

City of Corpus Christi Public Works Contracts Debarment Procedure

I. DEBARMENT

1. Causes for Debarment.

- a. **Fraud with Public Contract** - Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public contract or subcontract.
- b. **Business-related Crime** - A conviction of, or plea of guilty or nolo contendere to, a civil judgment for, or a public admission to, a crime or offense related to business of the contractor or affecting the responsibility of the contractor.
- c. **Theft, Forgery or Tax Evasion** - Commission of embezzlement, theft, forgery, bribery, collusion, falsification, perjury, destruction of records, making false statements, tax evasion, violating Federal Criminal Tax laws or receiving stolen property.
- d. **Lack of Business Integrity** - Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a contractor or subcontractor.
- e. **Contract Violation** - Violation of the terms of a contract so serious as to justify debarment such as:
 - i. Willful failure to perform in accordance with the contract terms.
 - ii. A history of failure to perform in a good and workmanlike manner or of unsatisfactory performance.
 - iii. Failure to complete a contract or abandonment of the work.
 - iv. Failure to promptly correct defective or substandard work discovered within the contract period or before the end of the warranty period.
 - v. Failure to comply with state, federal or local laws or regulations applicable to the work or to public works in general.
 - vi. Failure to comply with state, federal or local laws or regulations or applicable city policies and procedures concerning payment of a contractor in the performance of a contract.
 - vii. Failure to pay its employees as required by law or otherwise engaging in theft of services.
 - viii. Failure to complete the work on any public works contract within the time allowed.
- f. **Safety Violation** - Repetitive or extraordinary safety issues, which may be evidenced by violations of the OSHA Standards, worker's compensation claims, personal injury lawsuits or the safety record of any entity.
- g. **Indebtedness to the City.**

- h. **Debarred by Other Entity** - Placement on a state or federal debarment list or other similar list or undergoing a process of review that had the effect of excluding a contractor from contracting with the governmental entity for any length of time, provided the procedures for placement on the debarment list or exclusion process afforded the contractor any form of due process.
 - i. **Unsubstantiated Lawsuit** – Filing a lawsuit against the City if the City Attorney reasonably determines it is unsupported by evidence or filed in bad faith or for an improper purpose.
 - j. **Repetitive, Unsubstantiated Claims** – Filing repetitive claims if the City Attorney reasonably determines the claim is unsupported by the evidence or made in bad faith or with intent to harass or delay a city project.
 - k. **Other Compelling Reason** - Any other cause of such a serious or compelling nature that it affects the responsibility of a contractor.
2. Director of Engineering Services.
- a. The Director receives a written complaint regarding a contractor.
 - b. The Director will review the information provided and gather additional information from City resources to determine whether adequate information exists to debar the Contractor.
 - c. If the Director determines that adequate information exists to debar the Contractor, the Director will send a Notice of Proposed Debarment to the Contractor and any specifically named affiliates.
3. Notice of Proposed Debarment.
- a. The Notice of Proposed Debarment will be sent to the contractor.
 - b. The Notice will include:
 - i. A statement that debarment is being considered;
 - ii. The reasons or causes for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction(s) upon which the proposed debarment is based;
 - iii. Information regarding the contractor’s right to submit in writing, within 20 days, information and argument in opposition to the proposed debarment. The information and argument may be done by the contractor or through a representative and should include any additional specific information that raises a genuine dispute over the material facts. The contractor’s response must be concise and presented logically and factually.
 - c. The contractor must respond in writing within 20 days or waives the right to object to the proposed debarment. If the contractor does not timely respond to the Notice of Proposed Debarment, a decision to debar the contractor will be without the contractor’s objection and uncontested.
 - d. Within 10 business days after receipt of any information and argument submitted by the contractor, the Director will make the decision to continue with the debarment process based on the information in the Debarment File.

- e. In actions based upon a conviction or civil judgment, the Director will send a Notice of Debarment.
 - f. In actions not based upon a conviction or civil judgment:
 - i. If the Director decides not to debar the contractor, the Director will send a written notice to the contractor within 5 days of making the decision.
 - ii. If the Director decides to continue with the debarment process, the Director will send a written Notice of Hearing to the contractor within 5 day of making the decision.
4. Debarment Hearing.
- a. The Notice of Debarment Hearing will include:
 - i. The time, date and place for the contractor to meet with the City regarding the contractor's opposition to debarment.
 - ii. A statement that the contractor may be represented by counsel and may present evidence and testimony to support the factual grounds for the contractor's opposition.
 - iii. A statement that the contractor can request a copy of the City's evidence that supports debarment.
 - iv. A copy of the notice will be sent to the operating department and legal department.
 - b. The Debarment Hearing will be held within 30 days of the Director's decision to continue with the debarment process.
 - c. The following individuals from the City may attend the hearing:
 - i. Representatives from the operating department;
 - ii. Engineering Services staff;
 - iii. Legal Department staff;
 - iv. Other appropriate City staff or consultants as determined by the Director.
 - d. Conduct of Hearing:
 - i. The contractor will have an opportunity to present its case, call any witnesses and question any witnesses presented by the City.
 - ii. The Director will hear the case presented by the contractor and any rebuttal evidence presented by the City.
 - iii. The Director will have the ability to question the contractor and any witnesses.
 - iv. The Director will have the ability to stop testimony that is not relevant to the debarment.
 - v. The weight to be attached to witness testimony and documents presented will be at the discretion of the Director.
 - e. At the conclusion of the hearing, the Director will cause written findings of fact to be prepared by an independent third party or consultant.

5. Debarment Decision.

- a. The Director will make a decision within 15 business days after the date of the Debarment Hearing.
- b. The Director will send written notice to the contractor within 5 days of making the decision.
- c. If debarment is imposed, the Notice of Debarment will:
 - i. State the time period for debarment, including the effective dates;
 - ii. Include any written findings of fact specifying the reason(s) for debarment;
 - iii. Notify the contractor of the ability to appeal the Director's decision by filing a Notice of Appeal with the Executive Director of Public Works within 10 days of receiving the Notice of Debarment.
 - iv. Notify the contractor that, if they choose to appeal the Director's decision, within 30 days of receiving the Notice of Debarment, the contractor must submit, in writing, a clear and concise Statement of Appeal, detailing their objections to the debarment decision, specifically pointing out any of the particular findings and actions alleged to be in error. Such statement will include a brief and concise summary of all testimony of witnesses and exhibits presented at the debarment hearing.

6. Appeal to Executive Director of Public Works.

- a. The contractor may appeal the debarment decision to the Executive Director of Public Works (EDPW) by sending a written Notice of Appeal to the EDPW within 10 days of receiving the Notice of Debarment.
- b. The contractor must submit their Statement of Appeal within 30 days of receiving the Notice of Debarment. The Statement of Appeal must be clear and concise and detail the objections to the debarment decision, specifically pointing out the particular findings and actions alleged to be in error.
- c. The complete Debarment File will include:
 - i. the City's Cause for Debarment Form;
 - ii. all information gathered by the Director regarding the causes for debarment;
 - iii. all information submitted by the Contractor;
 - iv. the City's Notice of Hearing;
 - v. all evidence presented at the debarment hearing;
 - vi. the City's written Findings of Fact;
 - vii. the City's Notice of Debarment;
 - viii. the Contractor's written Notice of Appeal; and
 - ix. the Contractor's Statement of Appeal.
- d. Within 30 days of receiving the complete Debarment File, the EDPW will decide whether to uphold the debarment or request additional information.
- e. If the EDPW determines from the Debarment File that facts have been presented that might justify reversal of the debarment decision, the EDPW will schedule a date for the City and the Contractor to submit additional written information. The decision of the Director will be

entitled to great deference and will be affirmed unless it is found to be clearly unreasonable or capricious.

- f. The EDPW will render a decision within fifteen (15) days of receiving additional written arguments.
- g. The contractor will be notified in writing of the EDPW's decision. If the decision to debar is upheld, the notification will include the ability of the contractor to appeal to the City Manager or designee by sending a written Notice of Appeal to the City within 10 days of receiving the EDPW's Decision.

7. Appeal to City Manager or designee.

- a. Within 30 days of receiving the Notice of Appeal, the City Manager or designee will review the Debarment File.
- b. The complete Debarment File will include:
 - i. written complaint;
 - ii. all information gathered by the Director regarding the causes for debarment;
 - iii. all information submitted by the Contractor;
 - iv. the City's Notice of Hearing;
 - v. all evidence presented at the debarment hearing;
 - vi. the written Findings of Fact;
 - vii. the City's Notice of Debarment;
 - viii. the Contractor's written Notice of Appeal;
 - ix. the Contractor's Statement of Appeal; and
 - x. any additional information.
- c. The contractor will be notified in writing of the City Manager or designee's decision.

8. Appeal to City Council.

- a. If requested by the City Manager or City Council, a decision to debar a contractor upheld by both Executive Director of Public Works and the City Manager.
- b. With reasonable promptness, after the full appeals process has been exhausted, the decision is to debar is upheld by the City Manager or designee, and notice that the decision has been upheld is provided to the contractor, either the City Manager or City Council may request City Council review by promptly scheduling such review on an agenda of an upcoming regular meeting of the City Council.
- c. Requests for City Council review should be scheduled within 30 days of the date of the letter to contractor providing notice that the City Manager or designee has upheld the decision to debar.
- d. Upon the date of posting the agenda for the meeting at which City Council will review the debarment decision, the contractor will be removed from the EPL.
- e. Immediately after City Council upholds the decision to debar, the contractor will be listed on the EPL.
- f. If the City Council overturns the decision to debar, the contractor's name will remain off of the EPL.

- g. After City Council renders a decision, no notice to the contractor is required, no further communication is required.