

CON 7-20 (PR)

## Appendix A: King County Processes for SUSPENSION and DEBARMENT

This document details the processes for SUSPENSION/DEBARMENT of a RESPONDENT from consideration of award for a County contract.

### A. Membership of DEBARMENT COMMITTEE:

1. FBOD Director
2. Operations Cabinet Member (DNRP Deputy)
3. Operations Cabinet Member (DOT Deputy)
4. Operations Cabinet Member (DAJD Deputy)
5. Operations Cabinet Member (FMD Deputy)

### B. Membership of DEBARMENT BOARD OF APPEALS:

1. Executive's Designee
2. Director of Department of Executive Services
3. County Risk Manager

### C. Causes for SUSPENSION/DEBARMENT:

1. Suspension/debarment shall be imposed on a respondent by the Debarment Committee pursuant to the Debarment Policy and Procedures, for any of the following causes:
  - a. Conviction within the five years preceding commencement of the suspension/debarment for commission of a criminal offense as either an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of a public or private contract or subcontract;
  - b. Conviction within the five years preceding commencement of the suspension/debarment under state or federal statutes for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty that currently, seriously, and directly affects responsibility as a contractor to the County;
  - c. Conviction within the five years preceding commencement of the suspension/debarment under state or federal antitrust statutes arising out of the submission of bid proposals, including those proscribing proposal and bid rigging, price fixing between competitors, and collusion;
  - d. Violation of state wage payment laws, including:
    - i. Willful violation of a wage payment requirement, as defined in RCW 49.48.082, where the citation and notice of assessment for the violation was issued within the five years preceding commencement of the suspension/debarment; or
    - ii. Civil judgments entered by a court against a person, firm, or other legal entity for violations of wage payment requirements under state law within the five years preceding commencement of the suspension/debarment.

2. Suspension/debarment should be imposed on a respondent by the Debarment Committee for any of the following causes:
  - a. Violation of ethical standards set forth in contracts with the County;
  - b. Violation of contract provisions, such as the following, of a character that is regarded by the debarment committee to be so serious as to justify debarment action:
    - i. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract;
    - ii. Substantial failure to comply with commitments to and contractual requirements for participation by minority and women's business enterprises and equal employment opportunity; or
    - iii. A recent record of failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts, though failure to perform or unsatisfactory performance caused by acts beyond the control of the respondent shall not be considered as a basis for debarment;
  - c. Knowingly or negligently doing business with a debarred or suspended person in connection with a County contract;
  - d. Violation of a material provision of a voluntary exclusion agreement entered into with the County or of any settlement of a suspension/debarment action;
  - e. Knowing or negligent failure to pay the prevailing rate of wage to workers employed upon public works, or failure to post the prevailing wage rates as required by RCW chapter 39.12, within the five years preceding commencement of the suspension/debarment;
  - f. Intentional or negligent commission of any other act indicating a lack of business integrity, including, but not limited to, non-compliance with public policy, false statements and certifications, fraud in performance or billing, or lack of financial or technical resources; or
  - g. Any other cause that the Debarment Committee determines to be so serious and compelling as to affect responsibility as a contractor to the County, including debarment by another governmental entity for any cause similar to those in this section.

D. Aggravating and Mitigating Factors for DEBARMENT:

The following are aggravating and mitigating factors that the Debarment Committee may consider in determining whether to suspend or debar and the length of the debarment period:

1. The frequency of incidents and/or duration of the wrongdoing;
2. Whether there is a pattern or prior history of wrongdoing;
3. Whether the respondent has been excluded or disqualified by an agency of the federal government or has not been allowed to participate in state or local contracts or assistance agreements on a basis of conduct similar to one or more causes for suspension or debarment specified in this policy;
4. Whether the respondent has entered into an administrative agreement or voluntary exclusion agreement with a federal agency or a state or local government that is not government-wide but is based on conduct similar to one or more of the causes for suspension or debarment specified in this policy;

5. Whether the respondent has accepted responsibility for the wrongdoing and recognizes the seriousness of the misconduct that led to the cause for suspension or debarment;
6. Whether the respondent has paid or agreed to pay all criminal, civil, and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the government, and has made or agreed to make full restitution;
7. Whether the respondent has cooperated fully with the government agencies during the investigation and any judicial or administrative action. In determining the extent of cooperation, the debarment committee may consider when the cooperation began and whether the respondent disclosed all known pertinent information;
8. Whether the respondent took appropriate corrective action or remedial measures, such as establishing ethics training and implementing programs to prevent recurrence;
9. Whether the respondent brought the activity cited as a basis for suspension or debarment to the attention of the appropriate government agency in a timely manner;
10. Whether the respondent has fully investigated the circumstances surrounding the cause for suspension or debarment and, if so, made the result of that investigation available to the debarment committee;
11. Whether the respondent has taken appropriate disciplinary action against the individuals responsible for the activity that constitutes the cause for suspension or debarment; and
12. Other factors appropriate to the circumstances of a particular case.

E. Scope and duration of SUSPENSION:

1. A suspension may be used by the Debarment Committee until the Debarment Proceeding is completed. During the pendency of the Debarment Proceeding, the respondent is suspended from consideration of award of new County contracts, but may continue to work on pre-existing County contracts.
2. The duration of the suspension may be up to a period of six (6) months or the completion of the debarment proceeding, whichever is earlier.
3. If the respondent provides documentation that it has taken steps to mitigate or resolve the issue(s) during the debarment proceeding, the Debarment Committee reserves the right to reduce or lift the suspension.

F. Scope, effect, and duration of DEBARMENT:

1. Except to the extent prohibited by law, a respondent who is debarred shall be prohibited from consideration for award of new County contracts during the period of debarment.
2. The duration of the debarment should be commensurate with the cause(s) that led to the debarment proceeding and shall remain in effect for no longer than two (2) years.
3. Persons who are debarred shall be placed on a list of debarred participants, which list shall be disseminated to all County offices.

4. Persons who participate in new contracts with the County during the period of their debarment will not be paid for goods and services provided.
5. Debarment of a respondent under this policy constitutes debarment of all of its specifically identified principals, individuals, divisions, and other organizational elements from all new contracts with the County, unless the debarment decision is limited by its terms to one or more principals, individuals, divisions, or other organizational elements, or to specific types of contracts or transactions.
6. The debarment of a respondent under this policy may include the debarment of any other business that is, has been, or will be controlled or owned by the respondent or by any entity owned or controlled by a person or persons who own a controlling interest in the respondent then or at the time the debarment was imposed.

G. Referring a Respondent by Implementing Agency (IA) for SUSPENSION/DEBARMENT:

1. This is an internal County process, and third parties cannot use this suspension/debarment process.
2. All County employees should be responsible to immediately report any potential grounds for suspension/debarment to their manager within their IA.
3. When the IA manager becomes aware of potential grounds for suspension/debarment, s/he shall be responsible for gathering all available documents and presenting the relevant issues to his or agency director for review and potential request for suspension/debarment to the Debarment Committee within fifteen (15) days of the employees' notification.
  - a. Any justification and supporting documentation submitted to the agency director shall be in writing and cover all of the potential grounds for suspension/debarment.
  - b. All written justification should be clear and specific, and include all facts, dates, and other relevant information identifying the details of any and all causes for suspension/debarment.
4. The IA director or designee shall confer with PCSS to review the grounds or the issue prior to referral to the Debarment Committee. PCSS may confer with PAO in regard to pursuit of any suspension/debarment proceedings.
5. The IA director shall determine if there is sufficient cause to request suspension/debarment to the Debarment Committee for review. The IA director must make this determination within fifteen (15) days of notification by his or her IA manager.
6. If the IA director determines that that there is sufficient information to request a suspension/debarment proceeding, the IA director shall submit the following to the Debarment Committee:
  - a. Name of respondent;
  - b. Contract number (if applicable);
  - c. Cause(s) for suspension/debarment' and
  - d. All documents and information supporting the cause(s) for suspension/debarment.

H. Actions by the DEBARMENT COMMITTEE:

1. The Debarment Committee has sole authority to determine whether to initiate a suspension/debarment proceeding and to rule at such proceeding.
2. The Debarment Committee will review the request for suspension/debarment proceeding submitted by the IA director, and determine whether there is merit to proceed with a suspension/debarment proceeding.
3. The Debarment Committee may request additional information and hold meetings with the IA director before making a determination to proceed.
4. The Debarment Committee shall initially make a written determination of whether to implement a suspension of the respondent during the pendency of the debarment proceeding, and accordingly provide notice to the respondent if the Debarment Committee concludes that a suspension is required.
5. The Debarment Committee's evaluation of the request for suspension/debarment proceeding submitted by the IA director should be completed within fifteen (15) days of the IA director's request.
6. The Debarment Committee shall provide written notice to the IA director of the Debarment Committee's decision regarding his or her request for a suspension/debarment proceeding.

I. Notice of SUSPENSION/DEBARMENT PROCEEDING:

1. Once the Debarment Committee decides to initiate a debarment proceeding, the Debarment Committee shall provide written notice to the respondent of the following:
  - a. That the County is seeking to debar the respondent pursuant to this policy;
  - b. That during the pendency of the debarment proceeding, the respondent is, if the Debarment Committee so elects, suspended from consideration of award of new County contracts, but may continue to work on pre-existing County contracts;
  - c. The reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;
  - d. That the respondent may submit a written response within fifteen (15) days of the receipt of the Debarment Committee's notice;
  - e. That the respondent may request a hearing before the Debarment Committee;
  - f. That the respondent may appear at such a Debarment Committee hearing in order to challenge the proposed debarment, and that failure to appear at such a requested hearing may result in a waiver of the respondent's defenses to the debarment action and be taken by the Debarment Committee as an admission that the basis/bases for debarment is/are accurate, except to the extent that the respondent has preserved its challenges to the proposed debarment by means of a written submission pursuant to subsection 1(d) of this section;
  - g. That the respondent shall have no ex parte communication with any County employee, official, or representative regarding the facts and circumstances of the pending debarment proceeding;
  - h. The potential effect of a debarment; and
  - i. A copy of this policy.
2. Written notice shall be provided by certified mail to the respondent.

J. Respondent's Response to Notice of SUSPENSION/DEBARMENT:

1. Respondent may respond within fifteen (15) days of the Notice of Debarment Proceeding and submit in writing information and answer to the proposed debarment. The written response may include the following:
  - a. Indication of the items, facts, or conclusions that the respondent contests, and the basis/bases of the respondent's position regarding those items, facts, or conclusions;
  - b. Any additional specific information that the respondent believes would raise a genuine dispute over the material facts, and any mitigating factors to reduce the potential debarment period; and
  - c. The contact information for the authorized representative of the respondent.
2. The respondent may request in writing a hearing with the Debarment Committee regarding the proposed debarment. If such a hearing is requested, the Debarment Committee will inform the respondent of the date, time, and location of the hearing at least fifteen (15) days prior to the hearing.
3. The respondent's failure to respond to the Notice of Debarment Proceeding will result in the Debarment Committee making a debarment decision without the respondent's input.

K. Standard of Proof and Burden of Proof at SUSPENSION/DEBARMENT PROCEEDING:

1. The cause for debarment must be established by preponderance of the evidence. If the proposed debarment is based upon a conviction, civil judgment, or debarment by another governmental agency, the standard of proof shall be deemed to have been met.
2. The County has the burden of proof to establish the cause for debarment. The respondent has the burden of proof to establish mitigating circumstances.

L. Instructions for SUSPENSION/DEBARMENT PROCEEDING Hearing:

1. Any hearing shall be conducted in accordance with the Administrative Procedure Act (RCW Chapter 34.05) and, to the extent not covered by the Act, by the Uniform Procedural Rules codified in Chapter 1-08 of the Washington Administrative Code.

M. DEBARMENT COMMITTEE'S Notice of Recommendation for DEBARMENT:

1. If, based on its review, and following a hearing if requested by the respondent, the majority of the Debarment Committee determines that the facts support debarment, the Debarment Committee shall provide written notice to the respondent. The notice shall include the following information:
  - a. Date when the recommended debarment takes effect;
  - b. Each cause for the recommended debarment and the facts that the Debarment Committee found that support each cause;
  - c. The duration of the recommended debarment;
  - d. The effect of the debarment on the respondent's ability to contract with the County;
  - e. That the respondent may request an appeal to the Debarment Board of Appeals to dispute the recommended debarment or the length of the recommended

debarment period. The notice shall state that if no appeal is requested within fifteen (15) days of the issuance of the notice, the Debarment Committee shall issue a final, unappealable debarment recommendation to the County Executive; and

- f. That if the respondent requests an appeal, the recommended debarment order will not go into effect until the completion of the appeal.
2. Should the respondent not request an appeal, the Debarment Committee will provide its report and recommendation to the County Executive, who may issue a final debarment order. The order shall include the effective date of debarment.

N. Processes for Appeal of DEBARMENT RECOMMENDATION:

1. The respondent has the right to appeal a determination made by the Debarment Committee within fifteen (15) days of receipt a written determination from the Debarment Committee.
2. All appeals shall be in writing, and set forth the factual and legal justification for the appeal.
3. All appeals should be filed with the Debarment Board of Appeals. The Debarment Board of Appeals shall be limited to the factual record before the Debarment Committee in its review.
4. The Debarment Board of Appeals will endeavor to address all appeals within fifteen (15) days of receipt of the appeal. Any appeal may be granted or denied by the Debarment Board of Appeals, which shall issue a determination setting forth one of the following:
  - a. Affirming the final determination of the Debarment Committee;
  - b. Overturning the final determination of the Debarment Committee;
  - c. Directing a modification of the final determination of the Debarment Committee, including, but not limited to, the scope or duration of any debarment; or
  - d. Referring the matter back to the Debarment Committee for additional investigation or findings.
5. All decisions made by a majority of the Debarment Board of Appeals are final.

O. Authority of COUNTY EXECUTIVE:

1. The County Executive has the authority, in accordance with KCC 2.93.170, to not suspend or debar a respondent if the Executive determines that significant harm would accrue to the County by suspension or debarment of the respondent, or that mitigating circumstances do not warrant suspension or debarment, and notifies the County Council within thirty days of that determination.

P. Review of DEBARMENT Period:

1. After the period of appeal has lapsed and a final order of debarment has been issued, a debarred respondent may request that the Debarment Committee withdraw or modify the terms of the debarment, based on either of the following:
  - a. Newly discovered material evidence; or

- b. Reversal of a conviction, civil judgment, or agency order upon which a debarment was based.

Q. Processes for the Creation and Maintenance of the SUSPENSION/DEBARMENT List:

1. All respondents that have been suspended or debarred will be placed on a suspension/debarment list, to be maintained by PCSS.
2. The Debarment Committee will provide the identities of the subject respondents to the County Council and to PCSS.
3. PCSS will maintain a copy of this list on its internet website.

R. Limitations of SUSPENSION/DEBARMENT:

1. The County's suspension/debarment requirements are separate and apart from any other jurisdiction's requirements, and the County's suspension or debarment of a respondent is not intended to be automatically binding on any other jurisdiction.