

CHAPTER 9:

DEBARMENT OF BIDDER POLICY

Revised 4/20

9A) Statement of Purpose

It is the City of Amarillo policy to only accept bids or responses to requests for proposals or qualifications and only award contracts to responsible bidders. Debarment and suspension are discretionary actions that are appropriate means to protect the City by ensuring that the City only has contractual relationships with responsible persons. The serious nature of debarment and suspension requires that these sanctions be imposed not as punishment, but in order to protect the integrity of the City's procurement practices and public confidence in its fiscal responsibility. This Policy supersedes all prior Debarment policies.

9B) Definitions

- **Affiliate** means a person or business entity who:
 - Is the assignee, successor, subsidiary, or parent company, of another person or business entity; or
 - Is a controlling stockholder; member; owner; partner; officer; director; or, employee of a business entity; or
 - has the same or similar management of the debarred or suspended person or business entity; or
 - Directly or indirectly controls, or has the power to control, another person or business entity, or is directly or indirectly controlled by another person or business entity. Indicia of control include but are not limited to: interlocking management, directorship, membership, partnership, or ownership; identity of interests among relatives; shared facilities, equipment, or employees; creation of a business entity soon after the debarment, suspension, or proposed debarment of a person or business entity which has the same or similar management, directors, owners, partner, or principal employees as the contractor that was debarred, suspended or proposed for debarment.
- **Bid** for purposes of this policy, the term is used as a noun and verb, broadly, to mean and include any bid, proposal, qualification or other document submitted to City in response to a solicitation or request for the purpose of being considered or selected for the award of a contract with the City for the provision of any construction, goods, commodities, services, or labor.
- **Bidder** for purposes of this policy, the term is used broadly to mean and include any person or business entity who has submitted a bid, proposal, qualification or other

document responsive to a solicitation or request, whereby one seeks award of a contract with the City.

- **Business entity** means and includes any form of lawful legal entity recognized by Texas law, which includes but is not limited to: sole proprietorship, partnership, joint venture, association, corporation (for profit and non-profit), limited partnership, limited liability company, limited liability partnership, limited liability professional partnership.
- **City Manager** means the City Manager of the City of Amarillo or designee.
- **Contract** means any written agreement between the City and another person or business entity. It also includes a City-issued purchase order, invoice or other form of agreement for the purchase of services or goods.
- **Controlling Stockholder** means a stockholder who:
 - Owns more than 25% of the voting stock of a corporation; or
 - Notwithstanding the number of shares that the stockholder owns, has the power to direct or control the direction of the management or policies of a corporation.
- **Debar or Debarment** means the disqualification of a person or business entity, for a specified period, from directly or indirectly:
 - Submitting responses to City's requests for bids, proposals or qualifications; or
 - Being awarded a Contract; or
 - Executing a contract with the City; or
 - Indirectly participating in a City contract as a subcontractor, material supplier, or employee of a prime contractor or another subcontractor for work on a City contract; or
 - Conducting business with the City as an employee, agent, assignee, or representative of another person or business entity.
- **Board or Debarment Review Board** means a board established by the City to take evidence, and to make determinations about debarments for the City. The Board will consist of members appointed by the City Manager.
- **Director of Purchasing** means the City employee in charge of the City of Amarillo Purchasing Department.
- **Indictment** means and includes any formal accusation of a criminal offense by a prosecutor and includes misdemeanor information, for other than a traffic citation or summons.
- **Management** means and includes officer, director, partner, owner, general partner, manager, foreman, supervisor, or other individual or entity responsible for some or all the finances, operations, policies, or practices of a person or business entity.

- **Person** means an individual, company, firm, association, corporation, partnership or other business entity recognized by Texas law. In addition, if a person is a business entity rather than a natural person, then it includes individuals who constitute the person's management. It also includes affiliates and any individual or other legal entity that:
 - Directly or indirectly (e.g. through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a contract, or a subcontract under a City contract; or
 - Conducts business, or reasonably may be expected to conduct business, with the City as an agent or representative of another person.
- **Preponderance of the evidence** means proof that leads to the conclusion that the fact at issue is more probably true than not.
- **Prime contractor** means a person who enters a contract directly with the City.
- **Relative** means:
 - An individual related by consanguinity (blood) within the second degree as determined by the common law; or
 - A spouse; or
 - An individual related to a spouse affinity 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; or
 - Any individual considered to be "family" in commonly understood terms of the word.
- **Subcontractor** means:
 - A person who contracts directly with a prime contractor but not directly with the City; or
 - Any person under contract with a prime contractor or another subcontractor to provide any service, materials, labor or otherwise perform on a contract.
- **Suspend or Suspension** means the debarment of a person for a temporary period pending the outcome of some stated future occurrence, including but not limited to, an indictment, any proceedings before a Debarment Review Board, or a legal proceeding.
- **Willful failure to cooperate** means:
 - Intentionally failed or refused to attend a hearing and/or give testimony, or
 - Intentionally failed or refused to provide documents, books, papers, or other information upon request of the City Manager or the Debarment Review Board.

9C) Grounds for Debarment of Person and Affiliate

1. A person may be disbarred by the City for a period of **five years** for the following:
 - a. A criminal case disposition by conviction, a plea of nolo contendere, deferred adjudication, pretrial diversion or a final unappealable civil judgment for any of the grounds listed below:
 - i. under any state or federal statute or municipal ordinance for embezzlement, theft, fraudulent schemes and artifices, fraudulent schemes and practices, bid rigging, perjury, forgery, bribery, falsification or destruction of records, receiving stolen property or any offense indicating a lack of business integrity or business honesty which affects the person's or its affiliate's responsibility; or
 - ii. for commission of a criminal offense arising out of obtaining or attempting to obtain a public or private contractor subcontract, or in the performance of such contract or subcontract; or
 - iii. for a conviction under federal or state antitrust statutes involving public contracts or the submission of offers or bid proposals,
 - b. Commission of any offense or taking of any action or failing to take an action, which indicates a lack of business integrity and which could directly affect the reliability and credibility of performance by the person on future contracts with the City,
 - c. Colluding with another person or persons in the submission of a bid or for the purpose of preventing any other bid being made or price manipulation to city's detriment,
 - d. Commission of any corrupt practice in bidding for or in any way seeking award of any contract or other government entity,
 - e. Establishment or operation of a business in a manner designed to evade the application of this Policy or to defeat the purpose of this Policy.
2. A person may be disbarred by the City for any of the following acts or omissions for a period of **not less than one year and up to and including three years**:
 - a. Failure, refusal, or inability to properly or timely perform or complete contract work or warranty performance for the City on any contract or subcontract; or
 - b. Failure, refusal, or inability to honor or observe contractual obligations or legal requirements pertaining to a contract or subcontract for the City; or
 - c. Use of substandard materials, or the failure, refusal or inability to furnish or install materials in accordance with contract requirements, even if the discovery of the defect is subsequent to acceptance of the project and expiration of the warranty thereof by the City; or

- d. Willful failure to cooperate in the investigation or hearing of any proposed debarment by the City; or
- e. Performing, or failing, refusing or inability to perform, a contract in such a way that environmental damage results, or a violation of environmental laws or permits is committed; or
- f. Failure, refusal, or inability to pay or abide by prevailing wage, rates and hours laws or practices, unlawful discrimination in employment, or failure, refusal, or inability to take corrective action for such, after notice by the City or any other governmental entity; or
- g. Failure, refusal, or inability to timely submit bond, contract documents, insurance documents or any other item required by bid, request, or contract; or
- h. Providing false or misleading information (by act or omission) as part of any prequalification statement, bid or contract, and including but not limited to, financial statements, product descriptions, billings, or invoices to the City; or
- i. Failure, refusal, or inability to timely pay undisputed bills or invoices from suppliers or subcontractors; or
- j. Debarment by any other federal, state or local governmental entity; or
- k. Failure, refusal, or inability to defend, indemnify and hold the City harmless pursuant to a contractual obligation after being requested to do so by the City; or
- l. Failure, refusal, or inability to maintain required insurance coverage, bond, letter of credit, or other form of security required to be maintained in effect before, during, or after the term of any contract with the City; or
- m. Any other good cause that the City, in its sole discretion, deems so serious or of such a nature that it affects the ability of the person to properly or timely perform a future contract or subcontract.

9D) Debarment Review Board Procedures

The Director of Purchasing or any City department director may request the City Manager to consider debarment or suspension of a person or business entity. Board members shall keep all communication about the debarment request confidential and only discuss with that board, management, and the Legal Department. Upon receipt of a written request for debarment from a City Department, the City Manager shall convene a Debarment Review Board to review the allegations and determine whether a person or business entity should be debarred. The City Manager shall appoint three individuals to serve on each Board. These individuals shall be unbiased department directors, meaning that they have not participated in the decision to request the debarment nor are subject to the authority, direction or discretion of employees who have participated in such request. The Board shall follow procedures set forth in this Policy and shall make

decisions based on evidence provided. The Board's scope of authority and duties are as follows:

- a. The Board will gather and review all relevant data to determine whether the preponderance of evidence supports of the request for debarment. The board shall meet with the City attorney to receive training on this duty and policy. The request must allege specific grounds from 9C (1) or (2). If the Board finds that the data reviewed does not support the request for debarment the Board will forward its findings to the Department that initiated the request and to the City Manager and debarment proceedings will end when the City manager accepts the finding.
- b. If the Board finds that preponderance of evidence supports the request for debarment then in collaboration with the Legal Department. The Board shall notify the person or business entity in writing of: (i) the proposed debarment; (ii) the length of time of the proposed debarment; (iii) a detailed summary of the evidence upon which the proposed suspension and/or debarment is based such that the person or business entity is on fair notice of the reason(s) for the action; (iv) that a final determination of debarment will be made after ten days from date of the notice, unless the person or business entity submits a written response during that time opposing the debarment by stating specific evidence that raises a genuine dispute as to the facts or law on which the proposed debarment is based. If applicable, the notice shall also state that the person or business entity has been suspended pending final determination.
- c. The failure to file a written response within the time allowed shall be deemed an admission of the allegations set forth in the notice and debarment shall be imposed with no further recourse by the person or business entity.
- d. If a person or business entity timely files written opposition, the Board shall review the response and determine that (i)the response fails to raise a genuine dispute as to the facts or law and impose the debarment, (ii)cancel the proposed debarment, or (iii)determine that the response raises a genuine dispute and schedule a hearing. If a hearing is required, then it shall be as informal in nature as is compatible with the requirement that a just determination be made. Each side shall in turn present its information, examine and cross-examine witnesses, and argue their position. The City shall have the burden of proof by a preponderance of the evidence, with the right to open and close both the evidence and argument.
- e. The Board shall issue a written decision either sustaining the debarment or cancelling the debarment, within seven business days after the later of receipt of the response in opposition, when the City manager accepts the finding, or after

conclusion of a hearing if one is held. The written decision shall contain a summary of the evidence supporting the Board's decision. The decision must be delivered to the debarred party in the same manner that notice is served.

- f. A debarment shall run from the date of the Board decision or from the date of temporary suspension if such was imposed.
- g. Decisions of the Board are final except as may be appealed, as provided for below.

9E) Temporary Suspension

If the City Manager determines that there are specific valid and urgent reasons for the person or business entity to be immediately temporarily suspended pending the debarment process, then such shall be imposed immediately with the notice to the person or business entity. In the event of an indictment, then temporary suspension shall be automatically implemented without a determination by the City Manager and remain in effect until such time as the indictment has been disposed of or debarment process completed. The fact that the indictment is dismissed, or the subject of deferred adjudication or pretrial diversion does not prejudice the right of the City to proceed with debarment.

9F) Appeals to City Manager from Certain Decisions of Debarment Hearing Board

- a. If the Board has decided to debar a person or business entity, that person or business entity may appeal such decision to the City Manager in accordance with procedures set forth here.
- b. A person or business must appeal by filing the appeal no later than close of business on the fifth business days after the date the notice of the Board's debarment decision is delivered according to this policy. The appeal shall be in writing and set forth in detail each and all the separate reasons (factual and legal) why the person or business entity disagrees with the board's decision. The person shall file the notice with the City Secretary who shall promptly provide it to the City Manager.
- c. The filing of a request for appeal shall not stay the Debarment decision of the Board.
- d. No new evidence shall be submitted in an appeal.
- e. Within ten business days after receipt of the notice of appeal, the City Manager shall issue a written decision upholding, reversing, or modifying the debarment. The written decision will be provided to the appealing party, the Board, and the Director of Purchasing.

9G) Notices

Whenever any notice is required to be delivered under this Policy, the notice shall be delivered by any of the following methods. Service is effective as described herein.

- a. Personal delivery accomplished via hand, fax, or email at the number or address stated in the bid or contract documents or most recently amended contact information provided by the person or business entity. When accomplished by the means listed in this subsection, service is deemed effective on the date of delivery;
 - i. Certified mail, postage prepaid, return receipt requested. Simultaneously, the same notice shall be sent by regular mail. If certified mail is returned unsigned, then delivery shall be deemed effective pursuant to regular mail, provided the notice that was sent by regular mail is not returned. When accomplished by the means listed in this subsection, service is deemed effective on the date of mailing; or
 - ii. Publication in a newspaper of daily and general circulation in Amarillo Texas. When accomplished by the means listed in this subsection, service is deemed effective on the first date of publication.
- b. Proof of delivery of notice shall be offered by the testimony or certificate of any employee or agent of the City, over the age of eighteen years, concerning the fact of delivery in accordance with this policy.
- c. The failure of a person or business entity to actually or timely receive a notice that is served in accordance with this section shall not affect the validity of a debarment proceeding.

9H) Creation of List of Debarred and Suspended Persons

- a. The Director of Purchasing shall create and maintain a list of persons and business entities that are currently debarred or suspended in accordance with this Policy. For each debarred or suspended person or business entity, the list shall state the person's or business entity's name and address, and the dates of commencement and expiration of the debarment or suspension.
- b. The Director of Purchasing shall establish procedures to ensure that no City department does business with persons or business entities that have been debarred or suspended.

9I) Effect of Debarment or Suspension

- a. Persons or business entities that have been debarred or suspended are excluded from directly or indirectly (e.g., through an affiliate or as agent for another person):

- i. Preparing or submitting responses to City's requests for bids, proposals or qualifications;
 - ii. being awarded a City contract;
 - iii. executing a contract with the City;
 - iv. participating in a City contract as a subcontractor, material supplier, or employee of a prime contractor or another subcontractor performing work on a City contract;
 - v. conducting business with the City as an employee, agent, or representative of another person or business entity; and
 - vi. Having a direct or indirect interest in any city contract.
- b. A prime contractor who shall knowingly employ, subcontract with, or purchase materials or services for work on any City contract, from a debarred or suspended person or business entity, shall be debarred.
 - c. When a suspended or debarred person or business entity sells or otherwise transfers its business to a relative, affiliate, or to any other person or business entity over whose actions the suspended debarred person or business entity may exercise substantial influence or control, then that relative, affiliate or other person or business entity is automatically suspended or debarred or proposed for debarment to the same extent as the seller or transferor is debarred, suspended, or proposed for debarment.

9J) Effect of Debarment or Suspension on an Affiliate

- a. If the City determines that a person or business entity is an affiliate of a person or business entity that is debarred, suspended or proposed for debarment, then the affiliate is debarred or suspended to the same extent as the person or business entity that is debarred, suspended or proposed for debarment.
- b. The affiliate debarred under (a) above may request a review of the decision by submitting a written request to the City Manager who shall appoint a Debarment Review Board in accordance with this policy.
- c. The filing of a request for review shall not stay the debarment of the affiliate while the review and any appeal is pending.

9K) Effect of Debarment or Suspension on Existing Contracts

- a. Except as otherwise provided in this section and notwithstanding the debarment, suspension, or proposed debarment, of a person or business entity, the City may continue contracts or subcontracts it has with that person or business entity that are in existence at the time if such is deemed by the City Manager to be in the City's best interests at that time.

- b. If the basis of a person's debarment or suspension is so serious that the City Manager believes that termination or suspension of contracts or subcontracts with the City that are in existence at the time the person or business entity is debarred or suspended is in the best interests of the City, the City Manager shall do so after consultation with the City Attorney to ensure the lawful manner and means for the proposed action.
- c. The City shall not renew or otherwise extend the duration of current contracts, or consent to subcontracts, with debarred or suspended persons or business entities, unless the City Manager finds compelling reason(s) for renewal or extension.

9L) Liability for Increased Costs

Any person or business entity who enters a contract with the City, either directly as a prime contractor or indirectly as a subcontractor, vendor, employee, supplier, or in other capacity during a period of suspension or debarment imposed upon that person or business entity, shall be liable to the City for any increased costs incurred as a result of replacing the debarred or suspended person or business entity.

9M) Agreement Not to Bid

The City may, but is not required to, offer a person or business entity the opportunity to execute a written agreement not to bid for an agreed period, in lieu of the City's pursuing a debarment under this Policy. By executing such an agreement, the person or business entity shall consent to waive a debarment review and the agreement will not constitute a debarment.

9N) Contractual

When the City issues any request or solicitation for bids, proposals, qualifications, or otherwise contracts with a person or business entity, and makes specific mention of this policy, then the terms of this policy become contractual and a material part of such bid, proposal, or contract.

9O) Procedure to Administer Delinquent Account Lists

The Accounting Department sends to the Purchasing Department a list of all delinquent accounts on a monthly basis. Before an award is to be made, the Purchasing Department will check the list and the Potter Randall Appraisal District for any business within the City limits for Delinquent Accounts status. For the purpose of this list, delinquent will be defined as 60 days old.

1. First, all vendors determined to be delinquent in their indebtedness to the City will be sent a certified letter (return receipt requested) stating in detail their reported indebtedness to the City and stating that they are being placed on the Cities Excluded Parties List (CEPL) and will no longer be able to do business with the City.

Each letter will state that as soon as we have proofed this issue has been resolved they will be removed from the CEPL.

2. Each letter will include the appeals procedure that is shown above.
3. Wait at least 7 calendar days before placing them on the CEPL list & the intranet list.
4. After the waiting period all vendors on the list will have their JDE Address Book records tagged with a CEPL at the end of their name.
5. If a party clears the debt, then the Purchasing Department will promptly remove all above restrictions.

The terms and conditions on all bids and purchase order documents will be amended to add:

“Pursuant to Local Government Code, Section 252.0436(b) and City Ordinance #6706, the City of Amarillo will not enter into a contract with a person or business that is indebted to the City.”

As the contract and bid awards for all Bids and PO's are being processed for the various commodities and services, each will be checked for any CEPL tagged vendors. If such a vendor shows up, then they will be immediately notified in writing of the ordinance by being sent an additional CEPL form letter instead of the contract letter or purchase order. This notification must be by certified mail (return receipt requested). This notification may also be faxed if a fax receipt is retained in the contract file.

If the vendor clears up the delinquent account and brings the Purchasing Department a receipt as proof within seven calendar days, the contract letter or purchase order will be signed and sent. If the vendor fails to clear the delinquency, the contract or purchase order will be immediately awarded to the next low bidder.

A record will be kept in a central location of all vendors that are contacted under the terms of this statute, including the results of that contact.