

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SANTA BARBARA ESTABLISHING THE GROUNDS AND PROCEDURES FOR THE DEBARMENT OF NONRESPONSIBLE CONTRACTORS WHO SEEK CONTRACTS WITH THE CITY

WHEREAS, the City of Santa Barbara generally awards contracts for City purchases to the lowest responsible bidder;

WHEREAS, poor contractual performance in the past, improper bidding irregularities, and other negative actions on the part of a contractor can give the City reason to question the ability of a contractor to properly perform on future City contracts; and

WHEREAS, in order to protect the City's interests while maintaining fairness in the competitive bidding of City contracts, the City hereby establishes a process for the potential suspension and debarment of nonresponsible contractors.

NOW, THEREFORE, BE IT RESOLVED BY THE THE COUNCIL OF THE CITY OF SANTA BARBARA AS FOLLOWS:

1. Statement of Purpose

The City only intends to do business with responsible and honest persons and businesses. The use of a debarment and suspension process is designed to protect the City and the public and to promote fairness in the competition for City business by ensuring that only responsible and honest persons and businesses may submit bids or contract proposals to the City or otherwise contract with the City.

This Resolution sets forth the grounds for possible debarment and suspension of City contractors in order to establish procedures for determining whether a person or business may be debarred or suspended by the City from doing business with the City. These procedures shall apply to contracts for the purchase of ordinary goods and services, as well as contracts for the construction of City public works.

2. Definitions

For purposes of these procedures, the following definitions shall apply:

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

Affiliate. A person who is any of the following:

- a. is the assignee, successor, subsidiary of, or parent company, of another person; or,
- b. is a controlling stockholder; or,
- c. has the same or similar management of a debarred corporation or other legal entity; or,
- d. directly or indirectly controls, or has the power to control, another person, or is directly or indirectly controlled by another person.

For purposes of this definition, indicia of control include, but are not limited to, common or integrated management or ownership, identity of interests among relatives, shared facilities and equipment, common use of employees, or 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 contractor which may be or has been debarred, suspended or proposed for debarment, or the debarred person or the business entity created after the debarment, suspension or proposed debarment and which operates in a manner designed to evade the application of these procedures or to defeat the purpose of these procedures.

Charging Officer. The City department head, or his or her designee, who recommends debarment of a person.

Charging Document. A written document which identifies with particularity the information relevant to the proposed debarment and which summarizes the City's evidence concerning the person or business recommended for debarment.

City Administrator. The City Administrator of the City of Santa Barbara or his or her designee. The City Administrator may, in writing, delegate any or all of his or her rights and responsibilities under this resolution to another City officer.

City Contract. Any written agreement between the City and another person for the purchase of goods or services or any combination thereof, including contracts for the construction of City public works.

Controlling stockholder. A stockholder who:

- a. owns more than 25% of the voting stock of a corporation; or,
- b. has the power to direct or control the direction of the management or policies of a corporation, without regard to the number of shares the stockholder owns.

Debar or Debarment. The temporary or permanent disqualification of a person from any of the following:

- a. bidding on a City contract; or,
- b. submitting responses to City's requests for proposals or qualifications; or,
- c. being awarded a City contract; or,
- d. executing a City contract; or
- e. participating in a City contract as a subcontractor, material supplier, or employee of a prime contractor or another subcontractor; or
- f. directly or indirectly (e.g. through an affiliate) submitting offers for, or executing contracts, or subcontracts with the City; or
- g. conducting business with the City as an employee, agent, or representative of another person.

Debarment Hearing Officer. A City management employee from a City department other than the department requesting the debarment who is appointed by the City Administrator to hold hearings, take evidence, and to make determinations about a proposed debarment for the City, or some other person not employed by the City as and when determined by the City Administrator.

Management. The officers, partners, owners, foremen or other individuals responsible for the financial and operational policies and practices of a person.

Contract Performance Evaluation. A City-issued written evaluation of a person describing the performance of the person or the business on a specific City contract.

Person. As the term is defined in Santa Barbara Municipal Code section 1.04.190. In addition, if a person is a corporate or other legal entity, it includes individuals who constitute the person's management. The term person also includes any individual or other legal entity that does either of the following:

- a. directly or indirectly (e.g. through an affiliate) submits offers for or is awarded a City contract or a subcontract under a City contract; or
- b. conducts business with the City as an agent or representative of another person.

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

Prime contractor. A person who enters into and duly executes a contract with the City.

Public works contract. A contract for the construction, reconstruction or repair of public buildings, streets, utilities, and other public works.

Relative. An individual who is any of the following:

- a. an individual related by consanguinity to a person within the second degree as determined by the common law; or,
- b. a spouse of a person; or,
- c. an individual related to a spouse of a person within the second degree of consanguinity as determined by the common law; or,
- d. an individual in an adoptive relationship within the second degree of a person as determined by the common law.

Subcontractor. A person or business who is any of the following:

- 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 City contract.

Willful failure to cooperate. Any of the following acts or omissions:

- a. intentionally fail to attend a hearing or give testimony, or
- b. intentionally fail to provide documents, books, papers, or other information upon request of any City officer.

3. Grounds for Debarment

Any of the following acts or omissions may constitute appropriate grounds for debarment of a person by the City:

- a. A final conviction, including a plea of nolo contendere, or final unappealable civil judgment of any one or more of the following:
 1. a violation of any state or federal statute or municipal ordinance for embezzlement, theft, fraud, bid rigging, perjury, forgery, bribery, falsification or destruction of records, receiving stolen property, or any offense indicating a lack of business integrity or business honesty; or,
 2. the 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; or,
 3. a violation of California Government Code sections 84300(c) and 84301 (sections of the California Political Reform Act requiring disclosure of true campaign donor), and which violations occur with respect to a City election.
- b. Debarment of the person by another governmental agency.
- c. A Fair Political Practices Commission final enforcement order against a person, either following a hearing or by stipulation, that makes a finding of a violation of California Government Code sections 84300(c) and 84301 and which violations occurred with respect to a City election.
- d. The person has committed any unlawful or unethical act in bidding for or in any way seeking the award of a City contract.
- e. The person was created or formed to, or operates in a manner designed to evade the application of these debarment procedures or to defeat the purpose of these debarment procedures.
- f. On two or more occasions, the person committed any of the following acts or omissions:

1. unjustifiably refused to properly perform or complete contract work or warranty performance on a City contract; or,
2. unjustifiably failed to honor or observe contractual obligations or legal requirements pertaining to a City contract; or,
3. used demonstrably substandard materials, or failed to furnish or install materials in accordance with requirements of a City contract; or,
4. willfully failed to cooperate in the review or investigation of the person's performance or administration of a City contract; or,
5. performed, or failed to perform, a City contract in manner that violated any permit or discretionary approval issued by any governmental agency for the work; or,
6. violated any City ordinance or policy relating to employment and did not take corrective action after sufficient notice by the City; or,
7. failed to timely submit performance securities, contract documents, insurance documents or any other item required by the City in conformance with bid or contract requirements; or
8. submitted a bid or a claim for payment to the City with computational or other errors.

4. Initiation of Proceedings.

Upon a recommendation for debarment from a Charging Officer, the City Administrator may initiate an administrative debarment proceeding by serving the person or persons recommended for debarment with a Charging Document. The Charging Document shall state the grounds for debarment with sufficient specificity to advise the person recommended for debarment of the basis for the recommended debarment. The Charging Document shall also summarize the City's evidence against the person.

5. Service of Charging Document.

The City Administrator shall serve the Charging Document on each person named in the Charging Document in a manner specified for notice in Section 10 of this resolution.

6. Request for a Hearing.

Within fifteen (15) days of service of the Charging Document, any person named in the Charging Document may submit a written request for an administrative hearing. A request for a hearing may be made through counsel or other authorized representative. Hearing requests shall be filed with the City Clerk with a copy provided to the City Administrator.

7. Failure to Respond to the Charging Document.

The failure of any person to file a written request to be heard with the City Clerk within the time required by this resolution, or failure of the person or the person's representative(s) to appear for a requested hearing which has been scheduled and noticed in accordance with the provisions of Section 10 of this Resolution, shall be deemed an admission by the person to the allegations contained in the Charging Document.

8. Appointment of Debarment Hearing Officer.

If a timely request for a hearing is filed with the City Clerk pursuant to Section 6, the City Administrator shall appoint a fair and impartial Debarment Hearing Officer to hear and determine whether the person should be debarred. The Debarment Hearing Officer shall follow the procedures set forth in this Resolution and shall make a decision based on the evidence provided at the debarment hearing.

9. Suspension Upon Service of Charging Document

- a. Upon the service of a Charging Document, the City Administrator may elect to suspend any person named in the Charging Document if the City Administrator finds in writing that it is in the public interest to do so.
- b. The City Administrator shall notify the person of the suspension in accordance with the procedures set forth in this Resolution.
- c. The suspension shall continue from the effective date of the notice of suspension as provided in this resolution until the Debarment Hearing Officer makes a final decision on the proposed debarment or until there has been a final ruling by the City Council following an appeal of a debarment decision, if any appeal is filed. No suspension shall exceed a period of one hundred twenty (120) days.

10. Proper Notices and Service

- a. Whenever notice is required to be delivered under these procedures, the notice shall be delivered by any of the following methods:
 1. Personal delivery, with service deemed effective on the date of delivery as established with a written proof of service.
 2. Certified mail, postage prepaid, return receipt requested; provided that, simultaneously, the same notice is sent by regular mail. If a notice sent by certified mail is returned unsigned, then delivery shall be deemed effective pursuant to regular mail; provided, the notice sent by regular mail is not returned as undelivered by the postal authorities. Service provided in this manner shall be deemed effective on the date of mailing as established by a written proof of service.
 3. Publication in a newspaper of general circulation. Service shall be deemed effective on the first date of publication.
- b. Proof of delivery of notice may 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 service shall show that delivery was done in conformity with this resolution.
- c. The failure of any person to receive any notice duly served in accordance with these procedures shall not affect the validity of any debarment proceedings.

11. Pre-Hearing Procedure.

The Debarment Hearing Officer shall notify each person named in the Charging Document who has requested a hearing and the Charging Official of the scheduled debarment hearing date. The hearing date shall be set at the Debarment Hearing Officer's sole discretion, except the hearing must commence not less than 21 days or more than 90 days after of the date of service of the Charging Document. The Debarment Hearing Officer may extend the 90-day period upon good cause shown.

Discovery pursuant to the California Code of Civil Procedure is not applicable to this administrative debarment procedure.

The Debarment Hearing Officer may, in his or her sole discretion, direct any person named in the Charging Document and the Charging Official to submit in advance of the hearing, statements, legal analyses, lists of witnesses, exhibits, documents, or any other information the Debarment Hearing Officer deems pertinent to the determination on the debarment. The Debarment Hearing Officer may request the respective parties to submit any rebuttal evidence in response to such information. The Debarment Hearing Officer may limit the length, scope, or content of any statement, analysis, list, rebuttal, document, or other requested information.

12. Proceedings before the Debarment Hearing Officer

The proceedings shall be as informal as is compatible with the requirements of fairness and equity. The Debarment Hearing Officer need not be bound by the common law or statutory rules of evidence and procedure, but may make inquiries in the matter through all means and in a manner best calculated to make a just factual determination.

Upon the written agreement of each person who has requested a hearing and the Charging Official, and with the concurrence of the Debarment Hearing Officer, the hearing may be conducted exclusively by written presentation.

The Debarment Hearing Officer may, in his or her sole discretion, do either of the following:

- a. set time limitations on the presentation of evidence at the hearing; or,
- b. limit the scope of evidence presented based on relevancy.

13. Debarment Hearing Officer's Authority to Debar; Debarment Hearing Officer's Decision Final

- a. After notice and hearing held in accordance with these procedures, or upon the allegations contained in the Charging Document if a request for a hearing is not timely filed, the Debarment Hearing Officer shall determine whether the person is to be debarred and whether the debarment shall be temporary or permanent. If the debarment is temporary, the Debarment Hearing Officer shall indicate the period of the debarment. To debar a person, the Debarment Hearing Officer must find by a preponderance of the evidence that one or more grounds for debarment stated in the Charging Document exist. The Debarment Hearing Officer shall render his or her decision, in writing, within fifteen (15) days of the conclusion of the hearing or within thirty (30) days of the service of the Charging Document if no hearing is requested, whichever is earlier.
- b. Except as provided in subsection (d) below, a Debarment Hearing Officer's decision shall be final.

- c. The Debarment Hearing Officer shall deliver notice of the decision to each person named in the Charging Document and to the City Administrator in the manner of service provided in this Resolution.
- d. If the decision of the Debarment Hearing Officer concerns a person that has performed or been awarded City contracts of an aggregate value of more than \$500,000 within the five (5) years prior to the service of the Charging Document, the decision of the Debarment Hearing Officer to debar a person may be appealed to the City Council in accordance with Chapter 1.30 of the Santa Barbara Municipal Code. The filing of an appeal of the debarment decision shall not stay any suspension put in place by the City Administrator pending a final decision of the City Council.
- e. A copy of the decision shall be provided to the General Services Manager by the Debarment Hearing Officer or by the City Clerk's Office if the decision is appealed to the City Council.

14. Standard of Proof

The standard of proof for the Debarment Hearing shall be a preponderance of the evidence and the burden of proof shall initially be the responsibility of the Charging Officer.

15. Imputation of Knowledge and Conduct

- a. The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individuals associated with a person may be imputed to the person when the conduct occurred in connection with the individual's performance of duties for, or on behalf of, the person, or with the person's knowledge, approval, or acquiescence. The person's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.
- b. The fraudulent, criminal, or other seriously improper conduct of a person may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the person who participated in, knew of, or had reason to know of the person's conduct.
- c. The fraudulent, criminal, or other seriously improper conduct of one person participating in a joint venture or similar arrangement may be imputed to other participating persons if the conduct occurred for, on approval of, or acquiescence of these persons. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

16. Judicial Review

Once a final decision has been issued as provided in this resolution, the time in which judicial review of the order must be sought shall be governed by California Code of Civil Procedure section 1094.6.

17. Creation of List of Debarred and Suspended Persons

- a. The General Services Manager shall create and maintain a list of persons who have been debarred or suspended in accordance with these procedures.
 1. This list shall include the names and addresses of all persons who have been debarred or suspended.
 2. For each debarred or suspended person, the list shall state the date of commencement and expiration of the debarment or suspension.
- b. The General Services Manager shall establish procedures to provide for the effective use of the list to ensure that the City does not do business with persons who have been debarred or suspended.

18. Effect of Debarment or Suspension

- a. Persons who have been debarred or suspended are excluded from conducting business with the City on behalf of themselves or as agents or representatives of other persons for the duration of the debarment or suspension.
- b. Persons who have been debarred or suspended are excluded from submitting bids, directly or indirectly (e.g., through an affiliate), 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, or receiving contracts for the period of debarment or suspension.
- c. The management of a corporate or other legal entity that has been debarred or suspended shall not conduct business with the City under a different corporate name.
- d. The City shall not accept any bid, proposal, quotation, or offer from any debarred or suspended person for the duration of the debarment or suspension.

- e. When a debarred person sells or otherwise transfers to a relative or to any other person over whose actions the debarred person exercises substantial influence or control, then that relative or other person is automatically suspended or debarred or proposed for debarment to the same extent as the seller or transferor is debarred, suspended, or proposed for debarment.

19. Effect of Debarment or Suspension on an Affiliate

- a. If the City determines that a person is an affiliate of a person that is debarred, suspended or proposed for debarment, the affiliate is debarred or suspended to the same extent as the person that is debarred, suspended or proposed for debarment.
- b. An affiliate that is debarred under this Section may appeal the debarment determination to the Debarment Hearing Officer by submitting a written request to the City Clerk within ten (10) days of notice of the debarment determination. An appeal under this Section shall be governed by the same rules and regulations in accordance with these procedures as are applicable to a Debarment Hearing Officer's procedure to debar a person, including an appeal to the City Council.
- c. The filing of an appeal under this Section shall not stay the decision to debar the affiliate.

20. Effect of Debarment or Suspension on Existing Contracts

- a. Notwithstanding the debarment, suspension, or proposed debarment, of a person, the City may continue existing contracts or subcontracts it has with that person that are in existence at the time the person was debarred, suspended, or proposed for debarment.
- b. The City may continue to place orders against existing contracts, including delivery contracts, held by a debarred or suspended person, unless the contract has been terminated.
- c. The City shall not renew or voluntarily extend the duration of current contracts, or consent to subcontracts, with debarred or suspended persons, unless the City Administrator states in writing the compelling reasons for renewal or extension.