



CITY OF CHICAGO

DEPARTMENT OF PROCUREMENT SERVICES

*via first class U.S. mail and certified mail, return receipt requested*

February 10, 2021

Joel Kennedy  
Joel Kennedy Constructing Corp.  
40 Noll Street  
Waukegan, IL 60085

**Re: Notice of Proposed Debarment of Joel Kennedy and  
Joel Kennedy Constructing Corp.**

Dear Mr. Kennedy:

Take notice that, pursuant to Section VII, Paragraph 7.02 of the City of Chicago ("City") Department of Procurement Services ("DPS") Debarment Rules ("Rules," a copy of which is attached as **Exhibit A**), DPS is proposing to permanently debar you, Joel Kennedy ("Kennedy"), personally, and your company, Joel Kennedy Constructing Corp. ("JKCC"). The proposed debarment may result in Kennedy, JKCC, or any Vendor (as defined in the Rules) of which they are an Affiliate (as defined in the Rules), officer, director, or employee, being ineligible to serve as a prime and/or subcontractor, of any tier, on contracts with the City, including serving as a supplier.

**I. Notice of Proposed Debarment**

DPS proposes debarment of Kennedy and JKCC. The following Debarment Rule sections, grounds, and facts support the conclusion that Kennedy and JKCC knowingly made false statements to the City in connection with the City's workforce residency requirements, thereby violating the Debarment Rules and various laws while also compromising the integrity of the City's procurement process.

**Kennedy and JKCC knowingly<sup>1</sup> made false statements and submitted false claims to the City on at least four City contracts.**

JKCC has been doing business with the City since approximately April 1994 and has been awarded at least 29 City contracts since then for work related to water main construction and installation, sewer improvement projects, and other public works projects and construction.

Between 2013 and 2018, Kennedy, in his capacity as the President and owner of JKCC, and JKCC, as an entity, knowingly made false statements and submitted false claims to the City when they

<sup>1</sup> As defined in MCC §§ 1-21-010(d) and 1-22-010, *infra*.

submitted weekly certified payrolls falsely claiming to be in compliance with the Chicago Residency Ordinance (“CRO”), § 2-92-330, *et seq.*, of the Municipal Code of Chicago (“MCC”) on at least four (4) contracts between JKCC and the City, acting through its Department of Water Management (“DWM”).

The four (4) contracts at issue here (which are individually referred to by their P.O. numbers, and, collectively, as the “DWM Contracts”)<sup>2</sup> are as follows:

- i. JKCC was awarded a City contract entitled “Water Main Construction – District Two,” Contract P.O. 27738, Specification No. 112102, on or around January 30, 2013. The contract term was originally set to end on or around January 27, 2016 but was extended through at least December 31, 2016.
- ii. JKCC was awarded a City contract entitled “Water Main Construction – District One,” Contract P.O. 27739, Specification No. 112101, on or around January 31, 2013. The contract term was originally set to end on or around January 27, 2016 but was extended through at least December 31, 2016.
- iii. JKCC was awarded a City contract entitled “Damen Avenue Sewer Improvement – N. Damen Ave & W. Albion Ave.,” Contract P.O. 28325, Specification No. 115457, on or around July 24, 2013, and ended on or around July 27, 2017.
- iv. JKCC was awarded a City contract entitled “Augusta Boulevard Sewer Improvement,” Contract P.O. 43252, Specification No. 127995, on or around October 19, 2016, and ended on or around February 13, 2018.

In connection with each of the DWM Contracts, JKCC agreed to observe and comply with all applicable federal, state, county and municipal laws, statutes, ordinances, and executive orders.

### **Chicago Residency Ordinance**

In particular, each of the DWM Contracts contain provisions that require JKCC to comply with the requirements of the CRO. *See* Contract P.O. 27738 at § VIII.G.2; Contract P.O. 27739 at § VIII.G.2; Contract P.O. 28325 at § VIII.G.2; Contract P.O. 43252 at § VII.II.2.

The CRO requires that, for construction projects awarded by the City with contract values of \$100,000 or more, the total hours worked on the site of the construction project shall be performed at least 50 percent by City residents. MCC § 2-92-330(a). The CRO requires further that the total hours worked on the site of the construction project shall be performed at least 7.5 percent by project area residents, which can be counted toward the 50 percent City resident requirement. MCC § 2-92-330(a).

To comply with the CRO, contractors working on covered projects must submit weekly certified payroll reports to the City that clearly identify the actual residence of every employee on each

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<sup>2</sup> The DWM Contracts can be found on the DPS website by visiting <https://webapps1.chicago.gov/vcsearch/contracts> and searching for the relevant P.O. numbers, and have previously been provided to JKCC as part of the OIG investigatory file on August 12, 2020.

submitted certified payroll. MCC § 2-92-330(b). Failure to comply with the CRO results in assessment of stipulated damages.

JKCC did not comply with the CRO as to the DWM Contracts. Instead, to obtain the DWM Contracts, and to falsely portray to the City that JKCC was complying with the terms of those contracts, JKCC engaged in multiple fraudulent schemes to evade the City's CRO requirements and to avoid the assessment of damages for failure to comply the CRO requirements, which were incorporated into the DWM Contracts, and made numerous false certifications and statements to the City in connection with the CRO.

### **JKCC's Payroll Records**

JKCC had multiple systems of keeping records of its payroll to allow JKCC to carry out its fraudulent scheme and conceal its violations of the CRO from the City for years. JKCC submitted certified payroll reports to the City in connection with the DWM Contracts were substantially different - and inaccurate - when compared to the in-house payroll kept by JKCC.

During a typical week, JKCC employees would gather information from superintendents and other JKCC employees working on various JKCC projects to create written and/or typed records of what work employees performed on which JKCC projects, among other information. Then, JKCC employees would create weekly timesheets to submit to "Paychex," JKCC's in-house payroll system which is used to generate payroll. JKCC employees also manually created certified payroll forms.

Beginning in approximately 2014, the City began requiring contractors, including JKCC, to use an electronic system called "LCPTTracker" to submit certified payroll information, which JKCC was required to submit as condition of the DWM Contracts and of the CRO. JKCC employees submitted payroll information to the City via LCPTTracker for the majority of the DWM Contracts and submitted paper certified payroll reports to the City prior to implementing LCPTTracker. The payrolls submitted through LCPTTracker each contain a certification that the payrolls submitted under the contract are correct and complete; those certifications were variously signed by Kennedy and Michael Patti. JKCC submitted hundreds of invoices and hundreds of weekly certified payroll reports to the City under the DWM Contracts. The DWM Contracts are worth over \$162,000,000.00.

### **The OIG Report**

Evidence gathered by the OIG shows that JKCC knowingly made false statements and submitted false claims to the City of Chicago when it submitted weekly certified payrolls falsely claiming to comply with the CRO. In summary, the OIG found that, rather than comply with the CRO, JKCC engaged in a multifaceted fraudulent scheme to create the appearance of compliance.

The OIG determined that JKCC's conduct violated the False Statements Ordinance, MCC § 1-21-010, et seq. ("FSO"), the False Claims Ordinance, MCC § 1-22-010, et seq. ("FCO"), MCC § 2-92 (CRO), Illinois's Public Contractor Misconduct law under 720 ILCS 5/33-7, and the City of Chicago Debarment Rules, Section V, paragraphs (c), (g) and (h), and recommended that DPS debar Kennedy and JKCC.

Additionally, the OIG described a *qui tam* case that was filed on behalf of, among others, the City, against JKCC and several of its subcontractors (all of whom have subsequently been voluntarily dismissed), entitled *United States of America, State of Illinois, State of Illinois Department of Transportation and City of Chicago, ex rel., Angel Milazzo v. Joel Kennedy Constructing Corp.*, Case No. 17-cv-3062 (U.S. Dist. Ct. for the N.D. of Ill., E. Div.), for, *inter alia*, violation of the FCO in connection with the DWM Contracts (“FCO Action”). The City, led by the City’s Department of Law (DOL), intervened on its own behalf in the FCO Action, and on November 26, 2019, DOL filed its Complaint in Intervention adding Kennedy as a defendant and stating claims for violation of the FCO, the FSO, the Consumer Fraud Ordinance, MCC § 2-25-090, et seq. (“CFO”), and for breach of contract.

### **JKCC’s Response to the OIG Report**

On July 13, 2020, DPS informed Kennedy that he and JKCC were the subject of the abovementioned OIG report and, after obtaining a signed Confidentiality Agreement, provided JKCC with a copy of the OIG report so that JKCC could respond to the allegations contained in the report. On September 4, 2020, JKCC provided its response (“JKCC Response”). In that response, JKCC admitted that payroll falsification occurred but claimed that Kennedy was not aware of that fraud. JKCC also argued that the presence of mitigating factors made permanent debarment inappropriate.

### **JKCC’s Residency Fraud**

Together, the OIG report and JKCC’s Response, as well as the allegations made in the *qui tam* case, demonstrate that JKCC and Kennedy knowingly engaged in a systematic pattern of fraud and dishonesty, specifically through, among other things, the omission, concealment, and suppression of hundreds of hours worked by non-City residents on the DWM Contracts, and the omission, concealment, and suppression of the actual residency information of JKCC’s workforce on the DWM Contracts, with the intent that the City rely upon this false information to continue doing business with JKCC, approve its claims for payment, and believe that JKCC was complying with the CRO and its contractual obligations. JKCC’s Response to the OIG report fails to show that JKCC’s admitted fraudulent behavior does not warrant permanent debarment, but rather confirms that JKCC purposefully committed the multifaceted residency fraud scheme.

First, JKCC regularly omitted workers who resided outside of the City from its certified payroll reports and/or from LCPTracker submissions to the City, even though these employees performed work on the DWM Contracts, as recorded in JKCC’s in-house payroll system, and even though JKCC was required under the DWM Contracts to provide information about these workers’ performance on the DWM Contracts to the City. JKCC engaged in this deception to make it falsely appear that a larger percentage of the overall hours performed by workers on the DWM Contracts was performed by City residents. By leaving workers who lived outside of the City off the certified payroll that it submitted to the City – when in fact those workers had performed substantial amounts of work under the DWM Contracts – JKCC fraudulently represented to the City that JKCC had complied with the CRO, as required by the DWM Contracts.

JKCC also submitted false City addresses on the certified payroll reports submitted to the City in connection with the DWM Contracts for JKCC employees who did not reside in the City. The

false addresses included the address of JKCC's General Counsel for two JKCC employees who did not reside at that address. This practice fraudulently increased the number of City residents reported to the City as performing work on the DWM Contracts. Additionally, JKCC submitted false information about which of JKCC's employees worked on which of the DWM Contracts to appear compliant with the City's CRO. For example, JKCC sometimes submitted certified payroll reports to the City that falsely listed certain workers as having performed hours on one of the DWM Contracts when, in fact, those workers had actually performed hours for JKCC on a different job.

The over-inclusion of Chicago-based employees, including some with fake Chicago addresses, and the under-inclusion of non-Chicago-based employees increased the percentages of Chicago residents reported to the City on the DWM Contracts to make it appear that JKCC had met the requirements of the CRO and the DWM Contracts. JKCC's in-house payroll records, which were not submitted to the City, demonstrate that JKCC violated the CRO requirements on the DWM Contracts because they show that on the DWM Contracts far less than 50 percent of the hours worked were performed by City residents.

JKCC committed the fraud and other violations alleged herein through, at a minimum, its senior employee, Michael Patti II ("Patti"), its President and owner Kennedy, and/or its other officers, directors, employees, agents, and/or personnel. Patti has been employed as a civil engineer with JKCC since approximately 2003. From 2003 to 2015, Patti reported directly to Angelo Milazzo ("Milazzo"), who in turn reported directly to JKCC's President and owner, Kennedy. Milazzo was an employee at JKCC from approximately 1987 to 2015. Milazzo was also a 10 percent owner of JKCC until at least 2012. During his employment at JKCC, Milazzo held several senior positions, including Corporate Secretary/Treasurer, Project Manager, Engineer, and Head Estimator. Since Milazzo's departure from the company in approximately 2015, Patti has been the Project Manager, Resident Engineer and Head/Senior Estimator for JKCC, and Patti reports directly to Kennedy.

By his own admission, Patti, acting within the scope of his employment, submitted the false certified payroll information described above to the City on behalf of JKCC knowing that the information was false at the time it was submitted on the DWM Contracts, and that he learned the falsification scheme from Milazzo. In summary, JKCC's senior officers and owners, including Kennedy, knew or should have known that the certified payrolls submitted to the City related to the DWM Contracts were false because those certified payrolls omitted non-City resident who had performed work on the DWM Contracts, provided false City addresses for non-City residents who had performed work on the DWM Contracts, and/or claimed that certain workers had worked on the DWM Contracts when, in fact, they had not performed work on the DWM Contracts.

JKCC made these false certifications to be, and continue to be, awarded contracts by the City, including the DWM Contracts; to continue receiving payment on invoices submitted to the City; and to avoid paying any penalties associated with failure to comply the CRO or the DWM Contracts. Kennedy's claimed lack of knowledge regarding the complex residency fraud scheme implemented by JKCC, even if true, cannot absolve Kennedy from responsibility for the fraud JKCC committed against the City; there is no question that he acted knowingly as defined in MCC § 1-21-010(d) and 1-22-010.

**Violations of Law**

Subsection 1-22-010(a) of the MCC is violated, when, among other things, any person:

(1) knowingly presents, or causes to be presented, to an official or employee of the city a false or fraudulent claim for payment or approval; (2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the city; [or] ... (7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the city.

Section 1-22-010 of the MCC defines a "claim" as:

any request or demand, whether under a contract or otherwise, for money or property which is made by a city contractor, grantee, or other recipient if the city is the source of any portion of the money or property which is requested or demanded, or if the city will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

Under Section 1-22-010 of the MCC,

"Knowing" and "knowingly" mean that a person, with respect to information:

- (1) has actual knowledge of the information;
- (2) acts in deliberate ignorance of the truth or falsity of the information; or
- (3) acts in reckless disregard of the truth or falsity of the information, regardless of whether there is specific proof of intent to defraud.

Subsection 1-21-010(a) of the MCC provides, in pertinent part:

Any person who knowingly makes a false statement of material fact to the city in violation of any statute, ordinance or regulation, or who knowingly makes a false statement of material fact to the city in connection with any application, report, affidavit, oath, or attestation, including a statement of material fact made in connection with a bid, proposal, contract or economic disclosure statement or affidavit, is liable to the city for a civil penalty of not less than \$500.00 and not more than \$1,000.00, plus up to three times the amount of damages which the city sustains because of the person's violation of this section. A person who violates this section shall also be liable for the city's litigation and collection costs and attorney's fees. The penalties imposed by this section shall be in addition to any other penalty provided for in the municipal code.

Subsection 1-21-010(d) of the MCC provides, in pertinent part:

For the purposes of Chapter 1-21 of this Code, a person knowingly makes a false statement of material fact when that person (i) makes a statement of material fact with actual knowledge that the statement was false, or (ii) makes a statement of



material fact with knowledge of facts or information that would cause a reasonable person to be aware that the statement was false when it was made, or (iii) signs, certifies, attests, submits or otherwise provides assurances, or causes any other person to sign, certify, attest, submit or otherwise provide assurances, that a statement of material fact is true or accurate in deliberate ignorance or reckless disregard of the truth or falsity of the statement. For purposes of this section, a person who fails to make a reasonable investigation to determine the accuracy, truthfulness or completeness of any material fact acts in deliberate ignorance or reckless disregard of the truth or falsity of the material fact.

The CFO makes it unlawful for a business to “engage in any act of consumer fraud, unfair method of competition, or deceptive practice while conducting any trade or business in the city,” including “any conduct constituting an unlawful practice under the Illinois Consumer Fraud and Deceptive Business Practices Act.” MCC at § 2-25-090(a).

The Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2, makes unlawful, among other things, “Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the ‘Uniform Deceptive Trade Practices Act’ . . . in the conduct of any trade or commerce.”

## **II. Violations of DPS Debarment Rules**

DPS proposes debarment of Kennedy and JKCC for violating the following Debarment Rule sections, based on the above-cited facts and the following allegations:

1. Section V(b): “Violation of the terms of a City 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 . . . or (4) A history of failure to meet . . . City resident worker obligations . . . or any other contracting or subcontracting obligation imposed by the Municipal Code of Chicago or any other law.” Kennedy and JKCC violated this section because they repeatedly violated the terms of the DWM Contracts, including but not limited to JKCC’s willful history of failure to meet the CRO obligations under the DWM Contracts. This conduct also violated the FCO, the FSO, and the CFO.
2. Section V(c): “Making or attempting or causing to be made or attempting to cause to be made any false, deceptive, or fraudulent material statement in any bid, proposal, or application for City or any government work or in the performance of any such contract for the City or a government agency, or application for any permit or license.” Kennedy and JKCC violated this section because they made or caused to be made false, deceptive, and fraudulent material statements in the falsified certified payroll reports they submitted to the City under the DWM Contracts, and while requesting payment for invoices submitted under the DWM Contracts.

3. Section V(f): "Founding, establishing or operating an entity in a manner designed to evade the application or defeat the purpose of [the Rules] or any provision of the Municipal Code of Chicago, City of Chicago rule or regulation, the statutes, rules or regulations of the State of Illinois, Cook County, or any federal statute, rule or regulation, or any other legally applicable law, regulation, or rule." Kennedy and JKCC violated this section because they engaged in a multifaceted fraudulent scheme to create the appearance of compliance with, and in order to evade the application of, the City's CRO requirements on the DWM Contracts.
4. Section V(g)(1): "Improper conduct, including but not limited to the commission or attempted commission of intentional or negligent billing irregularities." Kennedy and JKCC violated this section by devising and implementing a fraudulent scheme to create the appearance of compliance with the City's CRO requirements on the DWM Contracts while intentionally omitting, concealing, and falsifying information, including the residency of its workers, on the certified payrolls it submitted to the City.
5. Section V(g)(2): "Improper conduct, including but not limited to the commission or attempted commission of submitting false or frivolous or exaggerated claims, documents, or records." Kennedy and JKCC violated this section by engaging in improper conduct which included creating and submitting falsified certified payrolls to the City on the DWM Contracts in order to obtain payments by the City on the DWM Contracts.
6. Section V(g)(3): "Improper conduct, including but not limited to the commission or attempted commission of falsification of claims, documents, or records." Kennedy and JKCC violated this section by engaging in improper conduct and creating and submitting falsified certified payrolls to the City on the DWM Contracts.
7. Section V(g)(6): "Improper conduct, including but not limited to the commission or attempted commission of use of false or deceptive statements to obtain some benefit, or causing competition to be restrained or limited." Kennedy and JKCC violated this section by engaging in improper conduct which included creating and submitting falsified certified payrolls to the City on the DWM Contracts to obtain contracts worth over \$162,000,000.00 and to avoid paying the stipulated damages under the CRO.
8. Section V(g)(7): "Improper conduct, including but not limited to the commission or attempted commission of misrepresentation to any governmental agency or governmental official." Kennedy and JKCC violated this section by engaging in improper conduct and creating and submitting falsified certified payrolls to the City on the DWM Contracts to create the appearance that JKCC had complied with the CRO requirements in, and to obtain payments under, the DWM Contracts.
9. Section V(g)(10): "Improper conduct, including but not limited to the commission or attempted commission of violation of ethical standards established by the City, or other dishonesty incident to applying, obtaining, prequalifying for, or performing any contract or modification thereof." Kennedy and JKCC violated this section because they engaged in dishonesty when they created and submitted falsified certified payrolls to the City on the DWM Contracts and obtained payments from the City through dishonesty.



10. Section V(h): “Any other cause of so serious or compelling a nature that it affects the responsibility of the vendor.” Kennedy and JKCC violated this section because they engaged in a multifaceted fraudulent scheme to create the appearance of compliance with the City’s CRO requirements on the DWM Contracts and willfully omitted and concealed information from the City about JKCC’s workforce, including the residency of its workers, and submitted false information on its certified payroll reports to the City, with the intent to conceal these violations of the CRO requirements from the City. This conduct violated the FCO, the FSO, the CFO, and the DWM Contracts, and demonstrates a course of conduct so serious and compelling that it proves that JKCC and Kennedy are not responsible to perform work on future City contracts.
  
11. Section XI provides for imputation of knowledge, including but not limited to, as follows:
  - a. Paragraph 11.01: “The 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 vendor when the conduct occurred in connection with the individual’s performance of duties for or on behalf of the vendor, or with the vendor’s knowledge, approval, or acquiescence. The vendor’s acceptance or attempted acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.” The fraudulent and improper conduct of, *inter alia*, Patti and Milazzo conducted in connection with the performance of their duties for or on behalf of, and may be imputed to, JKCC, which accepted the benefits derived from their conduct.
  
  - b. Paragraph 11.02: “The fraudulent, criminal, or other improper conduct of a vendor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the vendor who participated in, knew of, should have known, or had reason to know of the vendor’s conduct.” The fraudulent and improper conduct of JKCC may be imputed to Kennedy who knew, should have known, or had reason to know of the fraudulent and improper conduct of JKCC on the DWM Contracts.
  
  - c. Paragraph 11.03: “The fraudulent, criminal, or other improper conduct of any officer, director, shareholder, partner, employee or other individual associated with a vendor that occurred in connection with the individual’s performance of duties for or on behalf of the vendor may be imputed to any other officer, director, shareholder, partner, employee, or other individual associated with that vendor who participated in, knew of, should have known of, or had reason to know of the improper conduct.” The fraudulent and improper conduct of, *inter alia*, Patti and Milazzo conducted in connection with the performance of their duties for or on behalf of JKCC, and may be imputed to Kennedy who knew, should have known, or had reason to know of their fraudulent and improper conduct on the DWM Contracts.

**III. Other General and Administrative Matters**

Kennedy and JKCC are notified that, in making any debarment decision, the Chief Procurement Officer (“CPO”) may rely on any information that is collected, used, introduced, adduced, or stated (including any statements of the judge) in connection with any resolved and/or pending cases, criminal and/or civil, as well as the fact of any plea agreement, verdict, sentencing, or judgment in any such action. Further, DPS reserves the right to withdraw, change, alter, or amend this Notice (including withdrawing or adding any reasons for proposed debarment or amending any of the above reasons for proposed debarment) prior to your submissions on the Proposed Debarment as provided by the Rules.

Within thirty (30) days after receipt of this Notice of Proposed Debarment, you must submit an answer, in writing, including information and argument in opposition to the proposed debarment, including any additional specific information, as well as specifying which information or argument, if any, that raises a genuine dispute over the material facts relevant to the debarment. Such submissions also must include any remedial measures or mitigating factors which you believe should be considered pursuant to Section VI of the City of Chicago Debarment Rules. Your written answer shall include an admission, denial, or other response to each of the allegations in Section I and II of this Notice, and the omission of such a response to any allegation in the Notice shall be deemed an admission of that allegation. Should you fail to file a timely answer to this Notice of Proposed Debarment, all of the allegations of the Notice shall be deemed to be admitted.

In addition, DPS requires the following information to be provided:

- A. Timely information on the status of any pending criminal or civil action; this shall include informing the Administrative Contact within ten (10) working days of any dismissal of any or all charges or claims, of any verdict, of any sentencing, of any judgment, of any notice of (and case number of) any appeal, and of any disposition of any appeal; and
- B. The name of any and all of your Affiliates, as defined in Section III(b) of the Rules, within thirty (30) working days of receipt of this letter.

Please be advised that, in accordance with the Rules, Mitchell Krock, DPS General Counsel, is designated as the Administrative Contact for all matters covered by this letter. All correspondence or other contact regarding this matter should be made through him as follows:

Mitchell A. Krock, General Counsel  
City of Chicago  
Department of Procurement Services  
121 North LaSalle Street  
City Hall, Room 806  
Chicago, Illinois 60602  
(312) 742-9479  
Mitchell.krock@cityofchicago.org

Pursuant to Section VII, Paragraph 7.05(b) of the Rules, you should provide Mr. Krock with contact information for this proceeding, including a contact person or attorney, address, telephone number, and e-mail address within ten (10) working days of receipt of this letter. This information must be kept current.

In considering your options, please take note of Section V(f) of the Rules. That provision prohibits "(f)ounding, establishing or operating an entity in a manner designed to evade the application or defeat the purpose of these rules or any provision of the Municipal Code of Chicago, City of Chicago rule or regulation, the statutes, rules or regulations of the State of Illinois, Cook County, or any federal statute, rule or regulation, or any other legally applicable law, regulation, or rule." Accordingly, in the event Debarment is imposed, if you are in any way involved or connected with any person or entity that directly or indirectly does business with the City of Chicago currently or in the future, you, and any such person or entity must report that fact to the CPO. Pursuant to Section V(e) and Section V(f), failure to do so may result in further sanctions against you and/or sanctions against the person or entity who failed to report the involvement or connection with you.

Finally, your attention is drawn to Section VII, Paragraph 7.07 of the Rules, which allows the CPO to enter into a settlement agreement relating to debarment. Accordingly, if you wish to voluntarily accept permanent debarment without further proceedings, you may initiate discussions by contacting, in the first instance, the Administrative Contact.

Sincerely,



Shannon E. Andrews *HK*  
Chief Procurement Officer

SEA/mk

Enclosure(s)

cc: Celia Meza, Acting Corporation Counsel, DOL  
Fiona A. Burke, Chief Assistant Corporation Counsel, DOL  
Mitchell A. Krock, General Counsel, DPS

# EXHIBIT A

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**CITY OF CHICAGO  
DEPARTMENT OF PROCUREMENT SERVICES**

**DEBARMENT RULES**

**Effective March 28, 2012**

**Section I. Scope of Rules.**

These Rules:

- (a) Prescribe policies and procedures governing the debarment of vendors by the Chief Procurement Officer under the authority of Chapter 2-92 of the Municipal Code of the City of Chicago and of Chapter 65 of the Illinois Compiled Statutes in general and under the authority of 65 ILCS 5/8-10-11 and 8-10-16 in particular, for the causes given in *Section V*; and
- (b) Provide for the listing of debarred vendors; and
- (c) Do not restrict the Chief Procurement Officer's ability to make determinations pertaining to the responsibility of a vendor on a contract-by-contract basis for any reason, including those stated in *Section V*, or to reject any bid and all bids pursuant to 65 ILCS 5/8-10-12 or any other provision of law or legally permissible reason; and
- (d) Do not restrict the Chief Procurement Officer's ability to apply lesser sanctions than debarment when appropriate; and
- (e) Do not affect the ineligibility of any vendor to contract with or supply services or materials to the City as otherwise imposed by law; and
- (f) Supersede the previous City of Chicago Debarment Rules adopted December 14, 2005; and
- (g) Shall be effective as of March 28, 2012.

**Section II. Policy.**

Paragraph 2.01 The Chief Procurement Officer shall solicit offers from, award contracts to, and consent to subcontracts and supply agreements with responsible vendors only. Debarments are discretionary actions that, taken in accordance with these Rules, are an appropriate means to effectuate this policy.

Paragraph 2.02 The serious nature of debarment requires that these sanctions be imposed only in the public interest and not for purposes of punishment. The Chief Procurement Officer shall impose debarment only for the causes and in accordance with the procedures set forth in these Rules.

### Section III. Definitions.

As used in this Rule-

- (a) "Administrative Contact" means an individual designated by the Chief Procurement Officer to serve as a point of contact for a vendor in relation to a debarment proceeding. The Administrative Contact will be identified pursuant to *Paragraph 7.02(e)*.
- (b) "Affiliate" means a person, including any individual or entity, that 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, directors, identity of interests among relatives, shared facilities and equipment, and common use of employees. "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 or entity that has the same or similar management, ownership, or principal employees as the person or entity that was investigated, part of the proceeding, debarred, or proposed for debarment, or that operates in a manner designed to evade application of these debarment rules.
- (c) "Civil enforcement action" means any judicial or administrative proceeding filed by any governmental agency other than the Chief Procurement Officer for the purpose of civil enforcement of any statute, rule, regulation, or law for the matters specified in *Section V*.
- (d) "Civil judgment" means a judgment or finding of liability by any court or other tribunal of competent jurisdiction against the vendor on a claim brought by any governmental entity, individual, or private entity, including, but not limited to, a civil enforcement action. Civil judgments include findings of liability that may lead to awards of damages, injunctive or other equitable relief, fines, penalties, declaratory relief and restitution, or determinations of liability on any claim, including a civil enforcement action.
- (e) "City contract" is any agreement subject to the Municipal Code of Chicago or whose cost is to be paid directly or indirectly from funds belonging to or administered in whole or in part by the City of Chicago, regardless of source, between the City and any individual or entity. City contracts include all amendments, modifications, and extensions of contracts.
- (f) "Chief Procurement Officer" means the individual appointed by the Mayor as the purchasing agent pursuant to 65 ILCS 5/8-10-15 and/or as the Chief Procurement Officer pursuant to the Municipal Code of Chicago, section 2-92-010, or that individual's designee.
- (g) "Days" means calendar days, unless otherwise specified.
- (h) "Debarment" is a determination by the Chief Procurement Officer that a vendor or a person or entity is not responsible and is not eligible to enter into contracts with the City. Debarment may also include or consist of a determination that the vendor or a person or entity is not eligible to serve as a subcontractor of any tier on contracts with the City, including serving as a supplier, and/or that existing contracts with a vendor must be terminated.



- (i) "Department Head" is the commissioner or equivalent of any City department, City officer, City board, or City agency.
  - (j) "Indictment" means an action by a grand jury charging a criminal offense. An information or other filing by competent authority charging a criminal offense is given the same effect as an indictment.
  - (k) "Vendor" means any person, including any individual, or entity that has entered into a contract with the City or is seeking to or may enter into a contract with the City, serves as a subcontractor or supplier on a City contract, or has applied for or been certified by the City as a Minority-owned Business Enterprise ("MBE"), Woman-owned Business Enterprise ("WBE"), Disadvantaged Business Enterprise ("DBE"), Business Enterprise owned by People with Disabilities ("BEPD"), or any similar program. It includes all units, divisions or other organizational elements of such person or entity. "Vendor," for the purposes of these rules, also means any affiliate, officer, director, or employee who has received a Notice of Proposed Debarment under these rules.
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- (l) The provisions of 5 ILCS §§ 70/0.01 *et seq.*, in so far as applicable, shall also be applied to these Rules, except where a specific definition, provision, or context indicates a different meaning.

**Section IV. General Provisions**

Paragraph 4.01 Debarment constitutes debarment of all units, divisions, or other organizational elements of the vendor, no matter how denominated, unless the debarment decision is limited by its terms to specific divisions or organizational elements. The Chief Procurement Officer may extend the debarment decision to include any affiliates of the vendor, as well as individuals associated with or employed by the vendor to whom improper conduct may be imputed pursuant to *Section XI*, when those affiliates or individuals are provided with notice of the proposed debarment pursuant to *Section VII* herein and are allowed to participate. For purposes of these rules, these persons are considered a vendor whether or not a City contractor, subcontractor, or vendor.

Paragraph 4.02 A vendor's debarment shall apply to all City contracts, unless as permitted to the extent allowed by *Paragraph 10.04*, a department head states in writing the reasons justifying continued business dealings between that department and the vendor and the Chief Procurement Officer concurs in writing. A debarred vendor also may be debarred from participating in any City contract as a subcontractor or supplier of any tier.

**Section V. Causes for debarment.**

The Chief Procurement Officer may debar a vendor, subcontractor, or supplier for-

- (a) Conviction of, or civil judgment for:
  - (1) Commission or attempted commission of fraud or a criminal offense in connection with (A) obtaining, (B) attempting to obtain, or (C) 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, 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, veracity, or honesty that affects the responsibility of the vendor.
- (b) Violation of the terms of a City 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 MBE/WBE/DBE/BEPD obligations, Equal Employment Opportunity obligations, City resident worker obligations, base wage or prevailing wage obligations, or any other contracting or subcontracting obligation imposed by the Municipal Code of Chicago or any other law.
- (c) Making or attempting or causing to be made or attempting to cause to be made any false, deceptive, or fraudulent material statement in any bid, proposal, or application for City or any government work or in the performance of any such contract for the City or a government agency, or application for any permit or license;
- (d) Making or attempting, or causing to be made or attempting to cause to be made, any false, deceptive, or fraudulent material statement in any application to obtain, expand, or continue certification as a MBE/WBE/BEPD/DBE.
- (e) Refusal to cooperate with reasonable requests of City inspectors, representatives, or other appropriate City personnel with respect to work under contract provisions, plans, or specifications, or otherwise, pursuant to the duties of those City personnel;
- (f) Founding, establishing or operating an entity in a manner designed to evade the application or defeat the purpose of these rules or any provision of the Municipal Code of Chicago, City of Chicago rule or regulation, the statutes, rules or regulations of the State of Illinois, Cook County, or any federal statute, rule or regulation, or any other legally applicable law, regulation, or rule;

- (g) Improper conduct, including but not limited to the commission or attempted commission of
- (1) intentional or negligent billing irregularities;
  - (2) submitting false or 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 agency or government official;
  - (8) falsely claiming to be a minority-owned, woman-owned, persons with disabilities, or disadvantaged business enterprise, or falsely claiming to be eligible for the Chicago Business Preference or any other bidding preference or protected market program;
  - (9) conspiring to pose, or seek certification, as a minority-owned business enterprise, woman-owned business enterprise, persons with disabilities business enterprise, or disadvantaged business enterprise;
  - (10) violation of ethical standards established by the City, or other dishonesty incident to obtaining, prequalifying for, or performing any contract or modification thereof;
  - (11) violation of ethical standards established by the City or other dishonesty incident to applying, obtaining, qualifying for, or acquiring any City certification, license, or permit;
  - (12) failing to pay, after a reasonable period of time, any judgment or other adjudicated debt owed to the City after a request for payment; or
  - (13) failing to defend, indemnify, or hold harmless the City pursuant to a contractual obligation after having received a request to do so.
- (h) Any other cause of so serious or compelling a nature that it affects the responsibility of the vendor, including, but not limited to, those specifically enumerated in 65 ILCS 5/8-10-11; or
- (i) Debarment by any other government agency.

## Section VI. Factors to be Considered in Debarment Procedure

*Paragraph 6.01* The Chief Procurement Officer may, in the public interest, debar a vendor for any of the causes in *Section V*, using the procedures in *Section VII*. The existence of a cause for debarment, however, does not necessarily require that the vendor be debarred; the seriousness of the vendor's acts or omissions, and any remedial measures or mitigating factors, should be considered in making any debarment decision. Before arriving at any debarment decision, the Chief Procurement Officer should consider factors such as the following, if such documented and verifiable information is provided by the vendor in its submission as provided by *Paragraph 7.05(d)*:

- (a) Whether the vendor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for debarment or had adopted such procedures prior to any City investigation of the activity cited as a cause for debarment;
- (b) Whether the vendor brought the activity cited as a cause for debarment to the attention of the appropriate City agency in a timely manner;
- (c) Whether the vendor has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the Chief Procurement Officer or other City investigative personnel;
- (d) Whether the vendor cooperated fully with City agencies during any and all investigations and in any court or administrative action;
- (e) Whether the vendor has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity;
- (f) Whether the vendor has paid or has offered to pay any investigative or administrative costs incurred by the City, and/or has made or offered to make full restitution;
- (g) Whether the vendor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment;
- (h) Whether the vendor has implemented or agreed to implement remedial measures, including any identified by the City;
- (i) Whether the vendor has instituted or agreed to institute new or revised review and control procedures and ethics training programs;
- (j) Whether the vendor has had adequate time to eliminate the circumstances within the vendor's organization that led to the cause for debarment; and
- (k) Whether the vendor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent recurrence.

Paragraph 6.02 The presence of any mitigating factors or remedial measures such as those set forth in *Paragraph 6.01* does not necessarily mean that debarment is unwarranted. Accordingly, the vendor has the burden of demonstrating, to the satisfaction of the Chief Procurement Officer, that debarment is not warranted under these potentially mitigating factors.

## **Section VII. Debarment Procedures**

Paragraph 7.01 A Notice of Proposed Debarment may be issued under any cause(s) under *Section V*.

Paragraph 7.02 Notice of Proposed Debarment. A notice of proposed debarment (hereinafter "the Notice") shall be issued by the Chief Procurement Officer advising the vendor and any specifically named affiliates or other individuals-

- (a) That debarment is being proposed;
- (b) Of the basic facts and reasons for the proposed debarment in terms sufficient to state a prima facie case putting the vendor on notice of the conduct and/or transaction(s) upon which it is based;
- (c) Of the cause(s) relied upon under *Section V* for proposing debarment;
- (d) That, within 30 days after receipt of the Notice of Proposed Debarment, the vendor may submit, in writing, information and argument in opposition to the proposed debarment, including any additional specific information as well as specifying which information or argument, if any, that raises a genuine dispute over the material facts relevant to the debarment;
- (e) Of the identity of an Administrative Contact for matters relating to the debarment. The vendor must direct all correspondence relating to the debarment to that individual.
- (f) That a copy of the City of Chicago Debarment Rules can be obtained at <http://www.cityofchicago.org/city/en/depts/dps/provdrs/comp.html>, which shall be sufficient to inform the vendor of the information specified in these rules.

Paragraph 7.03 Service of the Notice shall be by any means reasonably calculated to provide actual notice to the person who is subject to the Notice and provide proof of service in the record. If the Notice is sent by certified mail, return receipt requested, or similar means, the Notice shall be presumed to have been received within three days.

Paragraph 7.04 Consequences of Notice of Proposed Debarment

- (a) From the date of a Notice until a decision is made by the Chief Procurement Officer, the following conditions shall apply to the vendor:
  - (1) The vendor may submit bids or proposals on contracts. New contract(s) may be awarded, but if a vendor is later debarred, the contract(s) may be terminated. The facts underlying a vendor's proposed debarment and other factors may be considered

when evaluating such bids or proposals. When appropriate, contract awards may be delayed a reasonable time to allow the Chief Procurement Officer to reach a decision on the debarment.

- (2) The vendor may continue as a subcontractor or supplier on existing contracts. However, if the vendor is debarred, the Chief Procurement Officer may terminate or suspend the vendor's participation in those contracts unless an exception is granted under *Paragraph 10.04* of these rules.
- (b) When the cause(s) for debarment are sufficiently serious and the evidence supporting debarment is compelling or highly reliable, including but not limited to indictment or the filing of a civil enforcement action for the causes listed under *Section V(a)* or debarment by another government agency, in the sole discretion of the Chief Procurement Officer, he or she may take an interim action constraining the vendor in dealing with the City after the Notice but before a final decision is made. The Chief Procurement Officer shall provide notice of such constraints in his or her Notice of proposed debarment or in a separate notice through the means outlined in *Paragraph 7.03*. The Chief Procurement Officer may consider the views of other Departments when determining whether the vendor should be so constrained. Such constraints may include but are not limited to any of the following:
- (1) Termination of all existing contracts between the vendor and the City.
  - (2) Termination of the vendor's participation as supplier or subcontractor on existing contracts.
  - (3) Ineligibility for the award of new contracts.
- (c) The vendor shall have ten days after the Notice, or ten days after the date of notice that constraints on contracting pursuant to *Paragraph 7.04(b)* are being considered, whichever is later, to submit a written response stating its reasons 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 a response, until the CPO issues a decision on the application of the interim constraints.
- (d) If the vendor can prove that it did not receive notice pursuant to *Paragraph 7.04(b)*, the vendor may, within three days of receiving notice of a restriction under this paragraph going into effect without vendor response, seek reconsideration of the restrictions.
- (e) Any such interim constraints put in place under this Paragraph shall remain in effect no longer than when a final debarment decision is rendered pursuant to *Section IX*.

Paragraph 7.05            Procedures following Notice of Proposed Debarment

- (a) In response to the Notice of Proposed Debarment in *Paragraph 7.02*, the vendor shall have the burden of production, i.e., coming forward with sufficient information, documentation, and argument explaining why debarment should not be imposed. If the vendor meets its burden of production, the Chief Procurement Officer must find by the preponderance of the evidence that the City has sufficient evidence to impose debarment or a lesser remedy.



- (b) Within ten days after receipt of the Notice, the vendor must provide the Department of Procurement Services, through the Administrative Contact, with contact information for purposes of the debarment including: a contact person or attorney, address, phone number, fax number, and email address. Immediate notice must be given of any changes in the information.
- (c) Within ten days after receipt of the Notice or any subsequent notice concerning any additional documentation which may be considered in the proceeding, the vendor may request, in writing from the Chief Procurement Officer, access to the documentation the City relies upon in seeking debarment, including but not limited to any contract where the contract or its terms are at issue, any witness summaries or affidavits, or relevant prior debarment decisions relating to the vendor or an affiliate, if such documentation was not already provided to the vendor with the Notice or otherwise. In the case of voluminous documentation, the vendor may instead be permitted to examine any and all such materials and thereafter request copies of any or all such materials. In such case, the vendor must pay a reasonable copying fee to the Department of Procurement Services. If copies cannot be made available within two days of receiving the request, pursuant to *Paragraph 7.06*, the vendor shall be given additional time to submit the answer described under *Paragraph 7.02(d)*. The Administrative Contact will notify the vendor and any City representative of such extensions.
- (d) The vendor must submit, by delivery or sending by U.S. mail or reputable, established private delivery service or personal service, its answer to the Administrative Contact no more than thirty days after receipt of the Notice. 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. Deliveries will be accepted only during the regular office hours of the Department of Procurement Services. The vendor's answer must be in writing and shall include an admission, denial, or other response to each of the allegations in the Notice, and the omission of such 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 basis upon which the vendor contests the debarment. All supporting documentation, if any, shall be included. Should the vendor 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. The vendor must also address the potential impact of any prior debarments, if any, for determining the length and/or scope of any new or further debarment under *Paragraph 10.05*, including the potential impact (along with all supporting documentation) of the factors in *Section VI*.
- (e) An officer or other representative for the City may be designated to present the causes for debarment to the Chief Procurement Officer. If a City Representative has been designated prior to the date of the vendor's answer, the vendor shall provide a copy of the answer to the City Representative. If a City Representative has been designated, the representative may respond in writing to the vendor's answer within thirty days of its receipt by the Administrative Contact. The vendor must be provided with a copy of the City Representative's response, and any other letter, notice, requests, or filings made by any City Representative. Further written submissions by the City Representative or the vendor shall be at the discretion of the Chief Procurement Officer upon specific request detailing the

need for a further reply or as he or she directs. Requests for further written submissions are not favored. Once any City Representative is designated, all notices, correspondence, and any other material shall be sent to that Representative as well as to the vendor (or its representative), if applicable, and to the Administrative Contact.

- (f) If any material information not previously given or offered to the vendor is introduced into the record subsequent to the Notice of Proposed Debarment or after documents are provided pursuant to *Paragraph 7.05(c)*, upon request, the vendor shall have the right to file a further written submission commenting on that information within a time frame set by the Chief Procurement Officer, and the City Representative may file a further written response thereto. Similarly, if material information not previously given or offered to the City is introduced into the record subsequent to the Notice of Proposed Debarment or after documents are provided pursuant to *Paragraph 7.05(c)*, upon request, the City Representative shall have the right to file a further written submission commenting on that information within a time frame set by the Chief Procurement Officer, and the vendor may file a further written response thereto.
- (g) When the vendor believes its answer raises a genuine issue of disputed material fact that cannot be resolved on the paper submissions and the vendor wishes to present a witness or witnesses in support of its position, the vendor may request an in-person hearing. When requesting an in-person hearing, the vendor must identify the fact or facts at issue and the witness or witnesses in its request. Vendor requests for in-person hearings must be part of the answer, must demonstrate that the hearing is necessary to decide any matter(s) pertaining to the Chief Procurement Officer'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 any City Representative designated to present the causes for debarment. In-person hearings may also be held on the Chief Procurement Officer's own initiative. A determination on whether an in-person hearing shall be conducted shall be made by the Chief Procurement Officer as set forth in *Paragraph 7.05(h)* below.
- (h) In instances where the Chief Procurement Officer finds that an in-person hearing is necessary to decide whether debarment should be imposed, including but not limited to cases in which evaluation of the credibility of a witness is necessary to determine a genuine issue of disputed material fact, an in-person hearing shall be conducted. The necessity for each requested witness will be considered individually. The Chief Procurement Officer or officer designated to conduct the hearing reserves 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.
  - (1) When the Chief Procurement Officer has found an in-person hearing to be necessary, he or she may designate an official to conduct the hearing to and prepare written findings of facts. The Chief Procurement Officer may reject the findings of an official designated to conduct the hearing if those findings are arbitrary and capricious or clearly erroneous.
  - (2) Notice of any such in-person hearing shall be given to the vendor and to any City representative responsible for presenting the case for debarment no less than twenty

days prior to the date and time of the hearing. Any such notice of an in-person hearing shall specify the date, location, time, and the issue(s) to be examined. The vendor and any representative presenting the case for debarment must submit a list of all attendees under their control no less than five days prior to the in-person hearing, including identifying those who will be presented as witnesses. The Chief Procurement Officer reserves the right to limit the number of attendees present at the hearing. Witnesses may be excluded from the in-person hearing when they are not testifying.

- (3) 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 Chief Procurement Officer. 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.
- (4) The vendor may appear with or be represented by counsel, and, as limited by this paragraph, shall have the right to present witnesses and to confront any witnesses presented in support of the proposed debarment. Any City representative responsible for presenting the case for debarment also shall have the right to present witnesses, as limited by this paragraph, and confront those presented in support of the vendor. The Chief Procurement Officer or the officer conducting the in-person hearing may also question the witnesses.
- (5) Where the statement of a witness is relied upon by the vendor, if the witness is under the control of the vendor and vendor fails to present that witness at the hearing, any proffer by the vendor of the witness' statement, whether in the form of a written summary, affidavit, or other form, shall be stricken from the record unless the vendor shows good cause why the witness cannot appear. Witnesses under the control of the vendor include, but are not limited to, affiliates, employees, employees of subcontractors or suppliers of any tier, and the relatives and business associates of the vendor or of any person who has a beneficial interest in the contractor or who exercises management or control over the vendor. Similarly, any City representative presenting the case for debarment may not present the statement of a witness who is under the control of the City unless the officer shows good cause why the witness cannot appear. Witnesses under the control of the City are its employees and officials, except for those under the control of a vendor. "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 official conducting the in-person hearing. Witness statements shall be accepted only if the presenting party offers guarantees of the veracity and trustworthiness of the statement that the official conducting the hearing deems sufficient. Such statements and demonstrations of "good cause" must be provided at least five days prior to the in-person hearing unless otherwise allowed by the Chief Procurement Officer or the official conducting the in-person hearing. Reasonable accommodation will be made to facilitate presentation of witnesses. Requests relating to facilitating presentation of witnesses

should be made as early as possible. The vendor may request the appearance of witnesses under the control of the City, but such requests must be made no less than fifteen days prior to the in-person hearing if not made in a request for an in-person hearing. Similarly, no less than fifteen days prior to the in-person hearing, the officer presenting the debarment may request the appearance of witnesses under the control of the vendor.

- (6) Exhibits or other documentary evidence other than that previously submitted or produced pursuant to this *Paragraph 7.07* or *Paragraph 7.09* may not be presented at the in-person hearing without the prior permission of the Chief Procurement Officer or the official conducting the in-person hearing.
- (7) The Chief Procurement Officer shall provide that any such in-person hearings conducted pursuant to these rules shall be recorded on audiotape or other medium and will become part of the record. A copy of the audiotape or other medium shall be made available to the vendor upon written request to the Administrative Contact and at the vendor's expense. With advance notice to the Chief Procurement Officer, the vendor may make its own audiotape, but may not record the proceedings by other means without permission of the Chief Procurement Officer or official conducting the in-person hearing.

*Paragraph 7.06* Any deadline in this *Section VII* may be extended in the discretion of the Chief Procurement Officer. Requests for extension of deadlines shall be in writing to the Administrative Contact except as otherwise provided. The Chief Procurement Officer shall issue a response within five days of receipt of the request by the Administrative Contact. When a short time remains before the deadline, the Administrative Contract shall have the discretion to, telephonically, or by fax, or by email, grant an extension providing sufficient time for the Chief Procurement Officer to respond to the request. Such extensions shall be granted absent extraordinary circumstances. The Administrative Contact shall also have the discretion to grant two-day extensions on the basis of a telephonic, fax, or email request, but such requests are discouraged. The Administrative Contact will notify the vendor and any City representative of any extensions.

*Paragraph 7.07* The vendor subject to the debarment proceeding and the Chief Procurement Officer may enter into a settlement agreement relating to the debarment.

*Paragraph 7.08* For the purposes of this *Paragraph 7.08* only, "Chief Procurement Officer" shall mean the person of the "purchasing agent" as defined by 65 ILCS 5/8-10-15 or the person of the "Chief Procurement Officer" as defined by Section 2-92-010 of the Municipal Code of Chicago. The Department of Procurement Services may conduct investigations of vendors prior to the issuance of a Notice of Proposed Debarment pursuant to *Paragraph 7.02*. While such investigations may be performed under the ultimate supervision of the Chief Procurement Officer, and the Chief Procurement Officer may make a determination whether to issue a Notice of Proposed Debarment as a result of such investigations, the Chief Procurement Officer shall not be directly and actively involved in such investigations and therefore is a neutral party with respect to making a decision whether to debar a vendor. In a situation where, in the sole opinion and discretion of the Chief Procurement Officer, his or her level of involvement in the investigation leading to the issuance of a Notice of Proposed Debarment to a vendor has rendered him or her unable to act as a neutral

decision maker, the Chief Procurement Officer shall designate a neutral officer who has not been directly and actively involved in the investigation to make the Chief Procurement Officer's decision on debarment of that vendor. This does not limit the Chief Procurement Officer's ability to designate an officer or officers to carry out any part of this debarment rule, including making the Chief Procurement Officer's decision, which he or she deems necessary or desirable for operational or other reasons.

Paragraph 7.09 At any point after the Notice of Proposed Debarment is issued, the Chief Procurement Officer may, in his or her sole discretion, request additional information or other submission or presentation from the vendor, from any City agency, or from any other person or entity to assist in making a decision on debarment. Copies of such information shall be provided to the vendor when the vendor was not the source of the information, and to the City representative presenting the case for debarment when the information was not complied by him or her. The vendor and/or City representative presenting the case for debarment shall be permitted a reasonable period, as determined by the Chief Procurement Officer, to comment on and respond to the information. Such information and comment shall become part of the record. This provision shall not preclude the Department of Procurement Services, or any other City office, board, agency, bureau or any other City administrative unit pursuant to its regulations or any contractual provisions, or any relevant City ordinance, rule, or regulation, from seeking information from a vendor in the evaluation of a bid, response to a Request for Proposal, Information or Qualification, for an application for certification or recertification as a minority-owned, woman-owned, or disadvantaged business enterprise, or for any other matter within the jurisdiction of the Department of Procurement Services, or any other City office, board, agency, bureau or any other City administrative unit as defined by any law, regulation, or ordinance.

Paragraph 7.10 The Chief Procurement Officer may withdraw the Notice of Proposed Debarment without prejudice for any reason prior to the final decision.

### **Section VIII. Decision-making by Chief Procurement Officer.**

Paragraph 8.01 In actions based upon a conviction or civil judgment, or debarment by another government agency, the Chief Procurement Officer shall make a decision on the basis of such conviction or judgment or debarment and/or other information available to the Chief Procurement Officer, including any submission made pursuant to these rules.

Paragraph 8.02

- (a) The Chief Procurement Officer will prepare and timely provide the vendor and any City representative presenting the case for the proposed debarment for the City a decision based solely upon the written record as defined in *Paragraph 8.03*. If debarment, or less than full debarment (including but not limited to those remedies outlined in *Paragraph 8.04*) is imposed, the decision shall contain the elements set forth in *Paragraph 9.02*.
- (b) Past debarments of the vendor or affiliates may be considered as evidence of a history or pattern of conduct when determining an appropriate length or scope for debarment.

Paragraph 8.03 The record shall consist of: the Notice of Proposed Debarment with any attachments or exhibits as well as any documentation made available to the vendor pursuant to

*Paragraph 7.05(c)*, all correspondence, notices, requests for information, documentation relating to service, all written submissions and accompanying documents or exhibits, recordings or transcripts of hearings, any exhibits, any other materials submitted pursuant to these rules, any written report or findings of fact made by the hearing officer, a copy of the Chief Procurement Officer's debarment decision, and any information relating to prior debarment proceedings considered by the Chief Procurement Officer.

**Paragraph 8.04** When the Chief Procurement Officer finds that a vendor's conduct was improper but does not rise to a level warranting full debarment, the Chief Procurement Officer may impose less than full debarment, including but not limited to, partial debarment or a finding of non-responsibility, or unacceptability as a contractor, subcontractor, or supplier, in relation to particular contracts or classes of contracts. Any decision under these rules does not affect the ability of the Chief Procurement Officer to make a finding of non-responsibility in other contexts.

**Paragraph 8.05** The decision of the Chief Procurement Officer shall be final. The vendor's sole remedy shall be judicial review by a common law writ of certiorari.

#### **Section IX. Chief Procurement Officer's decision.**

**Paragraph 9.01** When the Chief Procurement Officer reaches a determination, a decision shall be issued and the vendor shall be given prompt notice of the decision by certified mail, return receipt requested, or by comparable means or by personal service with attestation in the record.

**Paragraph 9.02** If the Chief Procurement Officer decides to impose debarment or less than full debarment pursuant to *Paragraph 8.04*, the decision shall include information:

- (a) Referring to the Notice of Proposed Debarment;
- (b) Specifying the reasons for debarment with reference to record facts;
- (c) Stating the period and type of debarment, including effective dates;
- (d) Stating the effect of the debarment on the vendor's existing contracts with the City;
- (e) Stating the effect of the debarment on the vendor's eligibility to act as a subcontractor or supplier of any tier on any existing and/or future contracts with other City vendors; and
- (f) Stating the effect of the debarment on affiliates or any other individuals.

**Paragraph 9.03** A list of debarred vendors will be published on the City's website or any media the City in its discretion may choose.

**Paragraph 9.04** Any interim constraints put in place under *Paragraph 7.04* shall terminate no later than the issuance of any final debarment decision under this section. A final debarment decision shall supersede any interim action.



## **Section X. Period of Debarment, Extensions and Reductions**

Paragraph 10.01 The period of debarment may be for a stated period of time, or if no duration is set at the time of the debarment, indefinitely. Periods of debarment may be imposed concurrently or consecutively.

Paragraph 10.02 The debarment may be cancelled prospectively, or the duration and/or scope may be reduced or waived by the Chief Procurement Officer, upon the written application of the debarred individual or entity, supported by documentation, for any of the following reasons:

- (a) Newly discovered material evidence or documentable error in the findings of the Chief Procurement Officer's decision.
- (b) Reversal of the conviction or judgment on which the ineligibility is based. If the conviction or judgment was based on an admission of conduct that was a cause for debarment under *Section V*, the Chief Procurement Officer shall determine whether such admitted conduct negatively affects the responsibility of the vendor.
- (c) Bona fide change in ownership and/or control of the entity, or other mitigating factors that are sufficient, in the judgment of the Chief Procurement Officer, to remove the conditions giving rise to the conduct that led to the ineligibility. In addition to the factors identified in *Section VI*, mitigating factors may include, without limitation: disciplinary action against all persons responsible for the acts giving rise to the ineligibility; remedial action designed to prevent a recurrence of the acts giving rise to the ineligibility; or a determination by the Chief Procurement Officer that the past conduct of the entity does not indicate a pattern or history of similar acts.

Paragraph 10.03 An application by or on behalf of a debarred individual or business entity 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, must include the applicant's oath that the statements in the application are true and correct, and must be signed by the applicant, whose signature(s) must be notarized. The Chief Procurement Officer may convene an in-person hearing under the same conditions of Paragraph 7.05 for the reasons specified therein.

Paragraph 10.04 The Chief Procurement Officer may suspend a debarred person's or entity's ineligibility to contract with the City in whole or in part in order to allow execution of a specific contract or type of contract with the person or entity, upon written application by a Department Head whose agency is affected by the proposed contract, setting forth facts and providing documentation sufficient in the judgment of the Chief Procurement Officer to establish:

- (a) that the public health, safety or welfare of the City requires the goods or services of the person or entity, or that it is otherwise in the best interest of the City to use the goods or services of the person or entity; or
- (b) that the City is unable to acquire the goods or services at a comparable price and quality, or in sufficient quantity from other sources.

Paragraph 10.05 During a period of debarment, the Chief Procurement Officer may 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 expanded solely on the basis of the specific facts upon which the initial debarment action was based. Prior to a decision to extend the duration and/or broaden the scope of an existing debarment, the vendor must be provided with notice of the extension and an opportunity to respond pursuant to *Section VII*.

#### **Section XI. Scope of debarment – Imputation**

Paragraph 11.01 The 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 vendor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the vendor, or with the vendor's knowledge, approval, or acquiescence. The vendor's acceptance or attempted acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

Paragraph 11.02 The fraudulent, criminal, or other improper conduct of a vendor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the vendor who participated in, knew of, should have known, or had reason to know of the vendor's conduct.

Paragraph 11.03 The fraudulent, criminal, or other improper conduct of any officer, director, shareholder, partner, employee or other individual associated with a vendor that occurred in connection with the individual's performance of duties for or on behalf of the vendor may be imputed to any other officer, director, shareholder, partner, employee, or other individual associated with that vendor who participated in, knew of, should have known of, or had reason to know of the improper conduct.

Paragraph 11.04 The fraudulent, criminal, or other improper conduct of one vendor participating in a joint venture or similar arrangement may be imputed to other participating vendors or their officers, directors, shareholders, partners, employees or other individuals associated with a vendor, if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these vendors or these vendors 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.

Paragraph 11.05 The procedures specified in *Section VII through IX* shall be followed when imposing debarment on the basis of imputed conduct.