

Hammond



County of Los Angeles
CHIEF ADMINISTRATIVE OFFICE

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DAVID E. JANSSEN
Chief Administrative Officer

August 9, 2005

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

Board of Supervisors
GLORIA MOLINA
First District

YVONNE B. BURKE
Second District

ZEV YAROSLAVSKY
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

Dear Supervisors:

**AMENDMENT TO THE DETERMINATIONS OF CONTRACTOR
NON-RESPONSIBILITY AND CONTRACTOR DEBARMENT ORDINANCE
(ALL SUPERVISORIAL DISTRICTS)
(3 VOTES)**

IT IS RECOMMENDED THAT YOUR BOARD:

Approve, introduce, waive reading, and place on your Board's agenda for adoption an ordinance amending Title 2, Chapter 2.202 of the Los Angeles County Code, Determinations of Contractor Non-Responsibility and Contractor Debarment to establish standards to assist the County in determining appropriate terms of debarment.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

On February 8, 2005, on the motion of Chairperson Molina and Supervisor Burke, your Board instructed this office, in conjunction with the County Counsel, and in consultation with affected contracting departments, to report back with recommendations for a standardized set of debarment term guidelines based on a best practices approach.

On March 7, 2005, your Board was provided with a status update on the progress made by the debarment guidelines workgroup made up of representatives from County Counsel, Auditor-Controller (A-C), Internal Services Department (ISD), Department of Public Works (DPW), Office of Affirmative Action Compliance (OAAC) and this office.

On June 24, 2005, your Board was provided with a report consistent with your Board's direction and including recommendations which we have incorporated into the attached Ordinance amending the County's Contractor Non-Responsibility and Contractor Debarment Ordinance. The Ordinance amendment provides:

- Standards to be utilized by Contractor Hearing Board (CHB) members and your Board in making debarment determinations, including the length of the debarment period. These standards consist of 17 proposed "aggravating and mitigating factors" to help guide the County in exercising its discretion whether to debar a contractor (and/or find a contractor to be non-responsible), as well as the appropriate length of a debarment. For example, these mitigating and aggravating factors include, among others, consideration of the following: the harm that results from the contractor's wrongdoing; the frequency and/or number of incidents and/or duration of the wrongdoing; whether there is a pattern or prior history of wrongdoing; and whether a contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes the cause for debarment. These factors are based on a best practices survey of other jurisdictions that have enacted contractor debarment processes.
- An increase in the maximum time period the County may debar a contractor. Currently, the County's Debarment Ordinance specifies the maximum length of debarment as three years. The Ordinance amendment provides that the debarment period should generally not exceed five years, but that the County may impose a longer period of debarment up to and including permanent debarment, where the County determines that such longer periods are justified. The Ordinance amendment adds a requirement that the County make an additional finding to impose a debarment period of longer than five years, and up to and including permanent debarment: the contractor's acts or omissions are of such an extremely serious nature that removal of the contractor from future contracting opportunities for the specified period is necessary to protect the County's interests.
- A procedure that would allow a contractor who has been debarred for a period longer than five years to request, after the debarment has been in effect for at least five years, a reduction of the period or termination of the debarment based upon circumstances, such as change in ownership or management, elimination of the grounds for which the debarment was imposed, or material evidence discovered after the debarment was imposed. Such requests would initially be considered by the CHB, with their recommendation subsequently submitted to your Board for final determination.
- Minor revisions to provide clarity and consistency within the Ordinance.

In our June 24, 2005 report, we indicated to your Board that we would place on your Board's agenda the recommendations set forth in our report. Therefore, we are recommending that your Board approve the attached Ordinance amendment which incorporates our June 24, 2005 recommendations. The June 24 report also contained the following additional recommendations:

- Revise the membership of the CHB to increase the pool of departments available to sit on the CHB. Currently, the CAO, ISD, OAAC, and DPW sit on the CHB. We recommend the Departments of Health Services, Parks and Recreation, and Public Social Services be available as alternates on the CHB.
- Establish a more senior level of management to serve on the CHB.

These recommendations related to the CHB membership will be reflected in revisions to the Implementation Instructions for Contractor Non-Responsibility and Contractor Debarment issued by the Auditor-Controller. Additionally, after your Board's approval of the attached Ordinance, the Implementation Instructions will be revised to reflect the changes to the Ordinance.

Implementation of Strategic Plan Goals

This action supports the County's Strategic Plan goals of Organizational Effectiveness by ensuring that service delivery systems are efficient, effective, and goal-oriented.

FISCAL IMPACT/FINANCING

There is no direct fiscal impact from this action.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

On January 11, 2000, your Board adopted an Ordinance for Determinations of Contractor Non-Responsibility and Debarment, Los Angeles County Code Chapter 2.202. The Ordinance provides procedures for the County to determine that a contractor is: 1) non-responsible and shall not be awarded a specific contract, and 2) debarred from contracting with the County for a specified period of time. On February 10, 2004, your Board approved an ordinance reflecting minor revisions to the Ordinance. Detailed procedures and guidelines to implement the Contractor Non-Responsibility and Debarment Ordinance are outlined in Implementation Instructions originally issued by the Auditor Controller in March 2000 (and amended in March 2004).

The existing Ordinance provides that the County may consider, in addition to the seriousness of the contractor's acts or omissions, relevant mitigating or aggravating factors in determining whether to debar a contractor (and/or find a contractor to be non-responsible) and the period of debarment. The mitigating and aggravating factors are not set forth in the County's existing Ordinance. The Ordinance amendment will set forth examples of mitigating and aggravating factors to guide the County in making its determinations. We believe that it will provide the County with the flexibility and guidance to make appropriate findings to support debarment determinations, including the length of a debarment. The Ordinance amendment is also necessary to reflect the additional recommendations set forth in our June 24, 2005 report. As set forth above, the Ordinance amendment will also increase the maximum time period the County may debar a contractor, and add a procedure that would allow a contractor, under certain circumstances, to request a reduction of the period of debarment or termination of the debarment. Additionally, should your Board approve this item, the Implementation Instructions will be revised to reflect all of the recommendations set forth in our June 24, 2005 report, as outlined above

This Ordinance amendment has been approved as to form by County Counsel.

CONTRACTING PROCESS

The Non-Responsibility and Debarment Ordinance will continue to be applicable in the County's contracting processes. The recommended action does not involve a specific contract.

Honorable Board of Supervisors
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IMPACT ON CURRENT SERVICES (OR PROJECTS)

The Ordinance amendment will enhance existing debarment policies and procedures while providing the appropriate guidance and direction necessary to reach decisions that are consistent with your Board's direction.

Respectfully submitted,



DAVID E. JANSSEN
Chief Administrative Officer

DEJ:MKZ
VLA:os


Attachment

c: All Department Heads
Executive Director, Office of Small Business

ANALYSIS

An ordinance amending Title 2 – Administration of the Los Angeles County Code,
relating to Determinations of Contractor Non-Responsibility and Contractor Debarment.

RAYMOND G. FORTNER, JR.
County Counsel

By 
LILLIAN D. SALINGER
Senior Deputy County Counsel
Public Works Division

LDS:gjh

7/6/05 (requested)

7/14/05 (revised)

ORDINANCE NO. _____

An ordinance amending Title 2 - Administration of the Los Angeles County Code, relating to Determinations of Contractor Non-Responsibility and Contractor Debarment.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. Section 2.202.010 is hereby amended to read as follows:

2.202.010 Findings and declarations.

A.____ The board of supervisors finds 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 of supervisors further finds that debarment is to be imposed only in the public interest for the county's protection and not for the purpose of punishment.

B.____ Determinations of contractor non-responsibility and contractor debarment shall be made in accordance with the procedures set forth in the ordinance codified in this chapter and implementation instructions issued by the auditor-controller.

SECTION 2. Section 2.202.020 is hereby amended to read as follows:

2.202.020 Definitions.

For purposes of this chapter, the following definitions apply:

A. "Contractor" means a person, partnership, corporation, or other entity who has contracted with, or is seeking to contract with, the county or a nonprofit corporation created by the county to provide goods to, or perform services for or on behalf of, the county or a nonprofit corporation created by the county. A contractor includes a

contractor, subcontractor, vendor, or any person or entity who or which owns an interest of 10 percent or more in a contractor, subcontractor, or vendor.

B. "Contract" means any agreement to provide goods to, or perform services for or on behalf of, the county or a nonprofit corporation created by the county.

C. "Debarment" means an action taken by the county which 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 of up to three years.~~ A contractor who has been determined by the county to be subject to such a prohibition is "debarred."

D. "Department head" means either the head of a department responsible for administering a particular contract for the county or the designee of same.

E. "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 is a member that have adopted county contracting procedures.

F. "Contractor hearing board" means the persons designated to preside over contractor debarment hearings and make recommendations on debarment to the board of supervisors.

G. Determination of "non-responsibility" means an action taken by the county which results in a contractor who submitted a bid or proposal on a particular contract being prohibited from being awarded and/or performing work on that contract. A contractor who has been determined by the county to be subject to such a prohibition is "non-responsible" for purposes of that particular contract.

H. "Bid or proposal" means a bid, proposal, or any other response to a solicitation submitted by or on behalf of a contractor seeking an award of a contract.

SECTION 3. Section 2.202.030 is hereby amended to read as follows:

2.202.030 Determination of contractor non-responsibility.

A. Prior to a contract being awarded by the county, the county may determine that a contractor submitting a bid or proposal is non-responsible for purposes of that contract. In the event that the county determines that a contractor is non-responsible for a particular contract, said contractor shall be prohibited from being awarded and/or performing work on that contract.

B. The county may declare a contractor to be non-responsible for purposes of a particular contract if the county, in its discretion, finds 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 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.

C. The decision by the county to find a contractor non-responsible for a particular contract is within the discretion of the county. The seriousness and extent of the contractor's acts, omissions, patterns, or practices as well as any relevant mitigating or aggravating factors, including those described in Subsection 2.202.040 (E) below,

may be considered by the county in determining whether a contractor should be deemed non-responsible.

GD. Before making a determination of non-responsibility pursuant to this chapter, the department head shall give written notice to the contractor of the basis for the proposed non-responsibility determination, and shall advise the contractor that a non-responsibility hearing will be scheduled on a date certain. Thereafter, the department head shall conduct a hearing where evidence on the proposed non-responsibility determination is presented. The contractor and/or attorney or other authorized representative of the contractor shall be afforded an opportunity to appear at the non-responsibility hearing and to submit documentary evidence, present witnesses, and offer rebuttal evidence. After such hearing, the department head shall prepare a proposed decision, which shall contain a recommendation regarding whether the contractor should be found non-responsible with respect to the contract(s) at issue. A record of the hearing, the proposed decision, and any recommendation shall be presented to the 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 shall have the right to modify, deny, or adopt the proposed decision and recommendation of the department head. A non-responsibility finding shall become final upon approval by the board of supervisors.

~~D. The decision by the county to find a contractor non-responsible for a particular contract is within the discretion of the county. The seriousness and extent of the contractor's acts, omissions, patterns or practices as well as any relevant mitigating~~

~~factors may be considered by the county in determining whether a contractor should be deemed non-responsible.~~

SECTION 4. Section 2.202.040 is hereby amended to read as follows:

2.202.040 Debarment of contractors.

A. 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.

B. The county may debar a contractor if the county 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 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.

C. The decision by the county to debar a contractor is within the discretion of the county. The seriousness and extent of the contractor's acts, omissions, patterns, or practices as well as any relevant mitigating or aggravating factors, including those described in Subsection (E) below, may be considered by the county in determining whether to debar a contractor and the period of debarment. Generally, the period of debarment should not exceed five years. However, if circumstances warrant, the

county may impose a longer period of debarment up to and including permanent debarment.

D. To impose a debarment period of longer than five years, and up to and including permanent debarment, in addition to the grounds described in Subsection (B) above, the county shall further find 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.

E. Mitigating and aggravating factors that the county may consider in determining whether to debar a contractor and the period of debarment include but are not limited to:

(1) The actual or potential harm or impact that results or may result from the wrongdoing.

(2) The frequency and/or number of incidents and/or duration of the wrongdoing.

(3) Whether there is a pattern or prior history of wrongdoing.

(4) A contractor's overall performance record. For example, the county may evaluate the contractor's activity cited as the basis for the debarment in the broader context of the contractor's overall performance history.

(5) Whether a contractor is or 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 debarment specified in this Section.

(6) 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.

(7) 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.

(8) 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.

(9) 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.

(10) Whether the wrongdoing was pervasive within a contractor's organization.

(11) The positions held by the individuals involved in the wrongdoing.

(12) Whether a contractor's principals participated in, knew of, or tolerated the offense.

(13) Whether a contractor brought the activity cited as a basis for the debarment to the attention of the county in a timely manner.

(14) Whether a contractor has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the county.

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

(16) Whether a contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes the cause for debarment.

(17) Other factors that are appropriate to the circumstances of a particular case.

CF. Before making a debarment determination pursuant to this chapter, the department head shall give written notice to the contractor of the basis for the proposed debarment, and shall advise the contractor that a debarment hearing will be scheduled on a date certain. The contractor hearing board shall conduct a hearing where evidence on the proposed debarment is presented. The contractor and/or attorney or other authorized representative must be given an opportunity to appear at the debarment hearing and to submit documentary evidence, present witnesses, and offer rebuttal evidence at that hearing. After such hearing, the contractor hearing board shall prepare a proposed decision, which shall contain a recommendation regarding whether the contractor should be debarred and, if so, the appropriate length of time for the debarment. A record of the hearing, the proposed decision, and any recommendation shall be presented to the 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 shall have the right to modify, deny, or adopt the proposed decision and recommendation of the contractor hearing board. A debarment finding shall become final upon the approval of the board of supervisors.

~~D. — The decision by the county to debar a contractor is within the discretion of the county. The seriousness and extent of the contractor's acts, omissions, patterns or practices as well as any relevant mitigating factors may be considered by the county in making a debarment decision. The county shall have the right, in its discretion to determine the period of time that the contractor may be debarred, which period may not exceed three years. In addition, upon a debarment finding by the board of supervisors, the county may, in its discretion, terminate any or all existing contracts the contractor may have with the county. In the event that any existing contract is terminated by the county, the county shall maintain the right to pursue all other rights and remedies provided by the contract and/or applicable law.~~

G. In making a debarment determination, the board of supervisors may also, in its discretion and consistent with the terms of any existing contracts that the contractor may have with the county, terminate any or all such existing contracts. In the event that any existing contract is terminated by the board of supervisors, the county shall maintain the right to pursue all other rights and remedies provided by the contract and/or applicable law.

H. With respect to a contractor who has been debarred for a period longer than five years, the contractor may, after the debarment has been in effect for at least

five years, request that the county review the debarment determination to reduce the period of debarment or terminate the debarment. The county may consider a contractor's request to review a debarment determination based upon the following circumstances: (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. A request for review shall be in writing, supported by documentary evidence, and submitted to the chair of the contractor hearing board. The chair of the contractor hearing board 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 contractor hearing board which shall hold a hearing to consider the contractor's request for review, and, after the hearing, prepare a proposed decision and a recommendation to be presented to the 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 shall have the right to modify, deny, or adopt the proposed decision and recommendation of the contractor hearing board. A reduction of the period of the debarment or termination of the debarment shall become final upon the approval of the board of supervisors.

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