of a civil action by any court or tribunal of competent jurisdiction, entered against a vendor, whether by verdict, decision, consent decree, confession of judgment, settlement, stipulation, or otherwise, creating civil liability for alleged wrongful acts, as well as any agreement terminating a dispute before a civil action has been filed in court.

(h) "Conviction" means a judgment of conviction of, or an order of court supervision for, any criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of no contest ("*nolo contendere*").

(i) "Debarment" is a determination by the Board that a vendor or other person is ineligible to enter into Board contracts. "Full Debarment" means a determination that the vendor or other person is permanently ineligible to enter into new Board contracts, become an affiliate or principal of any vendor, or serve as a subcontractor of any tier or supplier on Board contracts, and that existing contracts with the vendor or other person must be terminated. "Partial" or "less than full" debarment means any debarment of lesser scope or duration. The scope and duration of any debarment shall be stated in the Board Report approving the debarment.

(j) "Hearing Officer" means an official appointed by the CAO to preside over a debarment proceeding. The official need not be an attorney or an employee of the Board, but must be adjudged by the CAO to have sufficient expertise and objectivity to conduct impartial proceedings under this Debarment Policy.

(k) "Interim Constraint" includes the following actions taken with respect to a vendor by the CAO under Section 4.4(c), pending the outcome of the debarment proceeding:

- (1) Terminating all existing contracts between the vendor and the Board.
- (2) Terminating the vendor's participation as subcontractor or supplier on existing Board contracts.
- (3) Declaring the vendor ineligible for the award of new Board contracts.

(l) "Office of the Inspector General" ("OIG") means the Board's Inspector General and his or her Office, established by 105 ILCS 5/34-13.1

(m) "Indictment" means an action by a grand jury charging a criminal offense. For purposes of this Policy, an information or other filing by competent authority charging a criminal offense is given the same effect as an indictment.

(n) "Person" means any individual, corporation, partnership, joint venture, association, unit of government or other legal entity, however organized.

(o) "Principal" means any officer, director, owner, partner, key employee or other individual with significant management or supervisory responsibilities within a vendor; also, a person who has a critical influence on or substantive control over a Board contract, whether or not employed by the vendor; or any affiliate of a vendor.

(p) "Related Transaction" means a transaction directly related to a Board contract, which assists a vendor in executing a Board contract, regardless of the extent the person performing the related transaction has a critical influence on or substantive control over the Board contract. Examples include but are not limited to contracts between a vendor and its agents, appraisers, brokers, consultants, lenders and suppliers.

(q) "Respondent" means any vendor or other person against whom a debarment proceeding is initiated, including any present or former Board employee.

(r) "Suspension" means the temporary cessation of a vendor's Board contracts following the CPO's issuance of a Notice of Proposed Debarment.

(s) "Vendor" means any person who has entered into a Board contract, or has sought or is seeking to or may enter into a Board contract, or is serving as a subcontractor or supplier on a Board contract. It includes all units, divisions or other organizational elements of a vendor. "Vendor," for the purposes of this Policy, also means any affiliate, officer, director, principal or employee who has received a Notice of Proposed Debarment under this Policy.

(t) "Voluntary Exclusion" means a status, voluntarily accepted by a vendor as part of a settlement agreement with the Board, in which the vendor is excluded from participating in Board contracts and/or related transactions.

(u) "Warning Letter" means a written communication from the CPO to a vendor, giving notice of acts or omissions that may constitute grounds for debarment.

The provisions of Illinois' *Statute on Statutes*, 5 ILCS 70/0.01 *et seq.*, insofar as applicable, shall be applied in interpreting this Policy, except where a specific definition, provision, or context indicates a different meaning.

## **Section 2. CAUSES FOR DEBARMENT**

The Board may debar a Respondent for —

(a) Conviction of or Civil Judgment for —

(1) commission or attempted commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a private or public contract or subcontract;

(2) violation or attempted violation of Federal or State statutes, or any other legally applicable law, regulation, or rule relating to the submission of bids, proposals, invoices, or claims;

(3) commission or attempted commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; or

(4) commission or attempted commission of any other offense, or engaging in or attempting to engage in conduct indicating a lack of truthfulness or honesty, which affects the responsibility of the Vendor.

(b) Violation of the terms of a Board contract or subcontract so serious as to justify Debarment, including but not limited to —

(1) willful failure to perform in accordance with the terms of one or more contracts or subcontracts;

(2) a history of failure to perform one or more contracts or subcontracts;

(3) a history of unsatisfactory performance of one or more contracts or subcontracts; or

(4) a history of failure to meet goals under the Board's Minority- and Women-Owned Business Enterprise Program ("M/WBE"), or to meet its obligations to provide Equal Employment Opportunities, criminal-background checks, the payment of base-wage or prevailing-wage, or a drug-free-workplace, or to fulfill any other contracting or subcontracting obligation imposed by Board Rule or policy, or any other law.

(c) Making, causing to be made or attempting to make any false, deceptive, or fraudulent material statement in any bid, proposal, or application for Board or any government work, or in the performance of any such contract for the Board or any governmental unit or agency, or in application for any permit or license;

(d) Making, causing to be made or attempting to make, any false, deceptive, or fraudulent material statement in any application to obtain, expand, or continue certification as an M/WBE.

- (e) Engaging or participating in bid-rigging or stringing, or facilitating the bid-rigging or stringing of any Vendor or entity or individual;
- (f) Refusal to cooperate with the OIG in any investigation;
- (g) Refusal to cooperate with reasonable requests of Board inspectors, representatives, or other personnel with respect to work under contract provisions, plans, or specifications, or otherwise;
- (h) Founding, establishing or operating an entity in a manner designed to evade the application or defeat the purpose of this or any other Board Policy or any provision of any federal, state or local statute, ordinance, rule or regulation or any other applicable law, rule or regulation; or
- (i) Improper conduct, including but not limited to—
  - (1) intentional or negligent billing or invoicing;
  - (2) submitting false, frivolous or exaggerated claims, documents, or records;
  - (3) falsification of claims, documents, or records;
  - (4) willful or grossly negligent destruction of documents or records the Vendor had an obligation to maintain;
  - (5) bribery or coercion of a government official, or other unlawful tampering with a government official;
  - (6) use of false or deceptive statements to obtain some benefit, or causing competition to be restrained or limited;
  - (7) misrepresentation to any governmental entity, agency or official;
  - (8) falsely claiming to be an M/WBE, falsely claiming to be eligible for any bidding preference or protected market program, or assisting any other individual or entity to make such a false claim;
  - (9) violation of ethical standards established by the Board, or other dishonesty incident to obtaining, pre-qualifying for, or performing any Board contract or modification thereof;
  - (10) violation of ethical standards established by the Board or other dishonesty incident to applying, obtaining, qualifying for, or acquiring any certification, license, or permit related in any way to a Board contract;
  - (11) failing to timely pay any judgment or other adjudicated debt owed to the Board after a request for payment;
  - (12) failing to timely pay undisputed bills or invoices submitted by subcontractors;
  - (13) unreasonably disputing bills or invoices submitted by subcontractors;
  - (14) knowingly or negligently involving a temporarily constrained, voluntarily excluded or debarred Vendor or other Person in a Board contract or a Related Transaction;
  - (15) violating any provision of a Voluntary Exclusion agreement or any other settlement of a Debarment action between the Board and a Vendor or other Person;
  - (16) Debarment, Suspension, Voluntary Exclusion or Interim Constraints imposed by any governmental entity or agency;
  - (17) failing to defend, indemnify, or hold the Board harmless pursuant to a contractual obligation after having received a request to do so;
  - (18) assisting or facilitating another Person in any of the foregoing conduct.

(j) Any act or omission with respect to any procurement program, activity, transaction, invoice, purchase order or agreement between a Vendor or other Person and the Public Building Commission of Chicago related to construction, demolition, rehabilitation, renovation or repair of or any other work on any school that, if committed with respect to a Board contract, would constitute a cause for Debarment.

(k) Any other cause that the Board, in its sole discretion, deems so serious or of such a compelling nature that it affects the responsibility of the Respondent, including facilitating another Vendor's or other Person's violation of any Board Rule, Board policy, Board contract, or any federal, state or local law relating to public contracting.

### **Section 3. MITIGATING FACTORS**

The CAO may, in the public interest, recommend that the Board debar a Respondent for any of the causes in Section 2 of this Policy, using the procedures in Section 4. The existence of a cause for Debarment, however, does not necessarily require that the CAO seek to debar any Person; the seriousness of the Person's acts or omissions and any mitigating factors should be considered in making any Debarment recommendations. Before recommending any Debarment decision, the CAO should consider factors such as the following, if documented and verifiable information is provided by the Respondent in its submission as provided by Section 4.5(c) of this Policy:

(a) Whether the Respondent had effective standards of conduct and internal control systems in place at the time of the activity for which Debarment is being considered, or had adopted such procedures prior to any Board or OIG investigation of the activity cited as a cause for Debarment;

(b) Whether the Respondent brought the activity cited as a cause for Debarment to the attention of the OIG or other appropriate Board personnel in a timely manner;

(c) Whether the Respondent has fully investigated the circumstances surrounding the cause for Debarment and, if so, made the result of the investigation available to the CPO or the OIG;

(d) Whether the Respondent cooperated fully with Board personnel during any and all investigations and in any court or administrative actions;

(e) Whether the Respondent has paid or has agreed to pay all criminal and administrative fines and Civil Judgments for the improper activity;

(f) Whether the Respondent has paid or has offered to pay any investigative or administrative costs incurred by the Board, and/or has made or offered to make full restitution;

(g) Whether the Respondent has taken appropriate disciplinary action against the individual(s) responsible for the activity which constitutes cause for Debarment;

(h) Whether the Respondent has implemented or agreed to implement remedial measures, including any identified by the Board;

(i) Whether the Respondent has instituted or agreed to institute new or revised review and control procedures and ethics training programs;

(j) Whether the Respondent has had adequate time to eliminate the circumstances within the Respondent's organization that led to the cause for Debarment; and

(k) Whether the Respondent and/or its management recognizes and understands the seriousness of the misconduct giving rise to the cause for Debarment and has taken appropriate steps to prevent recurrence.

The presence of any mitigating factors such as those set forth above does not necessarily mean that Debarment is unwarranted. Accordingly, the Respondent has the burden of demonstrating, to the satisfaction of the Board, that Debarment is not warranted due to these potentially mitigating factors.

## **Section 4. DEBARMENT PROCEDURE**

**Section 4.1.** The CPO initiates a Debarment proceeding by filing a Notice of Proposed Debarment (“Notice”) with the CAO, and serving a copy of the Notice on the Respondent(s). The Notice may be issued for any cause(s) listed in Section 2 of this Policy. The Board’s General Counsel or designee (“Board Counsel”) shall represent the CPO in the Debarment proceeding, and may prepare, file and serve the Notice on behalf of the CPO.

### **Section 4.2. *Contents of the Notice* —**

- (a) Statement that the CPO is proposing Debarment;
- (b) The reasons for the proposed Debarment, in terms sufficient to put the Respondent on notice of the conduct and/or transaction(s) upon which it is based;
- (c) The cause(s) for Debarment relied on, under Section 2, and the date(s), scope and duration of any prior Debarments, Suspensions and Voluntary Exclusions of the Respondent, and in the case of present or former Board employees, the scope and duration of any disciplinary actions taken against them that are relevant to the present cause(s) of Debarment;
- (d) Statement of the scope and duration of the Debarment sought;
- (e) Notification that to contest the proposed Debarment, the Respondent must, within 28 calendar days after receipt of the Notice, submit a verified, written Answer, admitting or denying every allegation in the Notice, and stating any specific information and argument in opposition to the proposed Debarment, including any mitigating factors under Section 3 above, and the identification of specific information, if any, that raises a genuine dispute over the material facts relevant to the Debarment;
- (f) Notification that a failure to submit a verified, written Answer to the CAO within the time allowed by this Policy shall be deemed an admission of the allegations set forth in the Notice;
- (g) Name, address, telephone and fax numbers, and e-mail address of the Board Counsel who will be presenting the cause(s) for Debarment of the Respondent;
- (h) Copies of the portion(s) of any law, statute, ordinance, regulation, rule or policy alleged to have been violated.
- (i) A copy of this Debarment Policy, to inform the Respondent of its terms, including the procedures applicable to and consequences of Debarment.
- (j) The Notice also may, but need not, include copies of the statement(s) of any witness and of any documents supporting the proposed Debarment. Documents and statements obtained by the OIG as part of an investigation are admissible in the debarment proceeding under section 4.5(i)(7), subject to the limitations set forth in section 4.5(i)(8).

### **Section 4.3. *Service***

- (a) The Notice of Proposed Debarment shall be served by regular and certified return-receipt-requested mail at the address listed by the Respondent on the contract or agreement between it and the Board, or other last known address, or by any other means reasonably calculated to provide actual notice to the Respondent (including publication).
- (b) All other notices and submissions required or allowed under this Policy shall be served on the Respondent by regular mail, reputable, established private delivery service, or personal service, at the address provided pursuant to Section 4.5(b).
- (c) All notices and submissions required or allowed under this Policy shall be served on the Board’s Counsel by regular mail, reputable, established private delivery service, or personal service, at the address provided in the Notice, pursuant to Section 4.2(g).

(d) All mailed notices, including the Notice of Proposed Debarment, and all mailed submissions, shall be presumed to have been received within three calendar days after mailing. Proofs of service of every notice and submission shall be included in the record.

#### **Section 4.4. Consequences of Notice of Proposed Debarment**

(a) Upon filing of the Notice of Proposed Debarment, the Respondent is immediately suspended from performing under any existing Board contracts and any subcontracts to Board contracts identified in the Notice. The Respondent may appeal the Suspension by submitting to the CAO a verified, written response stating the reasons the Suspension should not be applied, within five calendar days after the Notice is issued. The CAO shall decide the appeal as soon thereafter as practicable.

(b) Except as otherwise provided in Section 4.4(c), from the date the Notice is issued until a decision is made by the Board, the following conditions shall apply to the Respondent:

(1) The Respondent may submit bids or proposals on contracts. New contract(s) may only be awarded conditionally, and if a Respondent is later debarred, the contract(s) may be terminated. The facts underlying a Respondent's proposed Debarment and other factors may be considered when evaluating such bids or proposals. When appropriate, contract awards may be delayed to allow the Board to reach a decision on the Debarment.

(2) The Respondent may continue to perform under any Board contract not identified in the Notice, unless Interim Constraints are imposed under Section 4.4(b). However, if the Respondent is debarred, the Board may not only terminate all the Respondent's existing Board contracts, but also may terminate or suspend the Respondent's participation as a subcontractor or supplier, unless an exception is granted under Section 6.4 of this Policy.

(c) When the cause or causes for Debarment are sufficiently serious and the evidence supporting Debarment is compelling or highly reliable, including but not limited to Indictment, Conviction, Civil Judgment, the filing of a Civil Enforcement Action for any of the causes listed under Section 2(a), or Debarment by another governmental entity or agency, the CAO, in his or her sole discretion, may take an interim action constraining the Respondent in dealing with the Board after issuance of the Notice but before the Board makes its final decision ("Interim Constraints"). The CPO shall notify the Respondent that he or she is seeking Interim Constraints in the Notice of Proposed Debarment, or in a separate notice served in accordance with Section 4.3 ("Notice of Interim Constraints"). The CAO may consider the views of the OIG and the head of any Board office, department or operational element when determining whether the Respondent should be so constrained.

(d) The Respondent shall have ten calendar days after service of the Notice or a Notice of Interim Constraints, whichever is later, to submit a verified, written response stating the reasons the Interim Constraint(s) should not be applied. No Interim Constraint shall go into effect until three calendar days after the time for response has passed, or in the case of a response, until the CAO issues a decision on the imposition of Interim Constraints.

(e) If the Respondent can prove that it did not receive notice of the imposition of constraints pursuant to Section 4.4(c), the Respondent may seek reconsideration.

(f) Any Interim Constraints imposed under this Section shall remain in effect no longer than the date a final Debarment decision is rendered pursuant to Section 5.5.

#### **Section 4.5. Procedures following Notice of Proposed Debarment**

(a) In response to the Notice of Proposed Debarment, the Respondent shall have the burden of production, *i.e.*, coming forward with sufficient information, documentation, and argument to explain why Debarment should not be imposed.

(b) Within ten calendar days after service of the Notice, the Respondent must provide Board Counsel and the CAO with contact information for purposes of the Debarment, including: a contact person or attorney, address, phone and fax numbers, and, preferably, email address. Immediate written notice must be given to the Board Counsel and the CAO of any changes in the contact information.



(c) Within ten calendar days after service of the Notice or any subsequent notice concerning any additional documentation that may be considered in the proceeding, the Respondent may make a written request to Board Counsel for access to the documentation the CPO has relied upon in seeking Debarment, any witness summaries or affidavits, or relevant prior Debarment decisions relating to the Respondent or an Affiliate, if these materials were not already provided to the Respondent with the Notice or otherwise. In the case of voluminous documentation, Board Counsel may instead permit the Respondent to examine any and all such materials and thereafter request copies of any or all such materials. In such case, the Respondent must pay a reasonable copying fee to the CPO. If copies cannot be made available within fourteen calendar days of receiving the request, the CAO shall give the Respondent additional time to submit the answer described in Section 4.2(e). The CAO will notify the Respondent and Board Counsel of such extensions.

(d) The Respondent shall submit its written Answer to the CAO and serve a copy on the Board Counsel by any method set forth in Section 4.3(c), no more than 28 calendar days after receipt of the Notice. Date of submission will be the date of receipt, if by personal service, or the date of mailing or placing with a private delivery service, with proof of mailing or placement. Deliveries will be accepted only during the regular office hours of the Board Counsel and CAO. The Respondent's Answer must be in writing, verified (sworn on oath before a notary public), and must include an admission, denial, or other response to each of the allegations in the Notice. The omission of a response to any allegation in the Notice shall be deemed an admission of that allegation. The Answer also must include all the facts, arguments, or other bases upon which the Respondent contests the Debarment. Any documentation supporting the Answer must be attached or, if voluminous, indexed and included separately. Should the Respondent fail to file a timely Answer to the Notice of Proposed Debarment, all of the allegations of the Notice shall be deemed to be admitted.

(e) Board Counsel may submit to the CAO a written Reply to the Answer within 28 calendar days of its receipt or due date, whichever is later. Board Counsel must serve the Respondent with a copy of the Reply, if any, and any other letter, notice, requests, or filings made by Board Counsel, by any method set forth in Section 4.2(b).

(f) Leave to make written submissions by the Board Counsel or the Respondent beyond the Answer and Reply shall be at the sole discretion of the CAO, upon specific request detailing the need for a further submission, or as he or she directs. Requests for further written submissions are not favored.

(g) If any material information not previously given or offered to the Respondent is introduced into the record subsequent to the Notice of Proposed Debarment or after documents are provided pursuant to Section 4.5(c), upon written request the Respondent shall have the right to file a further written submission commenting on that information within a time frame set by the CAO, and the Board Counsel may file a further written response thereto. Similarly, if material information not previously given or offered to the Board is introduced into the record subsequent to the Respondent's Answer or after documents are provided pursuant to Section 4.5(c), upon written request the Board Counsel shall have the right to file a further written submission commenting on that information within a time frame set by the CAO, and the Respondent may file a further written response thereto.

(h) When the Respondent believes its Answer raises a genuine issue of disputed material fact that cannot be resolved on the paper submissions and wishes to present a witness or witnesses in support of its position, the Respondent may request an in-person hearing. When requesting an in-person hearing, the Respondent must identify the fact or facts at issue and the witness or witnesses in its request. Respondent requests for in-person hearings must be part of the Answer, must demonstrate to the CAO that the hearing is necessary to decide any matter(s) pertaining to the Board's decision on Debarment, and must include a detailed description of the expected testimony. Requests for in-person hearings may also be made in a similar manner and for similar reasons by Board Counsel.

(i) In-person hearings will only be granted when the CAO finds that a disputed issue of material fact exists, based on the parties' written submissions. The CAO may conduct the in-person hearing, or may appoint a Hearing Officer to do so. If the CAO appoints a Hearing Officer, the Board shall be responsible for paying his or her reasonable fee. When an in-person hearing is ordered:

- (1) The CAO may limit the issues to be presented at such hearing, and shall notify the Respondent, Board Counsel, and Hearing Officer (if any) of this limitation.
- (2) The individual conducting the hearing shall have the right to limit the number of witnesses and the length and scope of testimony, including but not limited to prohibiting non-relevant, cumulative, or duplicative testimony.
- (3) When a Hearing Officer conducts the hearing, he or she shall prepare written factual findings. The CAO may reject the Hearing Officer's findings if the CAO determines those findings to be arbitrary and capricious or clearly erroneous. The Hearing Officer shall have no authority to render legal conclusions, or to determine whether conduct in question violates any law, Board Rule, policy or contract; these determinations are reserved solely to the judgment of the Board.
- (4) Notice of any in-person hearing shall be given to the Respondent and to Board Counsel no less than twenty-one calendar days prior to the date and time of the hearing, and shall specify the date, time, and location, and the factual issue(s) to be examined. The Respondent and Board Counsel must submit to the opposing party and the CAO or Hearing Officer, as the case may be, a list of all proposed attendees under their control no less than five calendar days prior to the in-person hearing, which list must identify the individuals who will be presented as witnesses. The CAO or Hearing Officer shall have the right to limit the number of attendees present at the hearing, and to exclude witnesses from the in-person hearing when they are not testifying.
- (5) Hearings shall be conducted in a manner consistent with principles of fundamental fairness. The official conducting the hearing may use flexible procedures, and is not required to follow formal rules of evidence or procedure unless such rules are adopted by the CAO. Hearsay evidence may be admitted if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs, and, if admitted, will be given appropriate weight by the official conducting the hearing. A certified Court Reporter or stenographer shall be present throughout the hearing to administer oaths and to record (and if ordered, transcribe) the proceedings. The Board shall bear the cost of providing the court reporter or stenographer for the hearing, but the party ordering a transcript shall bear the cost of its preparation.
- (6) The Respondent may appear with or be represented by counsel, and, as limited by Section 4.5(i)(2), shall have the right to present witnesses and to cross-examine any witnesses presented in support of the proposed Debarment. Board Counsel also shall have the right to present witnesses, as limited by Section 4.5(i)(2), and cross-examine those of the Respondent. The CAO or Hearing Officer may also question the witnesses.
- (7) Documents and reports of witness interviews ("statements") obtained by the OIG as part of an investigation shall be admissible, subject to subparagraph (8) below, provided they are included with or identified in the Notice or Response.
- (8) The statement of a witness, relied upon by the Respondent, who is under the control of the Respondent, may not be offered or admitted into the record unless Board Counsel stipulates to its admission, or the Respondent shows good cause why the witness cannot appear. For purposes of this subsection, "statement" includes a written summary, affidavit, or other form. Witnesses under the control of the Respondent include, but are not limited to, Affiliates, employees, employees of subcontractors or suppliers of any tier, and the relatives and business associates of the Respondent or of any Person who has a beneficial interest in the contract or who exercises management or control over the Respondent. Similarly, Board Counsel may not present the statement of a witness who is under the control of the Board, unless the Respondent stipulates to its admission, or Board Counsel shows good cause why the witness cannot appear. Witnesses under the control of the Board are its employees and officials. "Good cause" for non-appearance of a witness shall be limited to military or other official service or duties preventing attendance, death, serious illness or other similar impediment, and shall be determined within the sole discretion of the CAO or Hearing Officer. The statements of witnesses not controlled by either party shall be accepted only if the party seeking their admission offers guarantees of the veracity and trustworthiness of the statement that the CAO or Hearing Officer deems sufficient. Such statements and demonstrations of "good cause" must be provided at least five calendar days prior to the in-person hearing unless otherwise allowed by the CAO or Hearing Officer. Reasonable accommodation will be made to facilitate presentation of witnesses. Requests

relating to the presentation of witnesses should be made as early as possible. Each party may request the appearance of witnesses under the control of the other, but such requests must be made no less than fourteen calendar days prior to the in-person hearing.

(9) Exhibits or other documentary evidence not previously submitted or produced pursuant to this Section 4.5 may not be presented at the in-person hearing without the agreement of the opposing party or the prior written permission of the CAO or Hearing Officer.

(10) The Notice, the Answer, the Reply and any materials submitted in support of them, proofs of service, correspondence relating to the proceedings, the testimony of witnesses at the in-person hearing, if any, and the factual findings of the Hearing Officer, unless rejected by the CAO under Section 4.5(i), shall constitute the record.

#### **Section 4.6. *Extensions of time***

Any deadline in this Section 4 may be extended in the discretion of the CAO, or in the case of deadlines relating solely to the in-person hearing, in the discretion of the Hearing Officer. Requests for extension of deadlines shall be in writing and shall be submitted at least five days before the deadline passes. The CAO or Hearing Officer shall issue a response within three days of receipt of the request. One such extension shall be granted absent extraordinary circumstances, but additional extensions are discouraged. The CAO or Hearing Officer will notify the Respondent and Board Counsel of any extensions as soon as practicable, by fax, email or mail.

#### **Section 4.7. *Voluntary Exclusion***

(a) Board Counsel or the CPO, and a Respondent, may settle a Debarment proposal through Voluntary Exclusion as defined in Section 1.4(s), subject to the Board's approval upon Board Report.

(b) Persons who are voluntarily excluded from participation in Board contracts and transactions shall be placed on a list of excluded participants, which list shall be maintained by the CPO and disseminated to Board offices, departments and schools. This list will not be distributed to any other agency or unit of government unless required by law. However, the list is subject to disclosure under the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.*

(c) Any Person who participates in a Board contract or Related Transaction during the period of their Voluntary Exclusion will be deemed to have donated any goods or services so provided, will not be paid for the goods and services, and may be considered for Debarment on the basis of that participation.

**Section 4.8.** The CPO may withdraw the Notice of Proposed Debarment without prejudice for any reason prior to the Board's final decision.

### **Section 5. RECOMMENDATION BY CHIEF ADMINISTRATIVE OFFICER**

**Section 5.1.** When a Notice is based upon a Conviction, Civil Judgment, or Debarment by another government agency, the CAO may recommend the Board debar the Respondent on the basis of such Conviction, Civil Judgment or Debarment, and any submissions made pursuant to Section 4.

**Section 5.2.** When a Respondent fails to timely submit an Answer or otherwise admits the allegations set forth in the Notice, the CAO may recommend the Board debar the Respondent on the basis of such admissions. The recommendation shall include a copy of the Notice. No Debarment based on admissions may exceed the scope or duration sought in the Notice.

#### **Section 5.3. *Debarment Recommendations and Decisions***

(a) The CAO shall make any other recommendation that the Board debar a Respondent on the basis of the record as defined in Section 4.5(i)(10), by Board Report. A copy of the recommendation shall be provided to the Respondent and Board Counsel within 28 calendar days by any means of service permissible under Section 4.3(a).

(b) A recommendation of Debarment shall include information:

- (1) Referring to the Notice of Proposed Debarment;
- (2) Specifying the reasons for recommending Debarment, with reference to record facts;
- (3) Stating the period and scope of the recommended Debarment, including effective dates;
- (4) Stating the effect of the recommended Debarment on the Respondent's existing Board contracts;
- (5) Stating the effect of the recommended Debarment on the Respondent's eligibility to act as a subcontractor or supplier of any tier on any existing and/or future Board contracts; and
- (6) Stating the effect of the recommended Debarment on the Respondent's Affiliates or any other individuals.

(c) The decision of the Board, in acting on the CAO's recommendation, shall be final. The Respondent's sole remedy shall be judicial review by a common law writ of certiorari.

**Section 5.4.** A list of debarred Persons will be distributed to the Board's offices, departments and schools, and will be published on the Board's website or any other media the Board in its discretion may choose. The Board also may share this list with other governmental entities and agencies.

**Section 5.5.** Any Interim Constraints put in place under Section 4.4 shall terminate no later than the Board's approval of the Board Report acting upon the CAO's recommendation of debarment under this Section. A final Debarment decision shall supersede any interim action.

## **Section 6. PERIOD OF DEBARMENT, EXTENSIONS AND REDUCTIONS**

**Section 6.1.** The period of Debarment may be permanent, and may extend to any and all goods and services the Respondent has provided or may in the future seek to provide, or it may be for a stated period of time. Periods of Debarment may be imposed concurrently or consecutively, in the sole discretion of the Board.

**Section 6.2.** The CAO may recommend that a Debarment be cancelled prospectively or the duration and/or scope may be reduced or waived by the Board, upon the verified, written application of the debarred individual or entity, supported by documentation, for any of the following reasons:

- (a) Discovery of new material evidence within 2 years after the Board's decision, but only if this evidence could not have been discovered through reasonable diligence before the time to submit it under this Policy had passed (an affidavit explaining why the newly discovered evidence could not have been discovered in time for such submission must be attached), or conclusively documented error in the findings of the Board's decision.
- (b) Reversal of the Conviction or judgment on which the ineligibility is based.
- (c) Bona fide change in ownership and/or control of the entity, or other mitigating factors sufficient, in the discretionary judgment of the CAO, to remove the conditions giving rise to the conduct that led to the ineligibility, such as the mitigating factors identified in Section 3.

**Section 6.3.** An application by or on behalf of a debarred Person to reduce or waive the duration or scope of the Debarment or to cancel the Debarment, must be in writing, must state the specific bases for the application, must include all reasons and all documents the applicant intends to rely upon in support of the application, and must include the applicant's sworn oath that the statements in the application are true and correct. The CAO may convene an in-person hearing regarding the application, following the procedures set out in Section 4.5, and shall make a recommendation to the Board following the procedures set out in Section 5.3.

**Section 6.4.** The CAO may recommend that the Board suspend a debarred Person's ineligibility to contract with the Board in whole or in part to allow execution of a specific contract or type of contract with the Person, based on a written application by the head of an office or a department affected by the proposed contract, setting forth facts and providing documentation, which in the CAO's judgment show that:

(a) public health, safety or welfare requires the goods or services of the debarred Person, or that it is otherwise in the best interest of the Board to use the goods or services of the debarred Person, or

(b) the Board is unable to acquire the goods or services at comparable price and quality, or in sufficient quantity, from other sources.

**Section 6.5.** During the Debarment period, the CAO may recommend that the Board extend the duration and/or broaden the scope of the Debarment, if he or she determines that expansion is appropriate. However, Debarment may not be extended or broadened solely on the basis of the specific facts upon which the initial Debarment decision was based. Prior to a decision to extend the duration and/or broaden the scope of an existing Debarment, the debarred Person must be provided with notice of the recommendation and an opportunity to respond pursuant to Section 4.

## **Section 7. SCOPE OF DEBARMENT — IMPUTATION**

**Section 7.1.** Fraudulent, criminal, or other improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a Vendor may be imputed to the when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Respondent, or with the Respondent's knowledge, approval, or acquiescence. The Respondent's acceptance or attempted acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

**Section 7.2.** Fraudulent, criminal, or other improper conduct of a Respondent may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the Respondent who participated in, knew of, should have known, or had reason to know of the Respondent's conduct.

**Section 7.3.** Fraudulent, criminal or other improper conduct of any officer, director, shareholder, partner, employee or other individual associated with a Respondent that occurred in connection with the individual's performance of duties for or on behalf of the Respondent may be imputed to any other officer, director, shareholder, partner, employee, or other individual associated with that Respondent who participated in, knew of, should have known of, or had reason to know of the improper conduct.

**Section 7.4.** Fraudulent, criminal, or other improper conduct of one Person participating in a joint venture or similar arrangement may be imputed to other participating Persons or their officers, directors, shareholders, partners, employees, agents or other individuals associated with a Respondent if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these Persons or these Persons had reason to know or should have known of such conduct. Acceptance or attempted acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

**Section 7.5.** The procedures specified in Section 4 through 6 shall be followed when imposing Debarment on the basis of imputed conduct.

**Amends/Rescinds:** Amends 08-0602-PO1  
**Cross References:** 00-0322-PO1; 96-0522-PO2  
**Legal References:**