

County of Alameda Debarment Policy

1. Purpose and Intent

- a. It is the intent of the County of Alameda (County) to do business with responsible Contractors to promote integrity in the County's contracting processes and to protect the public interest.
- b. The decision to debar and the time period for the debarment of a Contractor is within the discretion of the County.
- c. This Debarment Policy sets forth the consequences of debarment as well as the grounds and procedures for the General Services Agency (GSA) to debar individuals and businesses providing services or goods to the County, including public works contracts as defined by Public Contract Code section 1101. This Policy applies to all County contracts, including contracts that do not originate in GSA, however, any debarment process shall be conducted by GSA.

2. Definitions. The following definitions shall apply:

- a. **Adequate Evidence** means information sufficient to support the reasonable belief that a particular act or omission has occurred.
- b. **Affiliate** means business concerns, organizations, or individuals directly or indirectly controlled by another business, organization or other individual, including if one has the power to control the other or a third-party or has the power to control both. Control indicators include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees or a business entity organized following the debarment, suspension or proposed debarment of a contractor which has the same or similar management, ownership or principal employees as the contractor that was debarred, suspended or proposed for debarment. **Relative** means an individual related by consanguinity (descended from the same ancestor) or marriage within the second degree as determined by the common law; or a spouse; or, an individual related to a spouse within the second degree as determined by the common law; or an individual in an adoptive relationship within the second degree as determined by the common law. **Management** means the officers, partners, owners, or other individuals responsible for a corporate or other legal entity's financial and operational policies and practices.
- c. **Contract** means an agreement for a person to provide goods or services to the County, including a purchase order. For purposes of this Debarment Policy, Contract also includes a subcontract or other agreement to provide goods or services to the County directly or indirectly. Goods and services include public works contracts as defined by Public Contract Code section 1101.

- d. **Contractor** means any Person that directly or indirectly (e.g., through an Affiliate or Subcontractor), provides goods or services to the County, submits offers for or is awarded or reasonably may be expected to submit offers or be awarded a contract to provide goods or services to the County. For purposes of this Debarment Policy, this includes Persons that may conduct business, or reasonably may be expected to conduct business, with the County as a Subcontractor, agent or representative of another Contractor. Goods and services include public works contracts as defined by Public Contract Code section 1101.
- e. **County** means the County of Alameda.
- f. **Date of Issuance** means the date the notice, letter or other document is distributed by the GSA, which is typically identified on the first page of the document.
- g. **Debar or Debarment** means an action taken by the County, or any local, state or federal government agency, which results in a Contractor being prohibited from any of the following: bidding or proposing on a Contract; being awarded a Contract; or performing work on a Contract. A debarment may be permanent or for a defined period of time. A Contractor subject to such prohibition is a **Debarred Contractor**.
- h. **Debarment Appeal Hearing Panel** (may also be referred to as the **Hearing Panel** or **Panel**) means the individuals designated to consider and make a determination on an appeal from a Debarment Determination and may also be referred to as the **Hearing Panel** or **Panel**.
- i. **Debarment Determination** means the decision made by the Debarment Official as to whether or not a Contractor is debarred from doing business with the County.
- j. **Debarment Official** means the individual designated to review all documents and evidence and to make the Debarment Determination for the County. The Debarment Official shall be the Director or the GSA Chief Deputy, Administration or their designee.
- k. **Department** means a County of Alameda department or agency.
- l. **Director** means the Director of the County of Alameda General Services Agency. The Director may name a designee or designees to perform some or all of the requirements and tasks contained in this Policy.
- m. **GSA** means the County of Alameda General Services Agency.
- n. **GSA Representative** means the individual presenting the information and evidence to the Debarment Appeal Hearing Panel.
- o. **Panel** see **Debarment Appeal Hearing Panel**
- p. **Performance Evaluation** means a written County issued evaluation of a Contractor's overall performance, including evaluations made during a Contract term and at the end of a Contract term.

- q. **Person** means any individual, partnership, corporation, association, or other legal entity, however organized.
- r. **Policy** means this County of Alameda Debarment Policy.
- s. **Prime Contractor** means a Person who enters into a Contract directly with the County.
- t. **Preponderance of the Evidence** means proof by information that, when compared with information opposing it, leads to the conclusion that the fact at issue is more probably true than not.
- u. **Procurement Administrator** means the individual in the position of Procurement Administrator in the Alameda County General Services Agency (GSA) who oversees and manages the centralized Procurement Division of the County. This includes any individual who is acting as or is temporarily appointed to the position. The Procurement Administrator may name a designee or designees to perform some or all of the requirements and tasks assigned to them in this Policy.
- v. **SLEB** means the Small, Local and Emerging Business (SLEB) program within Alameda County. The SLEB program is a race and gender neutral program designed to enhance contracting and procurement opportunities for small, local and emerging businesses and was developed to promote and foster inclusiveness, diversity and economic development; as well as on-going evaluation to ensure all businesses including SLEBs are provided equal opportunities in County contracting and procurement activities. A contractor may be certified by the County as either a small and local or an emerging and local business.
- w. **Subcontractor** means any Person who has an agreement with a Prime Contractor or another Subcontractor to provide any goods or services on a County Contract.

3. Debarment List.

- a. **Maintenance.** The Director shall create and maintain a Debarment List that identifies the name and last known address of each Contractor that has been Debarred pursuant to this policy. The list shall also contain the effective dates of each Debarment (commencement and expiration, or if permanent).
- b. **Additional Procedures.** The Director may establish additional procedures to provide for the effective use of the Debarment List to ensure that the County does not do business with Contractors who are Debarred by the County.

4. Effect of Debarment.

- a. **Placement on Debarment List.** If a Person is Debarred pursuant to this Policy, they shall be placed on the County Debarment List.

- b. **Debarment Determination.** A Debarment Determination shall provide for the term of debarment starting upon the date the Debarment Determination is final, or other date specifically stated in the Debarment Determination, and ranging from a minimum of one year to a permanent disbarment. The Debarment Determination shall prohibit any named Contractor and the Affiliates from participating in any Contract at any level, directly or indirectly, with the County during the period of the Debarment. Although a finding of non-responsibility will not always lead to debarment, a Debarment Determination is a finding of non-responsibility. Any Person named in a Debarment Determination shall be deemed not responsible and disqualified for the bidding, submitting proposals and all other purposes on all County Contracts for the period of Debarment.
- c. **Prohibition.** A Person who is placed on the Debarment List is a Debarred Contractor and prohibited from submitting bids, submitting responses to requests for proposal or qualifications, receiving Contract awards, executing Contracts and participating as a Subcontractor, agent or representative of another Person contracting with the County.
- d. **Rejection.**
 - i. After the opening of bids or receipt of proposals or quotes, the Procurement Administrator, or Department staff if the procurement is not being conducted by GSA, shall compare this list of bidders or proposers to the Debarment List. Bids received from any Debarred Contractor in response to an invitation for bids shall be entered on the abstract of bids and rejected.
 - ii. Proposals, quotations, or offers received from any Debarred Contractor shall not be evaluated for award, nor shall negotiations be conducted with a Debarred Contractor during a period of ineligibility.
- e. **No Subcontracting.** A Prime Contractor shall not subcontract with any Person on the Debarred List.
- f. **Effect of Debarment**
 - i. If a Contractor is Debarred, the County shall terminate all Contracts with the Debarred Contractor after the Debarment Determination is final. A decision as to the type of termination action, if any, to be taken should be made only after consultation with County Counsel.
 - ii. The County shall not renew or otherwise extend the duration of current Contracts, or consent to subcontracts, with Debarred Contractors.
 - iii. If the Debarred Contractor is a certified SLEB, they shall be decertified as a SLEB as they are not eligible to participate in County contracts.
 - iv. The County may contract with another Person to provide goods or perform services that a Debarred Contractor had been selected to perform. The County is not required to terminate a Contract with a Debarred Contractor prior to entering into a Contract with another Person. The Debarred Contractor shall be liable for additional costs incurred for selection and contracting with a replacement contractor, including any increase in costs from using another, non debarred Contractor.

- g. **Not Exclusive Action.** An administrative Debarment Determination pursuant to this Policy shall neither exclude nor preclude any other administrative or legal remedy available to the County.

5. Grounds for Debarment. A Contractor may be Debarred from doing business with the County for the any of the following:

- a. The Contractor has a judgment, settlement, stipulation, plea agreement, conviction, including a plea of nolo contendere, or civil judgment for any of the grounds listed below:
 - i. Embezzlement, theft, bid rigging, perjury, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, collusion, receiving stolen property, making false claims, or obstruction of justice under any local, state, or federal law or regulation.
 - ii. Any offense, action, or inaction indicating a lack of business integrity, business honesty, or employment discrimination.
 - iii. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction.
 - iv. Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging.
 - v. Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the Contractor's present responsibility.
- b. Violation of the terms of any contract or transaction with the County or another public entity so serious as to affect negatively the integrity of a County program, such as:
 - i. A willful failure to perform in accordance with the terms of the contract or transaction parameters.
 - ii. A history of failure to perform or unsatisfactory performance in a contract or agreements and transactions with the County or another public entity.
 - iii. A willful violation of a statutory or regulatory provision or requirement applicable to a contract or agreement or transaction with the County or another public entity.
- c. A Contractor submits materially false information related to doing business with the County, including but not limited to:
 - i. The County's Enhanced Construction Outreach Program (ECOP).
 - ii. The County's Small Local Emerging Business (SLEB) Program.
 - iii. The County's Construction Compliance Program (CCP).
 - iv. The County's prequalification or eligibility process.

- v. Any County program (1) relating to the participation in contracts by minority business enterprises and woman business enterprises, or (2) facilitating contract awards to small businesses, disabled veteran businesses or social enterprises, or (3) other County procurement or contracting programs.

d. Any of the following causes:

- i. Any debarment by a federal agency or other public entity.
- ii. Failure to pay a single substantial debt, or a number of outstanding debts owed to any federal agency, state or local government, including the County, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted.
- iii. The Contractor willfully breaches a material term of a Contract.
- iv. Violation of any local, state, or federal law or regulation applicable to a Contract.
- v. The Contractor provided substandard services, used substandard materials, or failed to furnish or install materials in accordance with Contract requirements, even if the discovery of the defect is subsequent to acceptance of the work and expiration of the warranty, if such defect is because of intentionally deficient or grossly negligent performance of the Contractor.
- vi. The Contractor has engaged in unlawful employment discrimination, as evidenced by a court judgement or finding from a federal or state administrative agency.
- vii. The Contractor fails to pay state, federal or local minimum wages or fails to comply with prevailing wage requirements.
- viii. The Contractor violates a material provision of any settlement of a Debarment action with the County or any other public entity.
- ix. Failing a Performance Evaluation.
- x. Any other cause so serious or compelling in nature that it affects the Contractor's ability to perform Contract responsibilities.

6. Consideration Factors. When determining whether to debar a Contractor and to establish the period of debarment, the seriousness and extent of the Contractor's acts, omissions, patterns, or practices as well as any relevant mitigating and aggravating factors will be considered. These factors may include, but are not limited to the following:

- a. The actual or potential harm or impact that results or may result from the wrongdoing.
- b. The frequency and/or number of incidents and/or duration of the wrongdoing.
- c. Whether there is a pattern or history of wrongdoing.

- d. The Contractor's overall performance record.
- e. Whether the Contractor is or has been debarred, found non-responsible, excluded or disqualified by another public entity on a basis of conduct similar to one or more of the causes for debarment set forth in above ~~in~~ section 5, Grounds for Debarment.
- f. Whether the Contractor's wrongdoing was intentional or inadvertent. For example, the County may consider whether and to what extent the Contractor planned, initiated, or carried out the wrongdoing.
- g. Whether the 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.
- h. Whether and to what extent the 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.
- i. Whether the 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, and when, the Contractor disclosed all pertinent information known to the Contractor.
- j. Whether the wrongdoing was pervasive within the Contractor's organization.
- k. The positions held by the individuals involved in the wrongdoing.
- l. Whether the Contractor participated in, knew of, or tolerated the offense.
- m. Whether the Contractor brought the activity which constitutes the basis for the debarment to the attention of the County in a timely manner.
- n. Whether the Contractor has fully investigated the circumstances surrounding the activity which is the basis for debarment and, if so, made the result of the Contractor's investigation available to the County.
- o. Whether the Contractor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes the basis for debarment.
- p. Whether the Contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes the basis for debarment.
- q. Other factors that are appropriate to the circumstances of a particular case.

7. Period of Debarment.

- a. Any debarment shall be for a minimum time period of one (1) year.
- b. Generally, the period of debarment will be one (1) to five (5) years. However, if circumstances warrant, the County may impose a longer period of debarment up to and including permanent debarment.
- c. In determining the time period of debarment the following shall apply:
 - i. For a one (1) year debarment all of the following mitigating factors must be present:
 - 1) The number of incidents was small and/or duration of the wrongdoing was short.
 - 2) The Contractor does not have a pattern or history of wrongdoing.
 - 3) The Contractor's overall performance record is positive.
 - 4) The Contractor has never been debarred, found non-responsible, excluded or disqualified by any federal or state government entity.
 - 5) The 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.
 - 6) The Contractor has paid or agreed to pay any criminal, civil, and administrative liabilities for the improper activity, including restitution.
 - 7) The Contractor has cooperated with the County during the investigation and any court or administrative action.
 - ii. For a two (2) to three (3) year debarment all of **the following mitigating factors** must be present.
 - 1) The Contractor does not have a pattern or history of wrongdoing.
 - 2) The Contractor has never been debarred, found non-responsible, excluded or disqualified by any federal or state government entity.
 - 3) The 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.
 - 4) The Contractor has paid or agreed to pay any criminal, civil, and

administrative liabilities for the improper activity, including restitution.

- 5) The Contractor has cooperated with the County during the investigation, and any court or administrative action.
- iii. The presence of all mitigation factors in either section (i) or (ii) above do not require that the debarment be for the limited period identified in each section. An increased time period for the debarment may occur based on additional factors and considerations, even if all mitigating factors are present.
 - iv. In situations that have two or more of the following aggravating factors, the minimum debarment period shall be three (3) to five (5) years:
 - 1) There was actual harm or impact as the results of the wrong-doing or the potential harm or impact was major.
 - 2) The frequency and/or number of incidents and/or duration of the wrongdoing was extensive.
 - 3) The Contractor has a pattern or history of wrongdoing.
 - 4) The Contractor has not accepted responsibility for the wrongdoing or recognized the seriousness of the misconduct that led to the grounds for debarment and has not taken corrective action to cure the wrongdoing, such as establishing ethics training and implementing programs to prevent recurrence.
 - 5) The Contractor has not cooperated with the County during the investigation, and any court or administrative action. In determining the extent of cooperation, the County may consider whether the Contractor disclosed all pertinent information known to the Contractor and if they intentionally concealed information.
 - 6) The Contractor has been debarred, found non-responsible, excluded or disqualified by any federal or state government entity.
 - v. In situations that have any of the following aggravating factors, the minimum debarment period shall be five to ten (5-10) years:
 1. The Contractor is or has been debarred, found non-responsible, excluded or disqualified by any federal or state government entity for a time period of five (5) years or more.
 2. A pattern or practice of wrongdoing exists within the Contractor's organization.
 3. The Contractor does not have effective standards of conduct and internal control systems in place to prevent the questioned conduct from re-occurring.

- vi. In situations that have four or more of the following aggravating factors, the minimum debarment period shall be at least ten (10) years:
 - 1) There was actual harm or negative impact as the result of the wrong doing or the potential harm or impact was major.
 - 2) The frequency and/or number of incidents and/or duration of the wrongdoing was extensive.
 - 3) The Contractor has a pattern or history of wrongdoing.
 - 4) The Contractor has not accepted responsibility for the wrongdoing or recognized the seriousness of the misconduct that led to the grounds for debarment and has not taken corrective action to cure the wrongdoing, such as establishing ethics training and implementing programs to prevent recurrence.
 - 5) The Contractor has not cooperated with the County during the investigation or any court or administrative action. In determining the extent of cooperation, the County may consider whether the Contractor disclosed all pertinent information known to the Contractor, or if they intentionally concealed information.
 - 6) The Contractor has been debarred, found non-responsible, excluded or disqualified by a federal or state government entity.
 - 7) The Contractor is or has been debarred, found non-responsible, excluded or disqualified on two or more instances by any public entity, where at least two of the instances were based on different contracts or factual situations/events. The debarments could have been for the same basis, for example dishonesty, or same pattern of behavior, for example failure to pay prevailing wage, but happened at different times or with different parties.
 - 8) A pattern or environment of wrongdoing exists within the Contractor's organization.
 - 9) The Contractor does not have effective standards of conduct and internal control systems in place to prevent the questioned conduct from re-occurring
 - 10) The Contractor's organization demonstrates a pervasive attitude and culture that supports the activity that constitutes the causes for debarment.
- d. To impose a permanent debarment, there must be a finding that the Contractor's acts or omissions are of such an extremely serious nature that removal of the Contractor from future County contracting opportunities on a permanent basis is necessary to protect the County's interests.

8. Debarment Process.

a. Initial Review.

- i. If the GSA Procurement Administrator receives information from any source, including another Department, concerning cause for Debarment of a Contractor, the GSA Procurement Administrator will conduct an initial review of the information and alleged facts.
- ii. This initial review may be consideration and assessment of documents submitted or a more comprehensive investigation.
- iii. If this initial review finds there is support for a Debarment, for any cause, they will refer the matter to the Debarment Official with a recommendation for a Debarment Determination.

b. Debarment Official Determination.

- i. The Debarment Official shall review and assess the causes and information related to the recommendation for a Debarment Determination.
- ii. The Debarment Official's review may be examination and assessment of documents or a more comprehensive investigation.
- iii. If information from any source comes to the attention of the Debarment Official, they may refer it to the GSA Procurement Administrator for an initial review or the Debarment Official may directly begin review and assessment for a Debarment Determination.

c. Notice of Proposed Debarment.

- i. After consideration of the recommendation, cause and other information, if the Debarring Official makes a preliminary determination to debar a Contractor, the Debarment Official shall send the Contractor a Notice of Proposed Debarment.
- ii. The Notice shall include the following information:
 - 1) That the Debarment Official has made a preliminary determination that the Contractor is subject to debarment.
 - 2) The basis for the Debarment in terms sufficient to put the Contractor on notice of the conduct or transactions upon which the proposed debarment is based.
 - 3) The effect of a debarment on the Contractor's participation in the County procurement programs and activities. This notice may be given by including in the letter a copy of Section 4 of this Policy, *Effect of Debarment*.
 - 4) That the Contractor may contest the proposed debarment by submitting a written request for reconsideration.

5) The address to which the request for reconsideration and any information in opposition to the proposed Debarment must be sent.

iii. The Contractor may be represented by counsel at any time in the debarment process.

d. Affiliates and Subcontractors.

i. Affiliates may be debarred or suspended to the same extent as the Debarred Contractor.

ii. After consideration of any recommendation, cause and other information to debar an Affiliate, if the Debarring Official makes a preliminary determination to debar an Affiliate, the Debarment Official shall send the Affiliate a Notice of Proposed Debarment.

iii. The debarment of an Affiliate may, but is not required, to occur at the same time as the debarment of the Contractor.

iv. An Affiliate receiving a Notice of Proposed Debarment shall have the same rights for reconsideration and appeal as a Contractor who receives a Notice of Proposed Debarment. An Affiliate receiving a Notice of Proposed Debarment may request reconsideration of the determination that they meet the definition of an Affiliate. When a Debarment Determination is final, the Affiliate shall be considered a Debarred Contractor.

v. An Affiliate may be represented by counsel at any time in the debarment process.

vi. Subcontractors, including certified SLEBs, are not Affiliates, and subject to the Debarment process as a Contractor. A Subcontractor maybe subject to debarment on the same facts/incidents as a prime contractor. A Subcontractor may be subject to Debarment even if a prime contractor is not being Debarred.

e. Request for Reconsideration.

i. The Contractor shall have ten (10) calendar days, starting the day following the Date of Issuance of the Notice of Proposed Debarment to file a request for reconsideration. Any request for reconsideration must be in writing. The date on the Notice of Proposed Debarment is the Date of Issuance, regardless of when it is received by Contractor.

ii. A Contractor's request for reconsideration must meet all of the following:

1) Be in writing.

2) Sent to the Debarment Official at the address provided in the Notice of Proposed Debarment.

3) Received by the Debarment Official no later than ten (10) calendar days from the Date of Issuance of the Notice of Proposed Debarment.

- 4) Any request for reconsideration must include all additional documents and information that the Contractor wants the Debarment Official to consider. The Debarment Official is not required to review or consider any information received more than ten (10) calendar days after the Date of Issuance of the Notice of Proposed Debarment.
- iii. The Debarment Official may, but is not required to, request that the Contractor come into the office for an informal meeting and settlement discussions. Any agreement or settlement reached in such a meeting shall be finalized by a written Notice of Debarment Settlement, which shall act as the final Debarment Determination.

f. Notice of Debarment Determination.

- i. If no request for reconsideration is submitted, the Proposed Debarment shall become definitive and a Notice of Debarment Determination shall be issued.
- ii. If a request for reconsideration is submitted, the Debarment Official shall reconsider the Proposed Debarment Determination.
 - 1) The Debarment Official may solicit additional information from the Contractor, GSA Procurement, Departments and any other Person.
 - 2) After the additional information is considered, including information and documents provided as part of the request for reconsideration, the Debarment Official will issue a written Notice of Debarment Determination.
- iii. The Notice of Debarment Determination shall include the following:
 - 1) The basis for the debarment, which may be simply that the basis contained in the Notice of Proposed Debarment Determination is sufficient to support the debarment.
 - 2) That the Contractor has the right to appeal the determination within seven (7) calendar days of the Date of Issuance of the Determination and the address to where the appeal must be sent.
 - 3) That the Contractor may request that the appeal hearing be completing by submitting documentary evidence only.
 - 4) That failure of the Contractor to timely file an appeal will result in the Debarment Determination becoming final.
- iv. If no appeal is filed, the Debarment Determination shall become the final Debarment Determination eight calendar (8) days from the Date of Issuance of the Notice of Debarment Determination.

9. Appeal of Debarment Determination.

- a. The Contractor shall have seven calendar (7) days from the Date of Issuance of the Notice of Debarment Determination to appeal the determination. Any appeal must be in writing and contain the following information:
 - i. The name and address of the Contractor.
 - ii. A complete statement of the reasons and facts to support the appeal request.
 - iii. Reference to the specific portions of each document that forms the basis for the appeal.
- b. The appeal must be sent to the Debarment Official at the address identified on the Notice of Debarment Determination.
- c. Only the Contractor named in the Debarment has the right to appeal.

10. Debarment Appeal Hearing Panel - Composition and Notice

a. Composition.

- i. If an appeal hearing is requested a Debarment Appeal Hearing Panel shall be appointed by the Director to conduct the hearing. The Panel shall be comprised of three individuals in management classifications from any County Department, including GSA.
- ii. An individual may not be appointed to a Hearing Panel if they have:
 - 1) Had primary responsibility for administration/oversight of any Contract of the appealing Contractor subject to the debarment proceedings.
 - 2) Been employed within the last year by a business that is directly or indirectly affiliated with the Contractor subject to the debarment proceedings.
 - 3) Own or work, or have an immediate family member that owns or works, for the Contractor subject to the debarment proceedings.
 - 4) Be a consultant, or employee for a consultant firm or business hired by the Contractor subject to the debarment proceedings.
 - 5) Be a member of the Board of Supervisors or Supervisor's staff.
 - 6) Participated in the investigation of the debarment or in the Debarment Determination.

- iii. The Panel may be advised by County Counsel, however, the attorney advising the Panel may not be the same attorney assigned to GSA Procurement or the Department that made the referral to GSA for a debarment investigation.
- b. **Notice.** After the Panel is appointed and no less than ten (10) calendar days prior to the hearing, GSA shall provide written notice to the Contactor that contains the following:
 - i. The date, time and location of the hearing.
 - ii. That the Contractor may request that the matter be submitted to the Panel on the basis of documentary evidence only.
 - iii. The name of the GSA Representative assigned to the Debarment Appeal Hearing.
 - iv. That if the Contractor intends to present evidence at the hearing, they must provide the GSA Representative a list of prospective witnesses and copies of documentary evidence by the date identified in the letter, which shall be no less than seven (7) calendar days prior to the scheduled hearing.
 - v. Failure of a Contractor to timely provide the names of prospective witnesses and copies of documentary evidence may result in the Hearing Panel determining that the witness cannot testify or not considering the documentary evidence.
 - vi. If the Contractor confirms its attendance, in writing, and requests a list of prospective witnesses and copies of documentary evidence, the GSA Representative will provide them to the Contractor the later of no less than seven (7) calendar days prior to the scheduled hearing or two GSA regular business day after receiving the confirmation and request.
 - vii. That failure of a Contractor to attend the hearing may result in waiver by the Contractor of all rights to a hearing before the Panel and/or the Panel may proceed with the hearing without the Contractor.

11. Debarment Hearing Procedures.

- a. **Panel.**
 - i. Prior to the start of the hearing, the Panel shall identify a chair to conduct the hearing.
 - ii. Panel members shall make a determination on whether the Contractor should be debarred and, if so, the appropriate length of time for debarment.
 - iii. Prior to making a determination, the Panel shall consider the evidence, including written documents and any oral presentation and testimony, on the issues of the debarment including the period of debarment.

b. **GSA.**

- i. At the hearing, a GSA Representative will present the case including evidence, or a summary of the evidence, in support of debarment of the Contractor.
 - 1) The GSA Representative may be the Debarment Official, the GSA Procurement Administrator or one of their designees.
 - 2) If a Department other than GSA has been involved with the Contract, including if they recommended a debarment, a representative from that Department may participate with the GSA Representative in presenting the case, including all items in this Section 11, *Department Hearing Procedures*, described as the responsibility of the GSA Representative and responding to questions from the Panel.
- ii. The presentation by the GSA Representative shall include a recommendation and a basis for the proposed time period of the debarment.
- iii. The GSA Representative may submit the case on written documentation and an oral presentation or may include testimony from witnesses.

c. **Contractor.**

- i. The Contractor and/or an authorized representative of the Contractor may appear at the hearing and submit documentary evidence, present witnesses and offer rebuttal evidence.
 - ii. An authorized representative may be designated by the Contractor in person at the hearing or by letter signed by the Contractor and received at or prior to the hearing.
- d. **County Counsel.** The Office of the County Counsel may provide legal advice and representation, as necessary, to the GSA Representative including presenting the evidence and arguments to the Panel in support of debarment of the Contractor. If the Hearing Panel requests counsel, the GSA Representative and the Hearing Panel shall each be advised by separate County Counsel attorneys.
- e. **Rules of Evidence.** Formal rules of evidence will not apply in the hearing. The Panel may 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 relying in the conduct of serious affairs.
- f. **Presentation of Evidence and Rebuttal.** At the hearing, the GSA Representative and the Contractor shall each have the right to have witnesses testify and to cross-examine opposing witnesses, to present documentary or any other evidence in support of or in rebuttal to a debarment determination and the proposed period of debarment including aggravating and mitigating factors.

- i. GSA Representative and the Contractor shall each have the opportunity to rebut the evidence presented.
 - ii. Panel members may ask questions, seek clarification and request additional information from GSA, the Contractor and witnesses at any time during the hearing.
- g. **Continuance.** The Panel has discretion to continue the hearing, as necessary.
- h. **Conclusion.** At the conclusion of the evidentiary presentations, GSA and the Contractor may each provide an oral, closing statement to the Panel. The Panel chair shall then close the hearing. All evidence to be considered by the Panel shall be submitted prior to the close of the hearing, unless otherwise specified by the chair.
- i. **Burden of Proof and Standard of Proof.** The burden of proof is on the GSA and must be established by a standard of preponderance of the evidence whether a Contractor is to be Debarred and for what length of time.
- j. **Deliberations.** Upon closing of the evidentiary portion of the hearing, the Panel shall deliberate and vote on whether to debar the Contractor based on the evidence received at the hearing. If a majority of the Panel votes to debar the Contractor, the Panel shall then deliberate and vote on the period of debarment, which shall be determined by a majority vote of the Panel. The majority vote shall be the decision of the Panel.
- k. **Written Decision.**
 - i. The Panel shall direct GSA staff to prepare the written decision, including the length of time for debarment. The Panel shall provide GSA staff with the information to include in the written decision.
 - 1) The written decision shall include whether the Contractor is debarred and the basis for the determination. The decision does not have to explain the basis in detail and can refer to documents submitted by GSA and the Contractor.
 - 2) If the Panel decides to debar the Contractor, the decision shall include the length of the debarment and the factors that support the length of the debarment, as contained in this Policy. The decision does not have to explain the basis and factors in detail and can refer to documents submitted by GSA and the Contractor.
 - 3) If it is a permanent debarment, the decision must also include the Panel's findings that the Contractor's acts or omissions are of such an extremely serious nature that permanent removal of the Contractor is necessary to protect the County's interests.
 - ii. GSA shall prepare the draft decision and circulate it to the chair for review and approval. GSA shall use reasonable efforts to complete the draft decision within

five (5) business days. The chair may request that other Panel members review the document for approval. GSA shall make any corrections to the written decision and finalize the decision for distribution.

- iii. The Panel's final written decision shall be mailed to the Contractor at the address included in the appeal request. A copy shall also be provided to the Director, Debarment Official, and the GSA Procurement Administrator.
- iv. The Panel's written decision shall be the final Debarment Determination and shall be effective on its Date of Issuance. The period of debarment shall begin on the Date of Issuance of the Panel's written decision.

12. Final Determination.

- a. This Policy states when a Debarment Determination is final. In summary the Debarment Determination is final:
 - i. If after a Request for Reconsideration, or at any other time, there is a settlement or agreement reached the date of the written Notice of Debarment Settlement; or
 - ii. If no appeal is filed, eight calendar (8) days from the Date of Issuance of the Notice of Debarment Determination; or
 - iii. If an appeal is timely filed, on the Date of Issuance of the Hearing Panel's written decision.
- b. The Contractor's name and a copy of the debarment determination shall be provided by GSA to the SLEB Certification Unit. Any SLEB decertification of a Contractor shall be administered by the SLEB Certification Unit.
- c. If the debarment proceedings involve a specific contract, GSA shall provide the Contractor's name and a copy of the debarment determination to the Department that is responsible for administration of that contract. That Department is responsible for any further notifications as may be required if there is a debarment or poor performance of a Contractor.

13. Placement on the Debarment List. The Contractor's name and information shall be placed on the County Debarment List after the Debarment Determination is final.

14. Judicial Review. California Code of Civil Procedure section 1094.6 governs judicial review of a final Debarment Decision.

15. Request to Modify Debarment Period.

- a. With respect to a Contractor who has been debarred the Contractor may, after the debarment has been in effect for at least seventy-five percent (75%) of the period of the debarment as identified in the final Debarment Determination, request that the Director review the Debarment Determination to reduce the period of debarment or terminate the debarment ("Reduction Request"). The Director may consider a Reduction Request upon

the following circumstances:

- i. Elimination of the grounds for which the debarment was imposed;
 - ii. A bona fide change in ownership or management;
 - iii. Material evidence discovered after debarment was imposed; or
 - iv. Any other reason that is in the best interests of the County.
- b. A Reduction Request must be in writing, supported by documentary evidence, and submitted to the Debarment Official. The Debarment Official may either determine that the written request is insufficient on its face and deny the Contractor's request or forward the written request to the GSA Procurement Administrator to review and make a formal recommendation. The Debarment Official and the GSA Procurement Administrator (or their designees) may conduct an investigation in addition to review of the written Reduction Request.
- c. The Debarment Official shall have the right to modify, deny, or adopt the recommendation of the GSA Procurement Administrator on the Reduction Request. The Debarment Official's determination on the Reduction Request shall be provided in writing. Any reduction of the period of the debarment shall be final on the Date of Issuance.
- d. Any reduction in the time period of the debarment is discretionary. There is no right to a hearing or to appeal any determination on a Reduction Request.

16. General Information.

- a. **Notice.**
- i. All notices required by this Policy shall be provided by U.S. Mail, postage prepaid at the notice address contained in the most recent Contract between the County and Contractor, unless an appeal has been requested, then notices shall be sent to the address identified in the appeal request. If there is not, or has not been, a Contract between County and Contractor, notice shall be sent to the address in the last proposal or bid submitted to the County by Contractor. If there has not been a Contract or proposal/bid submitted, notice shall be given at the last address provided to the County.
 - ii. Copies of notices may be provided by electronic mail, but it is not required.
 - iii. The failure of any Person to receive any notice served in accordance with this Policy shall not affect the validity of any Debarment proceedings.
- b. **Imputation of Knowledge and Conduct.** For purposes of actions taken under this Policy, conduct may be imputed as follows:

- i. *Conduct imputed from an individual to an organization.* The fraudulent, criminal, or other improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with an organization, may be imputed to that organization when the improper conduct occurred in connection with the individual's performance of duties for or on behalf of that organization, or with the organization's knowledge, approval or acquiescence. The organization's acceptance of the benefits derived from the conduct is evidence of knowledge, approval or acquiescence.
 - ii. *Conduct imputed from an organization to an individual, or between individuals.* The fraudulent, criminal, or other improper conduct of any organization may be imputed to an individual, or from one individual to another individual, if the individual to whom the improper conduct is imputed either participated in, had knowledge of, or reason to know of the improper conduct.
 - iii. *Conduct imputed from one organization to another organization.* The fraudulent, criminal, or other improper conduct of one organization may be imputed to another organization when the improper conduct occurred in connection with a partnership, joint venture, joint application, association or similar arrangement, or when the organization to whom the improper conduct is imputed has the power to direct, manage, control or influence the activities of the organization responsible for the improper conduct. Acceptance of the benefits derived from the conduct is evidence of knowledge, approval or acquiescence.
- c. **No Waiver.** Nothing in this Policy shall prevent County from terminating any Contract or taking any other action or asserting any right regardless of whether any Debarment action has taken place or is being considered.
 - d. **Liability for Increased Cost.** Any Contractor who enters into a Contract, either directly as a Prime Contractor or indirectly as a Subcontractor, during a period of Debarment imposed upon that Contractor or Subcontractor, shall be liable to the County for increased costs to the County incurred as a result of replacing the Debarred Contractor.
 - e. **Severability.** If any part or provision of this Policy or the application thereof to any person or circumstances is held invalid, the invalid provision(s) shall be severed, including the application of such part or provision to other persons or circumstances, and the remainder of the Policy shall not be affected and shall continue.
 - f. **Preemption.** In the event that any Contract is subject to federal and/or state debarment laws or regulations that are inconsistent with this Policy, such laws and regulations shall control.

End