

**CHICAGO PARK DISTRICT
DEPARTMENT OF PURCHASING**

DEBARMENT RULES AND PROCEDURES

March 9, 2011



1. Scope of Debarment Rules

- a. In accordance with Chapter 11 Section G of the Code of the Chicago Park District, the Director of Purchasing (the “DP”), establishes the following rules and procedures for the debarment of businesses. (the “Rules”).
- b. The DP may, in the interest of the Chicago Park District (the “CPD”) or the public, recommend that the Chicago Park District Board of Commissioners debar a Business for any of the causes stated in these Rules, using the procedures indicated in these Rules. The existence of a cause for Debarment, however, does not necessarily require that the CPD seek to debar any Business; the seriousness of the Business’ acts or omissions and any mitigating factors should be considered in making any Debarment recommendations. The presence of any mitigating factors does not necessarily mean that Debarment is unwarranted. Accordingly, the Business has the burden of demonstrating, to the satisfaction of the CPD, that Debarment is not warranted due to these potentially mitigating factors.
- c. These Rules apply to all Businesses, as defined in Chapter 11 of the Code of the Chicago Park District, involved or seeking to be involved in any procurement transactions, without regard to either the source of funds or the amount involved.
- d. These Rules do not restrict the ability of the DP to make determinations pertaining to the responsibility or responsiveness of a Business or other person on a contract-by-contract basis for any reason, including those in these Rules; to suspend a Business; or to reject any and all bids pursuant to the applicable provisions of the Code of the Chicago Park District or any other provision of law or legally permissible reason.

2. Acts or Omissions That Are Grounds for Debarment

- a. The Board may debar a Business for:
 - i. Conviction of a 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.
- ii. Violation of the terms of a Park District contract, subcontract or agreement 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 the Code of the Chicago Park District, policy, or any other law.
 - iii. Making, causing to be made or attempting to make any false, deceptive, or fraudulent material statement in any bid, proposal, or application for Park District or any government work, or in the performance of any such contract for the Park District or any governmental unit or agency, or in application for any permit or license;
 - iv. Making, causing to be made or attempting to make, any false, deceptive, or fraudulent material statement in any application to obtain, expand, or continue as an M/WBE.
 - v. Engaging or participating in bid-rigging or stringing, or facilitating the bid-rigging or stringing of any vendor or entity or individual;
 - vi. Refusal to cooperate with any Park District investigation;
 - vii. Refusal to cooperate with reasonable requests of Park District inspectors, representatives, or other personnel with respect to work under contract provisions, plans, or specifications, or otherwise;
 - viii. Founding, establishing or operating an entity in a manner designed to evade the application or defeat the purpose of this or any other Park District policy or any provision of any federal, state or local statute, ordinance, rule or regulation or any other applicable law, rule or regulation; or

ix. 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 Park District, or other dishonesty incident to obtaining, pre-qualifying for, or performing any Park District contract or modification thereof;
 10. violation of ethical standards established by the Park District or other dishonesty incident to applying, obtaining, qualifying for, or acquiring any certification, license, or permit related in any way to the Park District;
 11. failing to timely pay any judgment or other adjudicated debt owed to the Park District 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 Business in a Park District contract or a related transaction;
 15. violating any provision in a Debarment action between the Park District and another Business;
 16. Debarment, Suspension, Voluntary Exclusion or Interim Constraints imposed by any governmental entity or agency;
 17. failing to defend, indemnify, or hold the Park District harmless pursuant to a contractual obligation after having received a request to do so;
 18. assisting or facilitating another Business in any of the foregoing conduct.
- x. 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 Business, including facilitating another vendor's or other person's

violation of any Park District Code, rule, policy, contract, or any federal, state or local law relating to public contracting.

3. Procedures to Debar/Suspend

a. Notice

- i. The DP may issue a Notice of Debarment (hereinafter the “Notice”) for any acts or omission listed in these Rules as grounds for Debarment.
- ii. The DP shall deliver such Notice to the Business’ contact and address as indicated in its contract or agreement via certified mail or personal service or by any other means reasonable to provide actual notice to the Business (including publication). Date of delivery 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. (the “Date of Delivery”)
- iii. The Notice shall contain the following:
 1. That Debarment is being proposed
 2. Of the basic facts and reasons for the proposed Debarment, in terms sufficient to put the Business on notice of the conduct or transactions on which it is based;
 3. The cause(s) relied upon in these Rules for the proposed Debarment;
 4. The scope and duration of the Debarment sought;
 5. A notification that to contest the proposed Debarment, the Business must, within 28 calendar days from the Date of Delivery of the Notice, submit a 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 and the identification of specific information, if any, that raises a genuine dispute over the material facts relevant to the Debarment;
 6. Notification that a failure to submit a verified, written Answer within the time allowed by these Rules shall be deemed an admission of the allegations set forth in the Notice;
 7. Name, address, telephone and fax numbers, and e-mail address of the CPD contact who can discuss the matter with the Business;
 8. Copies of the portion(s) of any law, statute, ordinance, regulation, rule or policy alleged to have been violated, if applicable;
 9. A copy of these Debarment Rules, and
 10. 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 as part of an investigation are admissible in the debarment proceeding subject to the limitations as set forth in these Rules.

b. Written Answer Contesting Proposed Debarment

- i. In response to the Notice, the Business has the burden of production, i.e. – coming forward with sufficient information, documentation and argument to dispute the proposed Debarment. If the Business meets its burden of production it must be found by a preponderance of the evidence that the CPD has sufficient evidence to impose Debarment or a lesser remedy.
- ii. Within 28 calendar days from the Date of Delivery of the Notice the Business shall provide an Answer to the DP. The Answer shall 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 Business contests the Debarment. Any documentation supporting the Answer must be attached or, if voluminous, indexed and included separately. Should the Business fail to file a timely Answer to the Notice, all of the allegations of the Notice shall be deemed admitted. Date of submission of the Answer 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 CPD.

c. Written Answer Contesting Debarment with Request For In-person Hearing

- i. If the Business believes its Answer raises a genuine issue of disputed material fact that cannot be resolved in the Answer alone, the Business can request an in-person hearing. Any such request must be included within the Answer, demonstrate that the hearing is necessary to decide Debarment, and must include a description any proposed testimony. The Business must identify facts at issue and any potential witnesses it will call at the hearing in this request.
- ii. Within 14 calendar days from receipt of the Answer, the DP shall provide a written decision denying or granting the Business' request for an in-person hearing, or if no hearing request was made by the Business, the DP

may determine that an in-person hearing is warranted and notify the Business of such (the “Hearing Decision”). However, in-person hearings will only be granted when the DP finds that a disputed issue of material fact exists based on the parties’ written submissions.

- iii. If applicable, the Hearing Decision shall specify the date, time and location of the hearing and issues to be examined, if applicable. All hearings shall be conducted no less than 30 calendar days, but no more than 45 calendar days from Date of Delivery of the Hearing Decision. A list of all attendees under the control of the Business must be submitted to the DP at least 5 days before the hearing. The DP can limit attendees and witness can be excluded from a hearing when not testifying.
- iv. The hearing shall be before the DP, the Director of the CPD user Department and a member of the CPD Law Department (hereinafter, the “Hearing Panel”). The DP shall conduct the hearing and 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.
- v. Hearings shall be conducted in a manner consistent with principles of fundamental fairness. The DP may use flexible procedures, and is not required to follow formal rules of evidence or procedure. 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 Hearing Panel.
- vi. At the hearing the Business may be represented by counsel and have the right to present witnesses and confront witnesses presented in support of Disbarment. The Hearing Panel may question witnesses, the Business or their representative(s).
- vii. Failure of the Business to be present at a hearing or failing to participate in any hearing in good faith (as determined by the Hearing Panel) will result in all allegations being deemed admitted.
- viii. Documents and reports of witness interviews (“statements”) obtained as part of an investigation shall be admissible, provided they are included with or identified in the Notice or Answer and the presenting party either shows “good cause” why the witness cannot appear or the non-presenting

party stipulates to the admission. “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 DP. Such statements and demonstrations of “good cause” must be provided at least five calendar days prior to the in-person hearing. Each party may request the appearance of witnesses under the control of the other, but such requests must be made no less than 5 calendar days prior to the in-person hearings and shall be determined within the sole discretion of the DP.

ix. Exhibits or other documentary evidence not previously submitted or produced pursuant to these Rules may not be presented at the in-person hearing without the agreement of the opposing party.

d. The Record

i. The Notice, the Answer, and any decisions of the DP, and any materials submitted in support of them, proofs of service, and any documents or correspondence relating to the proceedings, the testimony of witnesses at the in-person hearing, if any, shall constitute the record.

4. Debarment Recommendations and Decisions

a. Within 28 calendar days from the conclusion of the in-person hearing or if no in-person hearing is conducted, then from the date of receipt of the Business’ written Answer, the DP shall provide a written decision on proposed Debarment. If the DP decided for debarment or less than full debarment, the decision shall include information:

1. Referring to the Notice of Proposed Debarment;
2. Specifying the reasons for debarment with references to facts in the Record in terms sufficient to put the Business on notice of the conduct and/or transaction(s) upon which it is based;
3. Stating the period and type of debarment,
4. Stating the effect of the debarment on the Business’s existing contracts; eligibility as a sub-contractor or supplier of any tier on any existing and or future contracts and, the effect of the debarment on affiliates or any other individuals associated with the Business;

5. Stating the date, time and location of the meeting of the CPD Board of Commissioners (the “Board Meeting”) where the DP will make the recommendation to the Board for Debarment.
- b. A decision for Debarment by the DP shall be made as a recommendation to the CPD Board of Commissioners on the basis of the Record, as defined in these Rules, by a letter to the Board at a properly noticed Board Meeting (the “Board Letter”). This Board Letter 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 Business’ existing contracts, agreements or permits;
 5. Stating the effect of the recommended Debarment on the Business’ eligibility to act as a subcontractor or supplier of any tier on any existing and/or future contracts, agreements or permits; and
 6. Stating the effect of the recommended Debarment on the Business’ affiliates, entities or any other individuals; and
 7. Include a copy of the Notice, Answer, and any written decisions of the DP.
- c. At said Board Meeting the CPD Board of Commissioners shall vote for any Debarment of the Business. The date of the vote shall be the effective date of Debarment unless otherwise determined in accordance with these Rules.
- d. Once the Agenda of said Board Meeting has been publicly posted, a copy of the Board Letter is to be provided to the Business prior to the start of the Board Meeting, if requested by the Business.
- e. The DP may withdraw the notice of proposed debarment without prejudice any time prior to the vote of the CPD Board of Commissioners.
- f. The decision of the Board, in acting on the DP’s recommendation, shall be final. The Business’ sole remedy shall be judicial review by a common law writ of certiorari in Illinois.

5. Consequences of the Notice of Proposed Debarment

- a. From the date of the Notice until a decision is made the following conditions apply:
 - i. The Business may submit bids or proposals on contracts. If awarded new contract and then debarred the contract can be terminated. The debarment proceedings may come into consideration when looking at bid.
 - ii. The Business may continue on an existing contract. If debarred the Business participation in any contracts may be terminated or suspended.
- b. When causes for Debarment are serious and the evidence supporting Debarment is compelling or highly reliable, such as a conviction, civil judgment, admission of any false, deceptive or fraudulent business practices, or debarment by another government agency, the DP may take an interim action constraining the vendor in dealing with the Park District after the Notice but before a final decision is made. The DP shall provide notice of such constraints in the Notice of proposed debarment or in a separate notice. Such constraints may include but are not limited to any of the following:
 - i. Termination of all existing contracts, agreements or permits with the Business,
 - ii. Termination of the Business' participation as supplier or subcontractor on existing contracts, agreements or permits,
 - iii. Ineligibility for the award of new contracts, agreements or permits.
- c. The Business shall have 10 days after notice of the constraints on contracting are being considered to write a response stating reason why the constraint should not be applied. No restriction shall go into effect until after the time for response has passed, or in the case of response, until the CPD issues a decision on the application of the interim constraints.
- d. If Business can prove that it did not receive proper notice pursuant to these Rules the Business may, within three days of receiving notice of a restriction can seek reconsideration of restrictions.
- e. Constraints shall remain in effect until a final debarment decision is made.

6. Consequences of Debarment

- a. Debarment constitutes debarment of all units, divisions, or other organizational elements of the Business. It can be extended to any affiliates, entities or individuals associated with or employed by the Business who can be proven to have acted improperly or contributed to the improper acts.
- b. Debarment will apply to all contracts, agreements or permits involving the Park District. Debarment may include subcontractor or supplier.

7. Other Guidance Necessary For Effective Implementation

- a. Any deadline in these Rules may be extended in the discretion of the DP. Requests for extension of deadlines shall be in writing and shall be submitted at least five days before the deadline passes. The DP shall issue a decision within three days of receipt of the request. One such extension shall be granted absent extraordinary circumstances, but additional extensions are discouraged. The DP will notify the Business of any extensions, by fax, email or mail.
- b. When the DP finds that a Business' conduct was improper, but does not rise to a level warranting full debarment, the DP may impose less than full debarment including partial debarment or a finding of non-responsibility, or unacceptability as a Business, sub-contractor, or supplier, in relation to certain contracts. The DP can still make a finding of non-responsibility in other contexts.
- c. Debarment may be cancelled prospectively or the duration and or scope may be reduced or waived by the DP, upon written application of the debarred entity, supported by documentation, for any of the following reasons:
 1. Newly discovered material evidence or documentable error in findings of the decision;
 2. Reversal of the conviction or judgment which Debarment is based. If the conviction or judgment was based on an admission of conduct that was a cause for Debarment, the DP shall determine whether such admitted conduct negatively affects the responsibility of Business;
 3. Bone fide change in ownership and or control of the Business, or other mitigating factors sufficient, in the judgment of the DP, to remove the conditions giving rise to the conduct that led to the ineligibility.

4. The DP may suspend a debarred Business' inability to contract with the CPD in whole or part, to allow execution of specific contract or type of contract with the Business, upon written application by a CPD Department head whose department is affected by the proposed contract, setting forth facts and providing documentation sufficient in the judgment of the DP to establish:
 - a. That the public health, safety, or welfare of the Park District or public requires the goods or services of the person or entity, or
 - b. The CPD is unable to acquire goods or services at comparable price, quality, or quantity from other source
- ii. An application by or on behalf of a debarred Business to cancel, reduce or waive the duration or scope of debarment must be in writing, state the specific bases for the application and include all reasons and documents the applicant intends to rely upon in support of the application. The DP may convene an in-person hearing under the same conditions as indicated in these Rules to determine any cancelation, reduction or waiver of Debarment.
- iii. The DP is free to amend, update or otherwise change these Rules as needed.