County of Los Angeles
CONTRACTOR HEARING BOARD
713 KENNETH HAHN HALL OF ADMINISTRATION • LOS ANGELES, CALIFORNIA 90012

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

47 July 31, 2012

SACHI A. HAMAI
EXECUTIVE OFFICER

Member Departments:
Chief Executive Office
Internal Services Department
Department of Public Works

Alternate Member Departments:
Department of Health Services
Department of Parks and Recreation
Department of Public Social Services

July 31, 2012

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

DEBARMENT OF K.C. BUILDING MAINTENANCE, INC.,
KIMBERLY Y. CHUNG (a.k.a KIM Y. PAEK) AND CHARLES I.CHUNG
ALL DISTRICTS
(3-VOTES)

SUBJECT

Request for Board approval to adopt the proposed findings, decision, and recommendations of the Contractor Hearing Board (CHB) to debar K.C. Building Maintenance, Inc. and its principals Kimberly Y. Chung (a.k.a Kim Y. Paek) and Charles I. Chung, for a period of three years from bidding on, being awarded, and/or performing work on any contracts for the County of Los Angeles from the date of Board's approval.

IT IS RECOMMENDED THAT THE BOARD:

1. Adopt the proposed findings, decision, and recommendations of the Contractor Hearing Board to debar K.C. Building Maintenance, Inc. and its principals Kimberly Y. Chung (a.k.a Kim Y. Paek) and Charles I. Chung, for a period of three years, from bidding on, being awarded, and/or performing work on any contracts for the County of Los Angeles from the date of the Board's approval.

2. Instruct the Executive Officer to send notice to K.C. Building Maintenance, Inc. and its principals Kimberly Y. Chung (a.k.a Kim Y. Paek) and Charles I. Chung, advising of the debarment action taken by the Board.

3. Instruct the Director of Internal Services Department (ISD) to enter this determination to debar K.C. Building Maintenance, Inc. and its principals Kimberly Y. Chung (a.k.a Kim Y. Paek) and Charles I. Chung into the Contract Database for a period of three years.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of the recommended debarment action against the contractor, K.C. Building Maintenance, Inc. and its principals Kimberly Y. Chung (a.k.a Kim Y. Paek) and Charles I. Chung (collectively referred to as KCBM), is to ensure the County of Los Angeles (County) contracts only with responsible contractors who comply with the terms and conditions of their County contracts, and with any relevant Federal, State, and local laws.

Implementation of Strategic Plan Goals

The recommended actions are consistent with the County's Vision and Strategic Plan Goal One which support shared values of accountability, integrity, and professionalism, efficient and effective service delivery, and envisions the County as the premier organization for those working in the public's interest with a pledge to sustain essential County services through proactive and prudent fiscal policies and stewardship.

FISCAL IMPACT/FINANCING

Not applicable.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The Contractor Non-Responsibility and Debarment Ordinance

The Contractor Non-Responsibility and Debarment Ordinance, County Code Chapter 2.202, provides the County with the authority to terminate contracts and debar contractors when the County finds, in its discretion, that the contractor has done any of the following:

- Violated a term of a contract with the County or a non-profit corporation created by the County;
- Committed an act or omission which negatively reflects on the contractor's quality, fitness, or capacity to perform a contract with the County, any other public entity, or a non-profit corporation created by the County, or engaged in a pattern or practice which negatively reflects on the same;
- Committed an act or omission which indicates a lack of business integrity or business honesty; or
- Made or submitted a false claim against the County or any other public entity.

In considering debarment, the County may consider the seriousness and extent of the contractor's acts, omissions, patterns, or practices and any relevant mitigating factors.

Contractor Hearing Board Responsibilities

County Code Chapter 2.202, the Contractor Non-Responsibility and Debarment Ordinance, established the CHB to provide an independent review of the contracting department's recommendation to debar a contractor. The regular membership of the CHB is comprised by a representative from the Chief Executive Office (CEO), the Internal Services Department (ISD), and the Department of Public Works (DPW). In addition, the CHB includes the departments of Health Services, Parks and Recreation and Public Social Services as alternate member departments. In the event the debarment action is initiated by CEO, ISD, or DPW, the CHB member from the department bringing the debarment action will recuse himself/herself from any participation in the hearing. In this particular debarment hearing, there was a potential conflict of interest as ISD was bringing the debarment action. Therefore, the CHB representative from Parks and Recreation participated in the hearing and deliberations, and voted in this debarment hearing. The CEO representative served as the acting chair for the CHB in these proceedings.

In April 2012, the Internal Services Department, requested the CEO to convene the CHB to initiate debarment proceedings against KCBM and its principals for:

- Commission of an act or omission which negatively reflects on the contractor's quality, fitness, or capacity to perform a contract with the County, or engagement in a pattern or practice which negatively reflects on same;

- Commission of an act or offense which indicated a lack of business integrity or business honesty; and

- Violated a term of a contract with the County or a non-profit corporation created by the County.

On April 10, 2012, ISD sent proper notice via certified first class letter to KCBM and its principals, notifying them of the Department's intent to initiate debarment proceedings against KCBM and its principals, with a recommendation of a five year debarment, at a hearing scheduled for May 2, 2012 at 1:30 p.m., in the Kenneth Hahn Hall of Administration, Room 372 (Attachment I). Included in this correspondence was notice to the parties that they must confirm by written notice to ISD their intent to attend the debarment hearing and oppose the debarment recommendation by April 19, 2012.

KCBM did not confirm their attendance for the May 2, 2012 debarment hearing. They also did not appear at the May 2, 2012 debarment hearing and did not submit any documentation or a list of prospective witnesses to rebut any evidence presented at the debarment proceedings. As such, their decision not to respond was construed as a waiver by KCBM and its principals of all rights to a hearing before the CHB. ISD thus proceeded in their absence and placed an uncontested debarment recommendation before the CHB at the hearing on May 2, 2012. At that hearing, the CHB voted to recommend a three year contractor debarment of KCBM and its principals.

On June 28, 2012, KCBM and its principals were sent a draft copy of the proposed decision recommending debarment for a period of three years, and notified that any written objections to this proposed decision were to be received by July 5, 2012. Any written objections would be considered by the CHB at a hearing on July 11, 2012. KCBM and its principals did not submit any written objections, and as a result, the July 11, 2012 hearing was cancelled.

The CHB proceeding was digitally recorded and the recording is available upon request, as well as all the documents entered into the record as exhibits during the hearing.

- Attachment II is a memo from County Counsel representing ISD, which identifies the documents that comprise the documentary evidence and a listing of the exhibits that were entered into the record.

- Attachment III is a listing of CHB members, ISD representatives and participating lawyers from County Counsel.

SUMMARY OF EVIDENCE AND ARGUMENT

An ISD department representative and County Counsel for ISD presented evidence in the form of correspondence and supporting documentation demonstrating that KCBM breached its contract with the County by refusing to perform services as contractually required, and by failing to comply with other contractual terms, including Section 8.6 (Compliance with Applicable Law) and Section 8.44 (Termination for Insolvency).

On June 21, 2005, the Board approved ISD Contract No. 753020 for Custodial Services with KCBM (Contract). Under this Contract, KCBM provided custodial services to twenty-four (24) facilities countywide, including for Sheriff, Court, Mental Health and Social Service facilities.

On February 9, 2012, the Internal Revenue Service (IRS) sent a Notice of Levy to ISD indicating that KCBM had unpaid tax balances for the period from December 31, 2008 through March 31, 2011 totaling $523,948.26.

On February 29, 2012, KCBM notified ISD that the IRS had served a tax levy of $523,949 which froze the company's financial accounts and assets. Ms. Kimberly Y. Chung met with ISD Custodial and Contracting Division staff on this date. Ms. Chung notified ISD that KCBM had been served with this tax levy and that KCBM's financial accounts and assets had been frozen. Ms. Chung indicated she would be meeting with the IRS to request that the levy be lifted to allow KCBM to pay its employees.

On March 1, 2012, ISD received a letter from KCBM's Chief Executive Officer, Kimberly Chung, giving notice that KCBM was closing business and was immediately terminating their Contract with the County.

On March 1, 2012, ISD served notice of the County's intent to terminate the KCBM Contract effective March 7, 2012, pursuant to Contract Section 8.44, Termination for Insolvency.

On March 6, 2012, the Board terminated the Contract with KCBM, in whole, for insolvency.

KCBM provided insufficient notice of financial difficulties and failed to perform as required under the Contract, forcing ISD to immediately find custodial coverage for \24 locations.

KCBM was contractually required to perform custodial services at twenty four (24) facilities countywide. These custodial services are critical services, given some of these facilities cannot remain open if there is not routine custodial services being provided. There is no provision in KCBM's Contract that allows it to terminate for convenience the Contract with the County. Yet, by letter dated March 1, 2012, KCBM served the County with notice that it was terminating immediately the Contract with the County, and that economic conditions had forced them to close business. KCBM provided the County with insufficient notice of the financial difficulties they were experiencing, having only meet with ISD representatives on February 29, 2012 to discuss the tax lien for $523,949. It also defaulted on its obligations to perform work under the Contract as required, and gave the County no advance notice of when custodial services from KCBM would terminate.

Although ISD was able to secure custodial service for every location serviced by KCBM, there was a possibility that certain County locations would have to close if ISD was not able to provide custodial coverage. This placed an undue burden on the County to have to find alternative custodial services for such a large number of County facilities at the last minute, and forced ISD to immediately modify existing contracts with other custodial contractors to cover those facilities.

KCBM violated the terms of its Contract with the County, including Contract Section 8.6 (Compliance with Applicable Law) and was found insolvent under Section 8.44 (Termination for Insolvency), by failing to pay taxes.

Section 8.6 (Compliance with Applicable Law) of the Contract required KCBM to comply with all applicable law. Section 8.44 (Termination for Insolvency) of the Contract provided the County with the contractual right to terminate the Contract for insolvency of a contractor if it was deemed to have ceased to pay its debts for at least sixty (60) days in the ordinary course of business or cannot pays its debts as they become due. The Notice of Levy dated February 9, 2012 from the IRS indicated that KCBM had unpaid tax balances for a four (4) year period from December 31, 2008 through March 31, 2011 totaling $523,948.26.

KCBM committed an act which negatively reflects on the Contractor's quality, fitness, and capacity to perform a contract with the County.

As noted above, KCBM could not perform under the Contract as contractually required, gave no advance notice to the County on when custodial services would terminate, and otherwise violated certain terms and requirements of their County contract. The County only does business with "responsible contractors" (County Code section 2.202.010). KCBM's failure to perform as required under the Contract, and its failure to provide the County with more advance notice of its financial difficulties and inability to perform, which resulted in ISD staff having to take immediate action to assure that custodial services could still be provided so that certain County facilities could remain open, negatively reflects on KCBM. These actions evidence that KCBM at this time, does not possess the quality, fitness and capacity to perform satisfactorily under a County contract.

FINDINGS AND RECOMMENDED DECISION

After considering the evidence and arguments presented by the ISD representative and County Counsel representing ISD, the CHB concluded that the following factors assisted them in reaching their decision for the debarment of KCBM, Kimberly Y. Chung (a.k.a Kim Y. Paek) and Charles I. Chung, for a period of three years:

- *Failure to perform or comply with the terms of the Contract.*

  As set forth above, the CHB found that KCBM violated the terms of their Contract in several areas, including failure to provide custodial services as contracted for, failure to comply with Section 8.6 (Compliance with Applicable Law) and being found insolvent pursuant to Section 8.44 (Termination for Insolvency).

- *Actual or potential harm or impact that results or may result from the wrongdoing.*

  As noted by one member of the CHB, based on the evidence and testimony presented, these were very serious failures by a contractor who was charged with providing critical services to the County. KCBM's inability to comply with the Contract negatively reflects on their ability to perform in a future County contract. The manner in which it provided notice to the County regarding its termination of custodial services, including the lack of any advance notice that custodial services would no longer be provided, could have caused significant harm to the County. It was only due to ISD staff's tremendous effort that the facilities KCBM were responsible for, were able to be covered and remained open without interruption to County services.

- *Frequency and/or number of incidents and/or duration of the wrongdoing.*

  The CHB found that the contractor showed a pattern of behavior that seriously called into question whether they could perform satisfactorily under a County contract, and noted that the levy resulted from a failure to pay taxes over a period of several years dating back to 2008, was not a recent occurrence. The CHB concluded that this behavior violated the terms of the Contract and lead to KCBM being found insolvent. The County cannot afford the risk of being placed into a similar situation with this Contractor again due its financial insolvency issues.

  One member of the CHB did note that while he believed the tax violations and the manner in which KCBM terminated the County contract were serious breaches of the contract, he did not believe there was sufficient evidence presented to demonstrate KCBM acted in a way which demonstrated a lack of honesty or integrity. As stated in the KCBM notice to the County, the economy was cited as a factor in their inability to continue providing services. The economy was also a factor noted by the CHB as a reason to reduce the recommended period of debarment of KCBM to three (3) years from five (5) years.

Therefore, by a majority vote with one abstention, the CHB decided to recommend to the Board that K.C. Building Maintenance, Inc. and its principals Kimberly Y. Chung

(a.k.a Kim Y. Paek) and Charles I. Chung, be debarred. By another separate majority vote, the CHB recommended debarment for a period of three years. In making these recommendations, the CHB considered the evidence presented above, including but not limited to, the manner in which KCBM terminated the County contract, their failure to provide contracted for services, and the length of tax violations which resulted in the tax levy. These acts negatively reflected on the contractor's quality, fitness and capacity to perform a contract with the County.

IMPACT ON CURRENT PROJECTS

Not applicable.

CONCLUSION

Due to the foregoing, and to ensure that the County contracts only with responsible contractors who comply with the terms and conditions of their contracts and with all relevant laws, the CHB respectfully requests that the Board adopt the proposed findings, decision and recommendations relating to K.C. Building Maintenance, Inc. and its principals Kimberly Y. Chung (a.k.a Kim Y. Paek) and Charles I. Chung.

Respectfully submitted,

MARTIN K. ZIMMERMAN
Assistant Chief Executive Officer
Acting Chair, Contractor Hearing Board

MKZ:FC
JH:ib

Attachments (3)

c: Executive Office, Board of Supervisors
Chief Executive Officer
Internal Services Department
Public Works
Parks and Recreation
County Counsel
Auditor-Controller
Kimberly Y. Chung, Principal, K.C Building Maintenance Inc.
Charles I. Chung, Principal, K.C. Building Maintenance Inc.

County of Los Angeles
INTERNAL SERVICES DEPARTMENT
1100 North Eastern Avenue
Los Angeles, California 90063

TOM TINDALL
Director

Telephone: (323) 267-3101
FAX: (323) 415-8664

"To enrich lives through effective and caring service"

April 10, 2012

Sent via Certified Mail –
Return Receipt requested

Ms. Kimberly Y. Chung
Mr. Charles I. Chung
KC Building Maintenance, Inc.
836 Crenshaw Blvd., Suite #200
Los Angeles, CA 90005

Dear Ms. Kimberly Y. Chung (a.k.a. Kim Y. Paek) and Mr. Charles I. Chung:

DEBARMENT PROCEEDINGS

The County of Los Angeles Internal Services Department (ISD) intends to initiate debarment proceedings against KC Building Maintenance, Inc. and Ms. Kimberly Y. Chung (a.k.a. Kim Y. Paek) and Mr. Charles I. Chung (collectively referred to as KCBM). The recommended debarment will be made pursuant to Los Angeles County Code Chapter 2.202, Determination of Contractor Non-Responsibility and Contractor Debarment.

You are hereby notified that the debarment hearing with the Contractor Hearing Board will be held on:

Date: Wednesday, May 2, 2012
Time: 1:30 p.m.
Place: Kenneth Hahn Hall of Administration, Room 372
500 West Temple Street
Los Angeles, CA 90012

This notice specifies the basis for the debarment recommendation, the proposed period of debarment and a summary of evidence to support the recommendation, in Attachment A, incorporated herein by reference.

At the Contractor Hearing Board, you are entitled to appear and/or be represented by an attorney or other authorized representative to present evidence against a finding of debarment. At the hearing, your representative may offer documentary evidence, present witnesses, and offer rebuttal evidence as authorized by the County code.

After the debarment hearing, the Contractor Hearing Board will prepare a proposed decision to the County Board of Supervisors (Board). This decision will include a recommendation on whether or not to debar you and/or KCBM and, if so, the appropriate length of time for debarment. The Board may, in its discretion, limit any further hearing to the presentation of evidence not previously heard. The Board has the right to modify, deny, or adopt the Contractor Hearing Board's proposed decision and recommendation. Any debarment finding shall become final upon the approval by the Board.

KCBM must submit a written confirmation to ISD indicating whether you and/or attorney or other authorized representative will be present at the debarment hearing. This confirmation must be sent to Ms. Yolanda Young, Contracts Division, 1100 N. Eastern Avenue, Los Angeles, CA 90063, no later than 5:00 p.m. on Thursday, April 19, 2012. Failure to confirm the hearing date or otherwise response may result in waiving of all rights to a hearing before the Contractor Hearing Board.

If KCBM intends to contest the debarment at the Contractor Hearing Board, the department will provide you with a list of prospective witnesses and copies of all documentary evidence at least five (5) days prior to the scheduled hearing. If KCBM intends to present evidence against the proposed debarment, you must provide ISD with a list of prospective witness and copies of all documentary evidence at least five (5) days prior to the scheduled hearing. Each party must also provide the Contractor Hearing Board with five copies of each item they provided in the exchange. The deadline for the exchange of these documents is 5:00 p.m. on Wednesday, April 25, 2012.

If you have any questions, please contact our County Counsel, Elizabeth Friedman, at (213) 974-1814.

Very truly yours,

Tom Tindall

Tom Tindall
Director

cc: County Counsel (Elizabeth Friedman)
CEO, Contractor Hearing Board (Martin Zimmerman)

ATTACHMENT A
BASIS FOR PROPOSED DEBARMENT RECOMMENDATION AND SUMMARY OF EVIDENCE TO SUPPORT THE RECOMMENDATION

The basis for the proposed debarment recommendation is that KC Building Maintenance, Inc. (collectively referred to as KCBM) by and through its principals, Kimberly Y. Chung (a.k.a. Kim Y. Paek) and Charles I. Chung (1) violated a term of a contract with the County or a nonprofit corporation created by the County; (2) committed an act or omission which negatively reflects on the contractor's quality, fitness, or capacity to perform a contract with the County, any other public entity, or a nonprofit corporation created by the County or engaged in a pattern or practice which negatively reflects on same; (3) committed an act or omission which indicates a lack of business integrity or business honesty; or (4) made or submitted a false claim against the County or any other public entity.

The Internal Services Department (ISD) will recommend a five year debarment for KCBM and its principals, Kimberly Y. Chung (a.k.a. Kim Y. Paek), President/CEO and Charles I. Chung, Chairman.

A summary of the evidence to support the debarment recommendation is set forth below:

1. On February 29, 2012, Ms. Kimberly Y. Chung (a.k.a. Kim Y. Paek) met with Custodial and Contracting Division staff of the Internal Services Department (ISD). Ms. Chung notified the County at that time that KCBM had been served with a Tax Levy of $523,949 by the Internal Revenue Service (IRS), and that KCBM's financial accounts and assets had been frozen. This lien resulted from monies owed to the IRS from 2008 to 2012. Ms. Chung indicated that she had an appointment to meet with the IRS to request that the levy be lifted to allow KCBM to pay its employees. On March 1, 2012, the IRS released the levy, however, the IRS issued a subsequent levy on March 30, 2012.

   The County is prepared to produce documentary evidence of the tax levies placed on KCBM by the IRS.

2. KCBM violated several terms of its contract with the County of Los Angeles including provisions under Section 8.6, Compliance with Applicable and Section 8.44, Termination for Insolvency.

   The County is prepared to produce documentary evidence demonstrating the terms of the County contract and the requirements of the applicable laws.

ATTACHMENT II

COUNTY OF LOS ANGELES
OFFICE OF THE COUNTY COUNSEL
648 KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012-2713

TELEPHONE
(213) 974-1814
FACSIMILE
(213) 633-1915
TDD
(213) 633-0901

JOHN F. KRATTLI
Acting County Counsel

April 23, 2012

DELIVERED IN PERSON

Martin Zimmerman
Chief Executive Office
Kenneth Hahn Hall of Administration, Room 745
500 West Temple Street
Los Angeles, California 90012

Re: DOCUMENTARY EVIDENCE DEBARMENT PROCEEDINGS FOR KCBM

Dear Mr. Zimmerman and Contractor Hearing Board:

Enclosed are five copies of the documentary evidence to be presented at the Contractor's Hearing Board meeting on May 2, 2012, regarding the potential debarment of KC Building Maintenance, Inc.

Attachment I identifies the documents that comprise the documentary evidence.

Please contact me with any questions or concerns regarding the upcoming debarment hearing or enclosures at (213) 974-1814 or by email at efriedman@counsel.lacounty.gov.

Very truly yours,

JOHN F. KRATTLI
Acting County Counsel

By
ELIZABETH J. FRIEDMAN
Principal Deputy County Counsel
Contracts Division

EJF:gjh

Enclosures

HOA.878931.1

DOCUMENTARY EVIDENCE

DEBARMENT HEARING FOR K.C. BUILDING MAINTENANCE, INC.

MAY 2, 2012

TAB	DOCUMENTS
1	IRS Notice of Levy dated February 9, 2012
2	Memorandum from KC Building Maintenance, Inc. (KCBM) to Laura Lambertson (ISD) requesting termination of contract number 75320 dated March 1, 2012
3	Notification Letter from Internal Services (ISD) to KCBM regarding its intent to terminate custodial services contract number 75320 dated March 1, 2012
4	IRS Release of Levy dated March 1, 2012
5	Adopted board letter terminating custodial services contract number 75320 with KCBM for insolvency dated March 6, 2012
6	Notification to KCBM advising of CARD Entry dated March 15, 2012
7	IRS Notice of Levy dated March 30, 2012
8	Notice of Debarment Hearing dated April 10, 2012
9	IRS Release of Levy dated April 12, 2012

PARTICIPANTS IN THE CONTRACTOR HEARING BOARD DEBARMENT PROCEEDINGS FOR K.C. BUILDING MAINTENANCE, INC. AND MS. KIMBERLY Y. CHUNG AND MR. CHARLES I. CHUNG

MAY 2, 2012 - 1:30 P.M.
KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 372
LOS ANGELES, CA 90012

CONTRACTOR HEARING BOARD

MARTIN ZIMMERMAN, CHAIR, ASSISTANT CHIEF EXECUTIVE OFFICER, CHIEF EXECUTIVE OFFICE
MASSOOD EFTEKHARI, ASSISTANT DEPUTY DIRECTOR, DEPARTMENT OF PUBLIC WORKS
ROBERT MAYCUMBER, ADMINISTRATIVE DEPUTY, DEPARTMENT OF PARKS AND RECREATION
JAMES HAZLETT, ANALYST, CHIEF EXECUTIVE OFFICE, STAFF TO THE CHB

RELIABLE BUILDING MAINTENANCE, INC.

NO PARTICIPANTS

OFFICE OF THE COUNTY COUNSEL

TRUC MOORE, LEGAL ADVISOR TO THE CHB, DEPUTY COUNTY COUNSEL
ELIZABETH FRIEDMAN, LEGAL ADVISOR TO ISD, DEPUTY COUNTY COUNSEL

WITNESSES

YOLANDA YOUNG, DIVISION MANAGER, INTERNAL SERVICES DEPARTMENT

ALSO PRESENT

LUCI GUTIERREZ, SECTION MANAGER, INTERNAL SERVICES DEPARTMENT
GAYANE KAZARYAN, ANALYST, INTERNAL SERVICES DEPARTMENT