County of Los Angeles
INTERNAL SERVICES DEPARTMENT
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"To enrich lives through effective and caring service"

October 4, 2012

To: Audit Committee

From: Tom Tindall
Director

Tom Tindall

Subject: **REVIEW OF BOARD POLICY NO. 5.040 – CONTRACTOR PERFORMANCE EVALUATION**

Based on the request of the Executive Office of the Board, the Internal Services Department, in conjunction with Chief Executive Office and County Counsel have reviewed Board Policy 5.040, Contractor Performance Evaluation. At this time, we are recommending the following four revisions:

1. Reference Section – add October 4, 2005 Auditor-Controller memorandum, "Revised Non-Responsibility and Debarment Implementation Instructions" and add July 11, 2011 Auditor-Controller memorandum, "Contractor Alert Reporting Database Final Report" (Board Agenda Item 26-C, April 27, 2010)

2. Policy Section – update the policy language to reflect the appropriate contractor performance databases.

3. Responsible Department Section – add Auditor-Controller

4. Date Issued/Sunset Date – extend the sunset review date to December 14, 2016.

Attached is a red-line version of the policy, as requested by the Executive Office.

If you have any questions regarding this request, please contact me or your staff may contact Joe Sandoval at (323) 267-2109 or at jsandoval@isd.lacounty.gov.

TT:JS:LG:gk

Attachments

c: Executive Officer, Board of Supervisors
Chief Executive Officer
County Counsel
Auditor-Controller

Los Angeles County
BOARD OF SUPERVISORS POLICY MANUAL

Policy #:	Title:	Effective Date:
5.040	Contractor Performance Evaluation	02/13/98

PURPOSE

Defines and incorporates a vendor performance evaluation process in contracts and solicitation documents.

REFERENCE

January 13, 1998 Board Order, Synopsis 44

February 13, 1998 Chief Administrative Office memo, "Contractor Performance Evaluation"

October 4, 2005 Auditor-Controller memorandum, "Revised Non-Responsibility and Debarment Implementation Instructions"

July 11, 2011 Auditor-Controller memorandum, "Contractor Alert Reporting Database Final Report (Board Agenda Item 26-c, April 27, 2010)

POLICY

All contracts and solicitation documents are to include provisions for a period/annual performance evaluation of the contractor, including reports to the Board of Supervisors (Board) and updates to the appropriate contractor performance databases when performance does not meet contract standards, and indicating improvement measures, if any. If improvement does not occur consistent with the corrective action plan, a department may ultimately recommend that the Board terminate the agreement, or within existing authority, may terminate the agreement and notify the Board of such action. When a contractor's performance meets standards, departments should retain the evaluation results.

The performance evaluation language is in addition to any other quality control/quality assurance requirements that departments believe are appropriate for a particular contract.

Standard language to be included in all contracts and substantive amendments:

The following policy language shall be incorporated in substantially similar form into all County contracts and substantive amendments.

County's Quality Assurance Plan

The County or its agent will evaluate Contractor's performance under this agreement on not less than an annual basis. Such evaluation will include assessing the Contractor's compliance with all contract terms and performance standards. Contractor deficiencies which County determines are severe or continuing and that may place performance of the agreement in jeopardy if not corrected will be reported to the Board ~~of Supervisors~~ and listed in the appropriate contractor performance database. The report to the Board will include improvement/corrective action measures taken by the County and Contractor. If improvement does not occur consistent with the corrective action measures, County may terminate this agreement or impose other penalties as specified in this agreement.

RESPONSIBLE DEPARTMENT

Internal Services Department

Chief Executive Office

County Counsel

Auditor-Controller

DATE ISSUED/SUNSET DATE

Issue Date: January 13, 1998
Review Date: November 21, 2002
Review Date: February 22, 2007
Review Date: March17, 2011
Review Date: October 25, 2012

Sunset Review Date: January 13, 2002
Sunset Review Date: November 21, 2006
Sunset Review Date: February 22, 2011
Sunset Review Date: December 14, 2012
Sunset Review Date: December 14, 2016

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

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J. TYLER McCAULEY
AUDITOR-CONTROLLER

October 4, 2005

TO: All Department Heads

FROM: J. Tyler McCauley
Auditor-Controller

SUBJECT: **REVISED NON-RESPONSIBILITY AND DEBARMENT IMPLEMENTATION INSTRUCTIONS**

On August 16, 2005, the Board of Supervisors adopted an ordinance amending the County's Non-Responsibility and Debarment ordinance (Title 2, chapter 2.202 of the County code). These amendments became effective September 15, 2005.

The procedures and guidelines for making determinations of contractor non-responsibility and debarment are outlined in the Implementation Instructions that my office originally issued in March 2000. The County Counsel issued revised Instructions on March 16, 2004 reflecting an ordinance amendment approved by the Board on February 10, 2004. My office has been working with the Chief Administrative Office and County Counsel to update these Implementation Instructions to reflect the most recent amendments to the ordinance, including revising the membership of the Contractor Hearing Board to include the Departments of Health Services, Parks and Recreation, and Public Social Services.

Enclosed is a copy of the revised Implementation Instructions. If you have questions regarding this matter, please call me or have your staff contact Don Chadwick at (626) 293-1102.

JTM:MMO:DC

Enclosure

c: Each Supervisor

IMPLEMENTATION OF PROCEDURES FOR DETERMINATIONS OF CONTRACTOR NON-RESPONSIBILITY AND CONTRACTOR DEBARMENT

On January 11, 2000, the Los Angeles County Board of Supervisors adopted an ordinance for Determinations of Contractor Non-Responsibility and Contractor Debarment (Ordinance), Los Angeles County Code Chapter 2.202, which is applicable to all County contracts except to the extent applicable State and/or Federal laws are inconsistent with the terms of the Ordinance.[1] These implementation instructions provide guidelines and necessary interpretation to assist departments in implementing the Ordinance.

I. INTRODUCTION

In adopting the Ordinance, the Board made a finding that, in order to promote integrity in the County's contracting processes and to protect the public interest, the County's policy shall be to conduct business only with responsible contractors. The Board further found that debarment is to be imposed only in the public interest for the protection of the County, and not for the purpose of punishment.

Requirements for finding contractors non-responsible and debarring contractors are applicable to all County contracts, unless Federal or State law otherwise applies. As defined in the Ordinance, the "County" means the County of Los Angeles, any public entities for which the Board of Supervisors is the governing body, and any joint powers authorities of which the County of Los Angeles is a member that have adopted the contracting procedures of the County of Los Angeles.

Other procedures in these implementation instructions describe the requirements for development and use of a County Contract Data Base to monitor contractor performance and contractor labor law violations; these procedures are applicable only to Proposition A/Living Wage, cafeteria services, information technology, and construction contracts.

Individual departments remain responsible for reviewing past contractor performance (e.g., past labor law issues on both County and non-County contracts) prior to recommending contracts, monitoring contractor performance, inputting relevant contractor information in the County Contract Data Base, recommending findings of non-responsibility, and initiating debarment procedures, as applicable.

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[1] Revisions to the Ordinance were later adopted by the Board of Supervisors on February 10, 2004, and August 26, 2005.

Semi-annually, the Office of Affirmative Action Compliance (OAAC) and the Internal Services Department (ISD) will jointly review the County Contract Data Base to assess departmental follow up on documented violations or other performance deficiencies which may merit debarment. Information in the County Contract Data Base will pertain to current and prospective contracts. Contractors will be required to disclose past performance as part of the solicitation process.

Contractor performance problems and contractor labor law violations that are identified in the semi-annual Contract Data Base review, and for which the relevant department has not initiated appropriate action, will be referred to the Chief Administrative Office (CAO) and the Auditor-Controller (A-C). These two departments will jointly work with the contracting department to determine if the department should pursue debarment of a contractor. The A-C also has responsibility for overall monitoring of departmental compliance with Ordinance requirements.

Department heads will be required to annually certify to the A-C that they have complied with all required procedures including: 1) completing at least annual contractor performance reviews, 2) inputting required information in the County Contract Data Base, as appropriate, and 3) proceeding with non-responsibility and debarment procedures, where required.

II. GENERAL DESCRIPTION OF THE ORDINANCE

A. Determination of Contractor Non-Responsibility

The Ordinance provides that prior to a contract award, the County may determine that a contractor submitting a bid or proposal (bidder/proposer) is non-responsible for purposes of that contract. As defined in the Ordinance, a "bid or proposal" is a bid, proposal, or any other response to a solicitation submitted by or on behalf of a contractor seeking an award of a contract. A finding of non-responsibility means that the bidder/proposer is prohibited from being awarded and/or performing work on that contract. This finding would be appropriate if the bidder/proposer has done any of the following:

(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.

Such bidders/proposers are entitled to written notice of the basis for the proposed non-responsibility finding and a hearing before the department head or his/her designee. The department head makes a recommendation regarding finding of non-responsibility to the Board of Supervisors. The Board can modify, deny, or adopt the recommendation of the department. The Board makes the final determination of non-responsibility.

NOTE: Finding a bidder/proposer <u>non-responsible</u> is not the same as finding a bidder/proposer <u>non-responsive</u> to solicitation requirements.

✓ Non-responsibility refers to finding a bidder/proposer incapable of performing as a responsible County contractor, based on past performance history or other relevant documentation.

✓ Non-responsive generally refers to the failure of a bidder/proposer to comply with some or all solicitation requirements making the bidder/proposer ineligible for consideration in bid/proposal evaluation process. It is generally not a reflection on the bidder's/proposer's capacity to perform as a responsible County contractor and does not require the exercise of the department's judgment in determining whether the bidder/proposer is responsive. In some instances, however, the distinction may not be clear based on the nature of the bidder's/proposer's omission. If department staff are unsure as to whether an action by a bidder/proposer is an indication of non-responsibility or non-responsiveness, County Counsel shall be consulted.

B. Debarment of Contractors

The Ordinance provides that the County may debar a contractor who has had a contract with the County in the preceding three years and/or a contractor who submits a bid or proposal for a new

contract with the County. Debarment would be appropriate if the County finds that the contractor has:

(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.

Such a contractor is entitled to written notice of the basis for the proposed debarment and a hearing before the Contractor Hearing Board (CHB), comprised of regular members CAO, ISD, OAAC, and the Department of Public Works (DPW), with the Departments of Health Services, Parks and Recreation, and Public Social Services acting as alternate members. The CHB makes a recommendation to the Board regarding whether the contractor should be debarred and, if so, the appropriate length of time for the debarment. The Board can modify, deny or adopt the recommendation of the CHB. A debarment finding becomes final upon the approval of the Board.

Debarment results in a contractor being prohibited from bidding or proposing on, being awarded and/or performing work on a contract with the County for a period up to five years, or if circumstances warrant, the County may impose a longer period up to and including permanent debarment. In addition, the Board may, consistent with the terms of any existing contracts that the debarred contractor may have with the County, terminate any or all such existing contracts. A debarred contractor is identified as such in the County Contract Data Base.

III. REQUIREMENTS FOR INVITATION FOR BIDS (IFBS), REQUEST FOR PROPOSALS (RFPS), AND CONTRACTS

As of February 10, 2000, the following requirements set forth in the Ordinance are effective for all solicitations and contracts, except to the

extent applicable State and/or Federal laws are inconsistent with the terms of the Ordinance.

A. IFB and RFP Solicitation Documents

All IFB and RFP solicitations shall include the standard language as provided in Exhibit I. In addition, the most current listing of debarred contractors, which is available from the County Contract Data Base, shall be included in all solicitation packages.

B. Standard Contract Language

All County contracts shall include the standard language as provided in Exhibit II.

IV. CONTRACTOR PERFORMANCE MONITORING

A. All Contracts

Departments remain responsible for monitoring contractor performance and compliance with all contract terms, consistent with existing Board policy that requires at least an annual evaluation of contractor performance.

B. Proposition A/Living Wage, Cafeteria Services, Information Technology and Construction Contracts - County Contract Data Base

Separate data bases for construction, information technology, cafeteria services, and Proposition A/Living Wage contracts have been merged into a single County Contract Data Base hosted by ISD which is available at the County Intranet site: http://camispnc.co.la.ca.us/contractsdatabase.

Departments are responsible for entering specific performance information into the County Contract Data Base for all existing and prospective Proposition A/Living Wage, cafeteria services, information technology and construction contracts. This information includes contract identifying information and contractor performance data, contractor compliance with contract wage requirements, and contractor labor law violations. Training on the County Contract Data Base has been provided to departmental contracting staff.

1. Initial identifying information

Contract identifying information which department staff must input for the affected contracts includes:

a) Contractor Identifying Information;
b) Contract Number;
c) Contract Title;
d) Service Type (Proposition A/Living Wage, Cafeteria Services, Construction, or Technology) and Sub-Type (e.g., custodial (Prop A), hardware (Technology), public works construction (Construction);
e) Department Name;
f) Department Contact Name and Phone Number;
g) Initial Contract Term (e.g., 3 years plus 2 one-year optional extensions);
h) Contract Start/Effective Date;
I) Contract End Date (without optional extensions);
j) Contract End Date after Exercise of All Optional Extensions;
k) Contract Cost (Annual Cost).

This information shall be entered into the County Contract Data Base upon the Board's or the department head's delegated authority approval of the affected contract. Department heads shall designate specific staff to input and update the County Contract Data Base.

2. Contractor Performance Information

Departments must enter performance information into the County Contract Data Base "Report Card", answering "yes" or "no" to standard questions. The County Contract Data Base and Report Card must be updated by departments at least annually in conjunction with the required contractor performance review, but more frequently if performance problems are identified and documented. If a contract period is less than one year, the County Contract Data Base and Report Card shall be updated by departments at the end of the contract period, at a minimum.

3. Semi-Annual Review of the County Contract Data Base

Failure by departments to enter contract identifying information and performance information at least annually, or at the conclusion of a shorter term contract, will trigger the

identification of such contracts in a semi-annual review of the County Contract Data Base by ISD and OAAC. Such contracts will be identified to the CAO and the A-C for further review and discussion with the contracting department. In addition, indications of performance problems that have not been acted upon by a department will similarly generate an inquiry and an assessment of the need for further action, including consideration of debarment proceedings.

V. SPECIFIC DEPARTMENTAL ROLES

The following briefly describes the roles of designated departments in the contract monitoring and non-responsibility/debarment process.

A. **All County departments:** Responsible for timely and accurate input into the County Contract Data Base and for taking remedial action with respect to contractor performance problems, where appropriate. This includes investigating and bringing charges for non-responsibility and debarment proceedings. Also required to append a list of debarred contractors to all IFBs and RFPs.

B. **Internal Services Department:** Participates with OAAC in the semi-annual review of the County Contract Data Base to identify potential problem contractors which show no indication of departmental action. ISD will provide contracting expertise related to contract performance monitoring. ISD will also host the County Contract Data Base, and participate as a member of the CHB.

C. **Office of Affirmative Action Compliance:** Participates with ISD in the semi-annual review of the County Contract Data Base to identify potential problem contractors which show no indication of departmental action. OAAC will provide expertise related to monitoring prevailing wage, labor law violations, employment discrimination, civil rights violations, and Living Wage compliance. Also participates as a member of the CHB.

D. **Auditor-Controller:** After notification by ISD and OAAC of a potential problem with a contractor, the A-C and CAO will work with the relevant department to determine if the department should pursue debarment of contractor. A-C also evaluates the contract monitoring process in conjunction with departmental audits, and provides countywide auditing expertise.

E. **Department of Public Works:** Participates on the CHB to bring expertise in the variety of contracts they administer, including construction contracts.

F. **Chief Administrative Office:** After notification by ISD and OAAC of a potential problem with a contractor, the CAO and A-C will work with the relevant department to determine if the department should pursue debarment of contractor. CAO will also participate on the CHB to bring general contracting and countywide perspective to the process. The CAO will chair the CHB as a non-voting member. Neither regular nor alternate members may participate if the contract at issue involves their department. If such an instance creates an even number of participating members, not including the CAO, the CAO will exercise its vote. If a contract before the CHB involves CAO, the other departmental representatives shall designate an acting chair (who will also be a voting member), and CAO will not participate in the hearing.

G. **Department of Health Services:** Participates as an alternate member of the CHB.

H. **Department of Parks and Recreation:** Participates as an alternate member of the CHB.

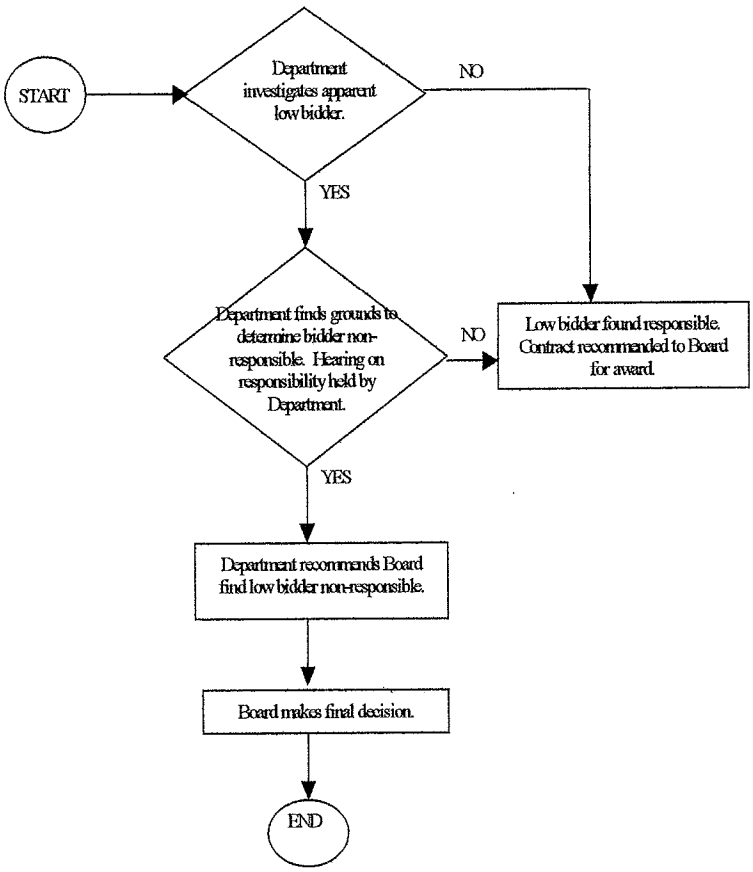
I. **Department of Public Social Services:** Participates as an alternate member of the CHB.

J. **County Counsel:** County Counsel staff will provide legal advice to departments throughout the process. Separate County Counsel staff will act as legal advisor to the CHB.

VI. NON-RESPONSIBILITY DETERMINATION

During a contract solicitation process, a department can recommend to the Board that a bidder/proposer be found non-responsible to perform services under the proposed contract, based on criteria established in the Ordinance. (See Section II A.)

A flow chart for the non-responsibility process is shown below.



A. Departmental Assessment of Cause for a Non-Responsibility Finding

In pursuing a finding of non-responsibility against a bidder/proposer, the burden of proof is on the department and must be established by a preponderance of the evidence.

1. Department staff who become aware of information concerning the existence of a cause for finding a bidder/proposer non-responsible shall immediately advise departmental management, who shall promptly notify appropriate County Counsel staff.

2. Departments shall promptly investigate any reports of information concerning the existence of a cause for a non-responsibility finding. Departments must develop evidence/documentation to support such a finding and discuss the adequacy of the documentation with the assigned County Counsel staff.

   A department may consider the seriousness and extent of the bidder's/proposer's acts, omissions, patterns or practices

as well as any relevant mitigating or aggravating factors in determining whether a bidder/proposer should be deemed non-responsible, which include but are not limited to the following:

- ✓ Actual or potential harm or impact that results or may result from the wrongdoing.
- ✓ Frequency and/or number of incidents and/or duration of the wrongdoing.
- ✓ Whether there is a pattern or prior history of wrongdoing.
- ✓ Bidder/proposer's overall performance record, e.g., the County may evaluate the bidder/proposer's activity cited as the basis for the non-responsibility finding in the broader context of the bidder/proposer's overall performance history.
- ✓ Whether a bidder/proposer has been debarred, found non-responsible, or disqualified by another public entity on a basis of conduct similar to one or more of the grounds for a non-responsibility finding specified in the Ordinance.
- ✓ Whether a bidder/proposer's wrongdoing was intentional or inadvertent. For example, the County may consider whether and to what extent a bidder/proposer planned, initiated, or carried out the wrongdoing.
- ✓ Whether a bidder/proposer has accepted responsibility for the wrongdoing and recognizes the seriousness of the misconduct that led to the grounds for a non-responsibility finding and/or has taken corrective action to cure the wrongdoing, such as establishing ethics training and implementing programs to prevent recurrence.
- ✓ Whether and to what extent a bidder/proposer has paid or agreed to pay criminal, civil, and administrative liabilities for the improper activity, and to what extent, if any, has the bidder/proposer made or agreed to make restitution.
- ✓ Whether a bidder/proposer has cooperated fully with the County during the investigation, and any court or administrative action. In determining the extent of cooperation, the County may consider when the cooperation began and whether the bidder/proposer disclosed all pertinent information known to the bidder/proposer.

- ✓ Whether the wrongdoing was pervasive within a bidder/proposer's organization.

- ✓ The positions held by the individuals involved in the wrongdoing.

- ✓ Whether a bidder/proposer's principals participated in, knew of, or tolerated the offense.

- ✓ Whether a bidder/proposer brought the activity cited as a basis for a non-responsibility finding to the attention of the County in a timely manner.

- ✓ Whether a bidder/proposer has fully investigated the circumstances surrounding the cause for a non-responsibility finding and, if so, made the result of the investigation available to the County.

- ✓ Whether a bidder/proposer had effective standards of conduct and internal control systems in place at the time the questioned conduct occurred.

- ✓ Whether a bidder/proposer has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes the cause for a non-responsibility finding.

- ✓ Other factors that are appropriate to the circumstances of a particular case.

B. County Counsel Assistance

County Counsel will consult with and assist the department in determining if there is sufficient cause to proceed with a non-responsibility hearing and provide legal advice throughout the process.

C. Written Notice of Departmental Non-Responsibility Hearing

1. Before initiating a hearing on a bidder's/proposer's responsibility, the department shall send written notice to the bidder/proposer stating that the department intends to recommend to the Board of Supervisors that the bidder/proposer be found non-responsible. The notice shall specify the basis for the proposed recommendation of non-responsibility and a summary of any evidence to support such recommendation.

The notice shall also include the date, time and place of the hearing before the department head/designee.

The notice shall also advise the bidder/proposer that the parties may agree to submit the matter on the basis of documentary evidence only.

2. The notice shall also advise the bidder/proposer that the bidder/proposer is required to confirm with the department that the bidder/proposer and/or representative intends to attend the hearing.

3. The notice shall also advise the bidder/proposer that failure to confirm with the department the hearing date or otherwise respond to the notice may result in the bidder/proposer waiving all rights to a hearing before the departmental hearing officer.

4. Before a department sends a written notice to a bidder/proposer pursuant to this Section, such notice must be approved by management at the department and County Counsel. County Counsel will advise as to the appropriate delivery method for the notice. At minimum, the notice should be delivered by certified mail to the last known address of the bidder/proposer, or of the bidder's/proposer's attorney, if the department knows that the bidder/proposer is represented by an attorney.

5. Notices made pursuant to this Section shall be deemed served and effective upon the date the notice is provided in person or by facsimile, or two days after sending by first class mail.

D. Non-Responsibility Hearing

On the date and place specified in the notice, the department shall conduct a hearing where evidence on the proposed non-responsibility determination is presented; the burden of proof is on the department and must be established by a preponderance of the evidence.

1. <u>Departmental Hearing Officer</u>

The department head, or a designee, shall conduct the hearing, examine the evidence on the issue of a

bidder's/proposer's responsibility, and prepare a proposed decision and recommendation to the Board of Supervisors regarding whether the bidder/proposer should be found non-responsible. The person acting as the departmental hearing officer must be a different person than the department staff who investigates or presents the charges in support of a finding of non-responsibility at the hearing.

2. Departmental Investigator

The department head shall designate a department staff member who will investigate information concerning the existence of a cause for finding a bidder/proposer non-responsible. The departmental investigator may also act as the departmental advocate (see below).

3. Departmental Advocate

The department head shall designate a department staff member who will present charges of a bidder's/proposer's non-responsibility at a hearing before the departmental hearing officer.

4. County Counsel Representation

County Counsel staff will provide legal advice and representation, as necessary to the departmental investigator/advocate. County Counsel staff will also provide legal advice to the departmental hearing officer. The departmental investigator/advocate and the departmental hearing officer shall be advised by separate County Counsel staff.

5. Bidder/Proposer, Attorney/Authorized Representative

The bidder/proposer and/or attorney or other authorized representative of the bidder/proposer shall be afforded an opportunity to appear at the hearing and to submit documentary evidence, present witnesses and offer rebuttal evidence. An authorized representative may be designated by the bidder/proposer in person at the hearing or by letter received at or prior to the departmental hearing, signed by the bidder/proposer who submitted the bid/proposal.

6. Presentation of Evidence and Rebuttal

a. At the departmental hearing, the department shall first present evidence to support a finding that a bidder/proposer is non-responsible. During the department's presentation of its case, the bidder/proposer or representative of same shall not interrupt or challenge the presentation, unless otherwise agreed to by both parties and the departmental hearing officer.

b. The person, on behalf of the department, who presents the charges of non-responsibility has the right to call and examine witnesses, to cross-examine opposing witnesses, to present documentary or any other evidence in support of a finding that the bidder/proposer is non-responsible.

c. After the department's presentation of its case, the bidder/proposer and/or representative of same shall present evidence to support a finding that the bidder/proposer is responsible and to rebut evidence that is the basis for the department's recommendation. During the bidder's/proposer's or representative's presentation of his or her case, the department shall not interrupt or challenge the presentation, unless otherwise agreed to by both parties and the departmental hearing officer.

d. The bidder/proposer and/or representative has the right to call and examine witnesses, to cross-examine opposing witnesses, to present documentary or any other evidence in support of a finding that the bidder/proposer is responsible and to rebut evidence that is the basis for the department's recommendation.

e. Each party shall have the opportunity to rebut the evidence presented by the other party.

f. The departmental hearing officer may ask questions, seek clarification and request additional information from the parties at any time during the hearing. The departmental hearing officer has discretion to continue the hearing as necessary.

g. The departmental hearing officer shall close the hearing at the conclusion of the presentation of the evidence. All evidence to be considered by the departmental hearing officer shall be submitted prior to the close of the hearing, unless otherwise specified by the departmental hearing officer.

7. Rules of Evidence

Formal rules of evidence do not apply in the departmental hearing. At the hearing, the departmental hearing officer can consider all relevant information on the issues related to the subject of the hearing, as long as the information presented is the sort of information on which responsible persons are accustomed to rely in the conduct of serious affairs.

8. Burden of Proof and Standard of Proof

The burden of proof is on the department proposing a non-responsibility determination and must be established by a standard of preponderance of the evidence. Preponderance of the evidence means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

E. Recording the Departmental Hearing

The hearing before the departmental hearing officer shall be recorded by any method deemed appropriate by the hearing officer (audio tape, video tape, reporter/transcriber) and a copy of the record of the proceeding shall be made available to the bidder/proposer at cost, upon request.

F. Proposed Decision and Recommendation to the Board of Supervisors

1. After the hearing, the departmental hearing officer shall prepare a proposed decision, which shall contain a recommendation regarding whether the bidder/proposer should be found non-responsible regarding the contract(s) at issue. The departmental hearing officer's proposed decision and recommendation regarding whether the bidder/proposer be found non-responsible shall be based on the record of the hearing.

2. In making the proposed decision and recommendation, the departmental hearing officer may consider such items, including but not limited to, the seriousness and extent of the bidder's/proposer's acts or omissions, patterns or practices, as well as any mitigating or aggravating factors presented at the hearing.

3. The department shall present to the Board of Supervisors the proposed decision, a recommendation on a finding of non-responsibility and a record of the hearing before the department.

4. The department shall give notice to the bidder/proposer of the proposed decision and recommendation. The notice shall include the proposed decision and recommendation and specify the date, time and place of the hearing before the Board of Supervisors. Delivery of the notice should be by certified mail to the bidder/proposer or representative of same.

G. Board of Supervisors

The Board of Supervisors may, in its discretion, limit any further hearing to the presentation of evidence not previously presented. The Board of Supervisors has the right to modify, deny or adopt the proposed decision and recommendation of the departmental hearing officer. A non-responsibility finding shall become final upon approval of the Board of Supervisors; if non-responsibility is determined, the bidder/proposer is ineligible for the award of the contract(s) at issue.

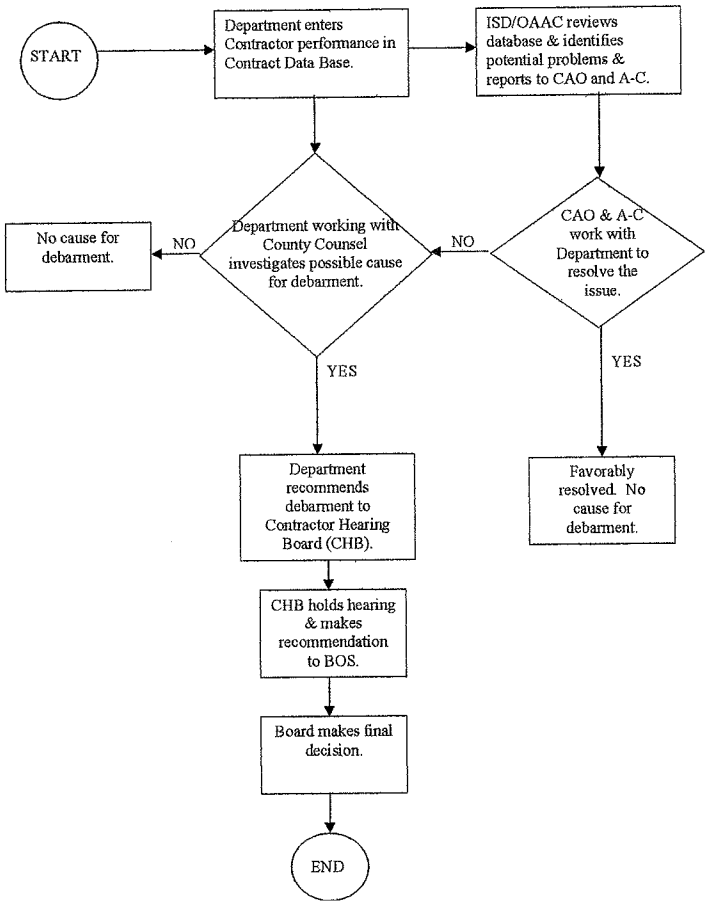
H. Contract Data Base Entry

Designated departmental staff shall enter a Board of Supervisors' finding of non-responsibility into the County Contract Data Base. (See Section IV. B above for information on the Contract Data Base)

VII. DEBARMENT DETERMINATION

The County may debar a contractor who has had a contract with the County in the preceding three years and/or a contractor who has submitted a bid or proposal for a new contract with the County. Debarment is an action taken by the County that results in a contractor being prohibited from bidding or proposing on, being awarded, and/or performing work on a contract with the County. Ordinarily, the period of

debarment should not exceed five years; however, if warranted by the circumstances, the County may impose a longer period of debarment up to and including permanent debarment. A contractor who has been determined by the County to be subject to such a prohibition is "debarred." The following flow chart demonstrates the debarment process.



A. Departmental Assessment of Cause for Debarment

In pursuing a debarment action against a contractor, the burden of proof is on the department and must be established by a preponderance of the evidence. The ordinance provides basic guidelines for making such a finding. (See Section II B.)

Contractor performance problems may be identified during routine contract monitoring, the annual performance review, A-C reviews, the semi-annual review of the County Contract Data Base by ISD and OAAC, and/or other reports of information concerning the existence of a cause for a debarment action, including complaints from the public or contractor employees.

Departments shall promptly investigate any report of contractor performance that may justify debarment. When a department staff member becomes aware of performance problems or any cause that potentially merit debarment action, the department staff member shall immediately advise departmental management who shall promptly notify the appropriate County Counsel.

The department head shall designate a department staff member who will investigate information concerning the existence of a cause for debarment.

B. County Counsel Assistance

County Counsel staff will consult with and assist the department in determining if there is sufficient cause to proceed with a debarment hearing and provide legal advice throughout the process.

C. Contractor Hearing Board

1. Composition/Structure

The regular membership of the CHB is comprised of the CAO, ISD, OAAC, and DPW. The Departments of Health Services, Parks and Recreation and Public Social Services serve as alternate members. Alternate members normally serve only when more than one regular member cannot participate due to a matter before the CHB involving their departments. However, they may be called to serve on other occasions (e.g., increased CHB workload). The CAO functions as the chair to call meetings as necessary to hear departmental debarment cases. County Counsel acts as a legal advisor to the CHB.

As chair, the CAO is a non-voting member of the CHB. Neither regular nor alternate members may participate if the contract at issue involves their department. If such an instance creates an even number of participating members, not including the CAO, the CAO will exercise its vote. If a contract before the CHB involves CAO, the other departmental representatives shall designate an acting chair (who will also be a voting member), and CAO will not participate in the hearing.

CHB representatives must be at the Deputy Director/Bureau Chief level in their department or its equivalent.

2. Scheduling the CHB Hearing

The department requesting a debarment hearing shall contact the Office of Unincorporated Area Services and Special Projects, Chief Administrative Office to schedule a hearing date. The CAO shall confirm a hearing date with the other CHB member departments that is responsive to the needs of the department. The requesting department shall be advised of the hearing date for purposes of issuing a written hearing notice to the contractor subject to the debarment process, consistent with the requirements in Section IV D, below.

D. Written Notice of CHB Debarment Hearing

1. Before initiating a debarment hearing before the CHB, the department shall send written notice to the contractor stating that the department intends to recommend that the contractor be debarred. The notice shall specify the basis for the proposed debarment recommendation and a summary of any evidence to support such recommendation. The notice shall also include the date, time and place of the hearing before the CHB.

   The notice shall also advise the contractor that the parties may agree to submit the matter to the CHB on the basis of documentary evidence only.

2. The notice shall also advise the contractor of the following:

   a. The contractor is required to confirm with the department that the contractor and/or representative intend to attend the CHB hearing.

   b. Failure of a contractor to confirm with the department the hearing date or otherwise respond to the notice within the time provided may result in waiver by the contractor of all rights to a hearing before the CHB.

   c. The department will provide to the contractor a list of prospective witnesses and copies of all documentary evidence to the contractor at least five (5) days prior to the scheduled hearing. The CHB shall be provided five (5) copies of each item so exchanged.

d. If the contractor intends to present evidence against the proposed debarment, the contractor must provide to the department a list of prospective witnesses and copies of any documentary evidence to the department at least five (5) days prior to the hearing. The CHB shall be provided five (5) copies of each item so exchanged.

e. The names and mailing addresses of the individuals to whom all copies shall be delivered.

3. Before a department sends a written notice to a contractor pursuant to this Section, such notice must be approved by department management and County Counsel staff. County Counsel will advise as to the appropriate method of delivery. At minimum, the notice should be delivered by certified mail to the last known address of the contractor, or of the contractor's attorney, if the department knows that the contractor is represented by an attorney.

4. Notices made pursuant to this Section shall be deemed served and effective upon the date the notice is provided in person or by facsimile, or two days after sending by first class mail.

E. Debarment Hearing

On the date and place specified in the written notice to the contractor, the CHB shall conduct a hearing where evidence on the proposed debarment action is presented by the department initiating such debarment action and rebuttal information is provided by the contractor. The burden of proof is on the department and must be established by a preponderance of the evidence.

1. Contractor Hearing Board

The chair of the CHB shall conduct the hearing and CHB members shall examine the evidence on the issues of the proposed debarment and the recommended period of debarment, and prepare a proposed decision and recommendation to the Board of Supervisors regarding whether the contractor should be debarred and, if so, the appropriate length of time for debarment.

2. Departmental Investigator

The departmental investigator may act as the departmental advocate at a CHB hearing (see below).

3. Departmental Advocate

The department head shall designate a department staff member who will present charges in support of contractor debarment at a CHB hearing.

4. County Counsel Assistance

County Counsel staff will provide legal advice, as necessary, to the department initiating the debarment action. County Counsel staff will also provide legal advice to the CHB. The department and the CHB shall be advised by separate counsel.

5. Contractor, Attorney/Authorized Representative

The contractor and/or attorney or other authorized representative of the contractor shall be afforded an opportunity to appear at the hearing and to submit documentary evidence, present witnesses and offer rebuttal evidence. An authorized representative may be designated by the contractor in person at the hearing or by letter received at or prior to the hearing, signed by the contractor who submitted the bid/proposal or who executed the contract.

6. Presentation of Evidence and Rebuttal

a. At the hearing, the departmental advocate, or the department's counsel, shall first present evidence to support a finding that a contractor should be debarred. The department's presentation shall also include a recommendation of the proposed period of debarment and any evidence in support thereof. During the department's presentation of its case, the contractor or representative of same shall not interrupt or challenge the presentation, unless otherwise agreed to by both parties and ordered by the CHB.

b. The departmental advocate, or the department's counsel, who presents the charges in support of debarment has the right to call and examine

witnesses, to cross-examine opposing witnesses, to present documentary or any other evidence in support of a debarment determination.

c. After the department's presentation of its case, the contractor and/or the contractor's representative shall be afforded an opportunity to present evidence to support a finding that the contractor should not be debarred and to rebut evidence that is the basis for the department's recommendation. The contractor may also present evidence relevant to the proposed period of debarment.

During the contractor's or contractor's representative's presentation of his or her case, the department shall not interrupt or challenge the presentation, unless otherwise agreed to by both parties and ordered by the CHB.

d. The contractor and/or the contractor's representative has the right to call and examine witnesses, to cross-examine opposing witnesses, to present documentary or any other evidence in support of a finding that the contractor should not be debarred and to rebut evidence that is the basis for the department's debarment recommendation.

e. Each party shall have the opportunity to rebut the evidence presented by the other party.

f. Members of the CHB may ask questions, seek clarification and request additional information from the parties at any time during the hearing. The CHB has discretion to continue the hearing, as necessary.

g. At the conclusion of the evidentiary presentations, each party may provide an oral, closing statement to the CHB. The Chair of the CHB shall then close the hearing. All evidence to be considered by the CHB shall be submitted prior to the close of the hearing, unless otherwise specified by the Chair.

7. Rules of Evidence

Formal rules of evidence do not apply in the CHB hearing. At the hearing, the CHB can consider all relevant information

on the issues related to the subject of the hearing, as long as the information presented is the sort of information on which responsible persons are accustomed to rely in the conduct of serious affairs.

8. Burden of Proof and Standard of Proof

The burden of proof is on the department proposing debarment and must be established by a standard of preponderance of the evidence. Preponderance of the evidence means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

F. Recording the CHB Hearing

The hearing before the CHB shall be recorded by any method deemed appropriate by the Chair (audio tape, video tape, reporter/transcriber) and a copy of the record of the proceeding shall be made available to the contractor at cost, upon request.

G. Deliberations of the CHB

1. Upon closing of the evidentiary portion of the hearing, the CHB shall deliberate and vote on whether to recommend that the contractor should be debarred.

2. If a majority of the CHB votes in the affirmative to recommend debarment, the CHB shall then deliberate and vote on the recommended period of debarment.

3. The chair shall announce the decision of the CHB and inform the parties that a written, tentative proposed decision and recommendation will be prepared and transmitted within a reasonable period of time to the parties for review and comment. No additional evidence or testimony will be received.

4. All deliberations and voting by the CHB shall be conducted in public during the hearing.

H. Proposed Decision and Recommendation to the Board of Supervisors

1. After the hearing, the CHB shall prepare a written tentative proposed decision, which shall contain a recommendation

regarding whether or not the contractor should be debarred and, if so, the appropriate length of time for debarment. The CHB's proposed decision and recommendation regarding debarment shall be based on the record of the hearing.

2. In making the tentative proposed decision and recommendation, the CHB may consider such items, including but not limited to, the seriousness and extent of the contractor's acts or omissions, patterns or practices, as well as any mitigating or aggravating factors presented at the hearing.

3. Mitigating and aggravating factors that the CHB may consider in determining whether to recommend debarment of a contractor and if so, the recommended length of the period of debarment include, but are not limited to, the following:

- ✓ Actual or potential harm or impact that results or may result from the wrongdoing.
- ✓ Frequency and/or number of incidents and/or duration of the wrongdoing.
- ✓ Whether there is a pattern or prior history of wrongdoing.
- ✓ Contractor's overall performance record, e.g., the County may evaluate the contractor's activity cited as the basis for debarment in the broader context of the contractor's overall performance history.
- ✓ Whether a contractor has been debarred, found non-responsible, or disqualified by another public entity on a basis of conduct similar to one or more grounds for debarment specified in the Ordinance.
- ✓ Whether a contractor's wrongdoing was intentional or inadvertent. For example, the County may consider whether and to what extent a contractor planned, initiated, or carried out the wrongdoing.
- ✓ Whether a contractor has accepted responsibility for the wrongdoing and recognizes the seriousness of the misconduct that led to the grounds for debarment and/or has taken corrective action to cure the wrongdoing, such as

establishing ethics training and implementing programs to prevent recurrence.

- ✓ Whether and to what extent a contractor has paid or agreed to pay criminal, civil, and administrative liabilities for the improper activity, and to what extent, if any, has the contractor made or agreed to make restitution.

- ✓ Whether a contractor has cooperated fully with the County during the investigation, and any court or administrative action. In determining the extent of cooperation, the County may consider when the cooperation began and whether the contractor disclosed all pertinent information known to the contractor.

- ✓ Whether the wrongdoing was pervasive within a contractor's organization.

- ✓ The positions held by the individuals involved in the wrongdoing.

- ✓ Whether a contractor's principals participated in, knew of, or tolerated the offense.

- ✓ Whether a contractor brought the activity cited as a basis for debarment to the attention of the County in a timely manner.

- ✓ Whether a contractor fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the County.

- ✓ Whether a contractor had effective standards of conduct and internal control systems in place at the time the questioned conduct occurred.

- ✓ Whether a contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes the cause for debarment.

- ✓ Other factors that are appropriate to the circumstances of a particular case.

4. If the CHB decides to recommend debarment of a contractor, and the recommended period is longer than five years up to and including permanent debarment, the CHB

must also make findings that the contractor's acts or omissions are of such an extremely serious nature that removal of the contractor from future County contracting opportunities for the specified period is necessary to protect the County's interests.

5. **Examples of Recommended Debarment and Appropriate Period of Debarment**

Note: the following examples are not intended to limit or control the judgment of the CHB in a particular case. In other words, while these examples may provide guidance, the CHB's recommendations must ultimately be made in light of the particular facts and circumstances presented during the debarment proceedings.

a. **Recommendation of 2 years or less**

This recommendation may be appropriate where there are few aggravating factors compared to mitigating factors. An example of such instance is where the contractor has no prior history of contract violations or wrongdoing; the violations or wrongdoing at issue are not the result of intentional or grossly negligent acts or omissions of the contractor (such as lack of full understanding of the contract requirements); and there is limited actual or potential harm or impact to the County or others as a result of the violations or wrongdoing.

b. **Recommendation of 2 years through 5 years**

This recommendation may be appropriate where there are more aggravating factors and fewer mitigating factors. An example of such instance is where there are contract violations or wrongdoing that are not solely unintentional or inadvertent but fall short of dishonest or intentional acts or omissions; the actual or potential harm to the County or others is limited; and the contractor has taken immediate steps to remedy the violations or wrongdoing and prevent future violations or wrongdoing.

c. **Recommendation of over 5 years to permanent**

This recommendation may be appropriate where there are very serious and/or multiple aggravating factors with very few or no mitigating factors. As set forth in the Ordinance, this recommendation must be based on a finding that the aggravating factors are of such an extremely serious nature that debarment for the recommended period is necessary to protect the County's interests. Examples of serious aggravating factors supporting such a recommendation include the following: multiple contract violations involving conduct that is dishonest, intentional, and/or illegal, which occur over an extended time period (such as an ongoing pattern of intentional violations of federal, state or local laws and regulations); an existing history of contract violations or other wrongdoing; the actual or potential harm to the County or others is substantial; the contractor purposely obstructed or interfered with the investigation of the contract violations or other wrongdoing; and/or the contractor's principals were involved in the wrongdoing.

6. The CHB shall transmit its tentative proposed decision and recommendation to the parties and provide notice of a hearing to consider written objections to the tentative proposed decision.

   a. A contractor or the department may submit objections to the tentative proposed decision of the CHB.

   b. All objections shall be made in writing and transmitted to the CHB (with a copy to the other party) at least five (5) days before the scheduled hearing.

   c. All objections must specify the portion(s) of the tentative proposed decision and recommendation and the basis for the objections. These objections shall be based on the tentative proposed decision. No new evidence or issues will be considered.

   d. If no objections are received by the CHB, the hearing will be canceled.

   e. After conducting a hearing or if the parties waived the right to a hearing on the proposed tentative decision, and after consideration of the written objections, the CHB may modify, correct or otherwise amend the

proposed decision and recommendation as it deems appropriate.

7. The CHB shall present to the Board of Supervisors a written report containing the proposed decision and a recommendation on debarment, and a record of the hearing before the CHB.

8. The CHB shall give notice to the contractor of the proposed decision and recommendation. The notice shall include a copy of the proposed decision and recommendation and specify the date, time and place of the hearing before the Board of Supervisors. Delivery of the notice should be by certified mail to the contractor or the contractor's representative or attorney.

I. Board of Supervisors

When considering the proposed decision and recommendation of the CHB, the Board of Supervisors may, in its discretion, limit any further hearing to the presentation of evidence not previously presented. The Board of Supervisors has the right to modify, deny or adopt the proposed decision and recommendation of the CHB. A debarment determination shall become final upon approval of the Board of Supervisors.

A contractor who has been debarred for a period longer than five years may request review of the debarment determination only as set forth in Section VIII, below.

J. Contract Data Base Entry

Designated departmental staff shall enter a Board of Supervisors' determination to debar a contractor into the County Contract Data Base. (See Section IV. B for information on the Contract Data Base.)

VIII. CONTRACTOR'S REQUEST FOR REDUCTION OF DEBARMENT PERIOD OR TERMINATION OF DEBARMENT

A. The County may in its discretion reduce the period of debarment or terminate the debarment if it finds that the contractor has adequately demonstrated one or more of the following: (1) elimination of the grounds for which the debarment was imposed; (2) a bona fide change in ownership or management; (3) material

evidence discovered after debarment was imposed; or (4) any other reason that is in the best interests of the County.

B. A request for review shall be in writing, supported by documentary evidence, and submitted to the CHB Chair. The CHB chair may either: (1) determine that the written request is insufficient on its face and deny the contractor's request for review; or (2) schedule the matter for consideration by the CHB.

1. The CHB Chair may summarily deny all requests that do not meet the following requirements: (1) the contractor has been debarred for a period longer than five years, (2) the debarment has been in effect for at least five years, and (3) the request is in writing, states one or more of the grounds for reduction of the debarment period or termination of debarment, and includes supporting documentation.

2. If the request for review has been approved for hearing by the CHB Chair, CHB staff shall provide notice of the scheduled hearing to the contractor and the department which recommended the initial debarment. The CHB shall conduct the hearing and make its recommendation pursuant to the same procedures as for a debarment.

IX. LIST OF DEBARRED CONTRACTORS

The Contract Data Base includes a listing of debarred contractors (Living Wage/Proposition A, cafeteria services, construction and technology contractors). Departmental staff shall append a copy of this listing to all IFB and RFP solicitations, as indicated in Section III. A.

X. DEPARTMENT HEAD ANNUAL CERTIFICATION OF COMPLIANCE

Department heads are required to annually certify to the A-C that they have complied with all required procedures, including completing at least annual contractor performance reviews, inputting required information in the County Contract Data Base, and proceeding with non-responsibility and debarment procedures where required. A copy of this certification shall be included with the department heads' annual submission of performance assessments.

STANDARD SOLICITATION LANGUAGE

1. **Determination of Bidder [Proposer] Responsibility** (Use "Bidder" or "Proposer" as appropriate to the type of solicitation. Use "Contractor," "Consultant," "Vendor," etc., as appropriate to the type of contract.)

   A. A responsible Bidder is a Bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is the County's policy to conduct business only with responsible contractors.

   B. Bidders are hereby notified that, in accordance with Chapter 2.202 of the County Code, the County may determine whether the Bidder is responsible based on a review of the Bidder's performance on any contracts, including but not limited to County contracts. Particular attention will be given to violations of labor laws related to employee compensation and benefits, and evidence of false claims made by the Bidder against public entities. Labor law violations which are the fault of subcontractors and of which the Bidder had no knowledge shall not be the basis of a determination that the Bidder is not responsible.

   C. The County may declare a Bidder to be non-responsible for purposes of this contract if the Board of Supervisors, in its discretion, finds that the Bidder has done any of the following: (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 Bidder'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.

   D. If there is evidence that the [apparent low Bidder/highest ranked Proposer] may not be responsible, the Department shall notify the Bidder in writing of the evidence relating to the Bidder's responsibility, and its intention to recommend to the Board of Supervisors that the Bidder be found not responsible. The Department shall provide the Bidder and/or the Bidder's representative with an opportunity to present evidence as to why the

Bidder should be found to be responsible and to rebut evidence which is the basis for the Department's recommendation.

E. If the Bidder presents evidence in rebuttal to the Department, the Department shall evaluate the merits of such evidence, and based on that evaluation, make a recommendation to the Board of Supervisors. The final decision concerning the responsibility of the Bidder shall reside with the Board of Supervisors.

F. These terms shall also apply to proposed [subcontractors/subconsultants] of Bidders on County contracts.

2. <u>Bidder Debarment</u>

A. The Bidder is hereby notified that, in accordance with Chapter 2.202 of the County Code, the County may debar the Bidder from bidding or proposing on, or being awarded, and/or performing work on other County contracts for a specified period of time, which generally will not exceed five years but may exceed five years or be permanent if warranted by the circumstances, and the County may terminate any or all of the Bidder's existing contracts with the County, if the Board of Supervisors finds, in its discretion, that the Bidder has done any of the following: (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 Bidder'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 offense 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.

B. If there is evidence that the [apparent low Bidder/highest ranked Proposer] may be subject to debarment, the Department shall notify the Bidder in writing of the evidence which is the basis for the proposed debarment, and shall advise the Bidder of the scheduled date for a debarment hearing before the Contractor Hearing Board.

C. The Contractor Hearing Board shall conduct a hearing where evidence on the proposed debarment is presented. The Bidder and/or the Bidder's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a tentative proposed decision, which

shall contain a recommendation regarding whether the Bidder should be debarred, and, if so, the appropriate length of time of the debarment. The Bidder and the Department shall be provided an opportunity to object to the tentative proposed decision prior to its presentation to the Board of Supervisors.

D. After consideration of any objections, or if no objections are received, a record of the hearing, the proposed decision and any other recommendation of the Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny or adopt the proposed decision and recommendation of the Contractor Hearing Board.

E. If a Bidder has been debarred for a period longer than five years, that Bidder may, after the debarment has been in effect for at least five years, submit a written request for review of the debarment determination to reduce the period of debarment or terminate the debarment. The County may, in its discretion, reduce the period of debarment or terminate the debarment if it finds that the Bidder has adequately demonstrated one or more of the following: (1) elimination of the grounds for which the debarment was imposed; (2) a bona fide change in ownership or management; (3) material evidence discovered after debarment was imposed; or (4) any other reason that is in the best interests of the County.

F. The Contractor Hearing Board will consider requests for review of a debarment determination only where (1) the Bidder has been debarred for a period longer than five years; (2) the debarment has been in effect for at least five years; and (3) the request is in writing, states one or more of the grounds for reduction of the debarment period or termination of the debarment, and includes supporting documentation. Upon receiving an appropriate request, the Contractor Hearing Board will provide notice of the hearing on the request. At the hearing, the Contractor Hearing Board shall conduct a hearing where evidence on the proposed reduction of debarment period or termination of debarment is presented. This hearing shall be conducted and the request for review decided by the Contractor Hearing Board pursuant to the same procedures as for a debarment hearing.

The Contractor Hearing Board's proposed decision shall contain a recommendation on the request to reduce the period of debarment or terminate the debarment. The Contractor Hearing Board shall present its proposed decision and recommendation to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

G. These terms shall also apply to proposed [subcontractors/subconsultants] of Bidders on County contracts.

STANDARD CONTRACT LANGUAGE

1. **Contractor Responsibility and Debarment** (Use "Contractor", "Consultant", "Vendor" etc. as appropriate to the type of contract.)

   A. A responsible Contractor is a Contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is the County's policy to conduct business only with responsible contractors.

   B. The Contractor is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the County acquires information concerning the performance of the Contractor on this or other contracts which indicates that the Contractor is not responsible, the County may, in addition to other remedies provided in the contract, debar the Contractor from bidding or proposing on, or being awarded, and/or performing work on County contracts for a specified period of time, which generally will not exceed five years but may exceed five years or be permanent if warranted by the circumstances, and terminate any or all existing contracts the Contractor may have with the County.

   C. The County may debar a Contractor if the Board of Supervisors finds, in its discretion, that the Contractor has done any of the following: (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 offense 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.

   D. If there is evidence that the Contractor may be subject to debarment, the Department will notify the Contractor in writing of the evidence which is the basis for the proposed debarment and will advise the Contractor of the scheduled date for a debarment hearing before the Contractor Hearing Board.

E. The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The Contractor and/or the Contractor's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a tentative proposed decision, which shall contain a recommendation regarding whether the contractor should be debarred, and, if so, the appropriate length of time of the debarment. The Contractor and the Department shall be provided an opportunity to object to the tentative proposed decision prior to its presentation to the Board of Supervisors.

F. After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision and any other recommendation of the Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny or adopt the proposed decision and recommendation of the Hearing Board.

G. If a Contractor has been debarred for a period longer than five years, that Contractor may, after the debarment has been in effect for at least five years, submit a written request for review of the debarment determination to reduce the period of debarment or terminate the debarment. The County may, in its discretion, reduce the period of debarment or terminate the debarment if it finds that the Contractor has adequately demonstrated one or more of the following: (1) elimination of the grounds for which the debarment was imposed; (2) a bona fide change in ownership or management; (3) material evidence discovered after debarment was imposed; or (4) any other reason that is in the best interests of the County.

H. The Contractor Hearing Board will consider a request for review of a debarment determination only where (1) the Contractor has been debarred for a period longer than five years; (2) the debarment has been in effect for at least five years; and (3) the request is in writing, states one or more of the grounds for reduction of the debarment period or termination of the debarment, and includes supporting documentation. Upon receiving an appropriate request, the Contractor Hearing Board will provide notice of the hearing on the request. At the hearing, the Contractor Hearing Board shall conduct a hearing where evidence on the proposed reduction of debarment period or termination of debarment is presented. This hearing shall be conducted and the request for review decided by the Contractor Hearing Board pursuant to the same procedures as for a debarment hearing.

The Contractor Hearing Board's proposed decision shall contain a recommendation on the request to reduce the period of debarment or terminate the debarment. The Contractor Hearing Board shall present its proposed decision and recommendation to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

I. These terms shall also apply to [subcontractors/subconsultants] of County Contractors.

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

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ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS
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JAMES L. SCHNEIDERMAN
JUDI E. THOMAS

July 11, 2011

TO: Supervisor Michael D. Antonovich, Mayor
Supervisor Gloria Molina
Supervisor Mark Ridley-Thomas
Supervisor Zev Yaroslavsky
Supervisor Don Knabe

FROM: Wendy L. Watanabe
Auditor-Controller

SUBJECT: **CONTRACTOR ALERT REPORTING DATABASE FINAL REPORT (Board Agenda Item 26-C, April 27, 2010)**

This is our final status report on establishing a mechanism to alert County departments of poorly performing contracts. On April 27, 2010, your Board directed the Chief Executive Officer (CEO), Auditor-Controller (A-C), County Counsel and the Director of Internal Services (ISD) to establish a work group and report back on the following:

- An examination of what mechanisms and/or databases the County already has in place to monitor its contractors, so the County can utilize what is currently working;
- A more appropriate term than the "Do Not Call List" for the database that will track the County's poorly performing contractors;
- A clearly defined purpose of the list and a definition of poorly performing contractors;
- Clearly defined roles and responsibilities for County staff charged with updating this list;
- A mechanism to remove contractors from the list that have complied with their obligations, along with appropriate notification;

- A mechanism to notify poorly performing contractors that they will be placed on this list absent sufficient corrective action and/or restitution steps; and

- A standard report or information sheet on a monthly basis, to alert County departments of poorly performing contractors.

We issued the work group's first status report on June 7, 2010, and the second status report on September 16, 2010. This is our final status report.

Implementation

In response to your Board's request, staff from the CEO, A-C and seven other County departments worked collaboratively to develop the Contractor Alert Reporting Database (CARD or System). CARD is a centralized online database for departments to track poorly performing contractors, within the County's eCAPS enterprise accounting application. CARD will improve interdepartmental oversight and communication regarding contractor performance issues.

CARD was implemented on July 1, 2011 for departments to begin posting contractor performance issues. In addition, departments will be required to use CARD to screen proposers as part of the evaluation process for solicitations issued after August 1, 2011.

CARD will allow all departments to review contractor performance issues in other departments by having the issues posted to the System. Under the CARD procedure manual, departments will be responsible for:

- Identifying performance issues that may justify placing a contractor in CARD;
- Giving contractor's due process to respond to the issue(s) before they are placed in CARD. The due process gives contractors several opportunities to resolve the issue(s) to avoid being placed in CARD;
- Placing a contractor in CARD;
- Working with contractors to resolve the issue(s) and updating a contractor's status in CARD to indicate when the issue(s) has been resolved;
- Using CARD to evaluate proposers during the contract solicitation process, including standard point deductions for contractors listed in CARD when scoring proposals that include prior County contract history.

As part of the implementation process, we have conducted CARD training classes for over 400 County managers and staff, and demonstrated the System to County executive staff and Board deputies. We also developed and distributed a CARD User Manual (Manual), which provides instructions on how to use CARD.

A-C staff will continue to provide technical support and assist County departments, on an as-needed basis, to address CARD-related concerns, such as determining when contractors should placed in the CARD.

Outcome

Implementing CARD will help improve departments' oversight of their contractors, and provide a method for sharing contractor performance issues among County departments. CARD will also help standardize the County's contract monitoring, contractor due process rights and issue resolution processes. We also expect that CARD will provide an incentive for contractors to address any performance issues before they are posted on the System. Finally, using CARD as part of the evaluation process will hold contractors more accountable for their work in all departments.

Acknowledgements

We thank the CEO, County Counsel, ISD, and the Departments of Children and Family Services, Health Services, Mental Health, Public Health, and Public Social Services for their assistance in developing and implementing the CARD system.

Please call me if you have any questions, or your staff may contact Don Chadwick at (213) 253-0301.

WLW:JLS:DC

c: All Department Heads
Public Information Office
Audit Committee