

## DEBARMENT ORDINANCE

### Sec. 10-38. - Debarment of contractors from County work.

(a)

#### *Purpose of debarment:*

(1)

The County shall solicit offers from, award contracts to, and consent to subcontracts with responsible contractors only. To effectuate this policy, the debarment of contractors from County work may be undertaken.

(2)

The serious nature of debarment requires that this sanction be imposed only when it is in the public interest for the County's protection, and not for purposes of punishment. Debarment shall be imposed in accordance with the procedures contained in this ordinance.

(3)

Debarment is intended as a remedy in addition to, and not in substitution of, the evaluation of the responsibility of County bidders and contractors, and the rejection or termination of County bidders and contractors based on findings of non-responsibility on a case by case basis.

(b)

#### *Definitions:*

(1)

*Affiliates.* Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, (i) either one (1) controls or has the power to control the other, or (ii) a third party controls or has the power to control both. Indicia of control 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 by a debarred entity, individual, or affiliate following the debarment of a contractor that has the same or similar management, ownership, or principal employees as the contractor that was debarred or suspended.

(2)

*Civil judgment* means a judgment or finding of a civil offense by any court of competent jurisdiction.

(3)

*Contractor* means any individual or other legal entity that:

(i)

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 County contract for construction or for procurement of goods or services, including professional services; or

(ii)

Conducts business, or reasonably may be expected to conduct business, with the County as an agent, surety, representative or subcontractor of another contractor.

(iii)

For the purposes of this section, the terms "vendor" and "consultant" have the same meaning as "contractor." "Subconsultant" has the same meaning as "subcontractor."

(4)

*Conviction* means a judgment or conviction of a criminal offense, be it a felony or misdemeanor, by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

(5)

*Debarment* mean action taken by the Debarment Committee to exclude a contractor from County contracting and County-approved subcontracting for a reasonable, specified period as provided in subsection (j) below; a contractor so excluded is debarred.

(6)

*Debarment committee* means a group of two (2) County department directors or assistant directors and one (1) member from private industry selected by DBD from a Standing Pool of Committee members appointed by the County Manager, to evaluate and, if warranted, to impose debarment. At least one (1) member of the Debarment Committee shall have working knowledge of the affected area. All Debarment Committee members appointed to a specific Debarment Committee shall be subject to restrictions similar to those in the Cone of Silence Ordinance 98-106 in that they are prohibited from having any communication with any of the parties involved in the specific debarment, or their representatives. Violation of this policy could lead to termination.

(7)

*Indictment* means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(8)

*Legal proceeding* means any civil judicial proceeding to which the county is a party or any criminal proceeding. The term includes appeals from such proceedings.

(9)

*List of debarred contractors* means a list compiled, maintained and distributed by the Department of Business Development ("DBD") of Miami-Dade County, containing the names of contractors debarred under the procedures of this ordinance.

(10)

*Preponderance of the evidence* means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(c)

*List of debarred contractors:*

(1)

DBD, as the agency charged with the implementation of this ordinance shall:

(i)

Compile and maintain a current, consolidated list ("List") of all contractors debarred by County departments. Such list shall be public record and shall be available for public inspection and dissemination;

(ii)

Periodically revise and distribute the list and issue supplements, if necessary, to all departments, to the office of the County Manager, to the Board of County Commissioners; and

(iii)

Include in the list the name and telephone number of the official responsible for its maintenance and distribution.

(2)

The list shall indicate:

(i)

The names and addresses of all contractors debarred, in alphabetical order;

(ii)

The name of the department that recommends initiation of the debarment action;

(iii)

The cause for the debarment action, as is further described herein, or other statutory or regulatory authority;

(iv)

The effect of the debarment action;

(v)

The termination date for each listing;

(vi)

The contractor's certificate of competency or license number, when applicable;

(vii)

The qualifier of the contractor, when applicable;

(viii)

The name and telephone number of the point of contact in the department recommending the debarment action.

(3)

DBD shall:

(i)

In accordance with internal retention procedures, maintain records relating to each debarment;

(ii)

Establish procedures to provide for the effective use of the list, including internal distribution thereof, to ensure that departments do not solicit offers from, award contracts to, or consent to subcontracts with contractors on the list; and

(iii)

Respond to inquiries concerning listed contractors and coordinate such responses with the department that recommended the action.

(d)

*Effects of debarment:*

(1)

Debarred contractors are excluded from receiving contracts, and departments shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the

county manager determines that an emergency exists justifying such action, and obtains approval from the Board of County Commissioners. Debarred contractors are also excluded from conducting business with the County as agents, representatives, subcontractors or partners of other contractors.

(2)

Debarred contractors are excluded from acting as individual sureties.

(e)

*Continuation of current contracts:*

(1)

Commencing on the effective date of this ordinance, all proposed County contracts for construction, or for procurement of goods and services, including professional services, shall incorporate this ordinance and specify that debarment may constitute grounds for termination of any existing County contract.

(2)

The debarment shall take effect in accordance with the notice provided by the County Manager pursuant to subsection (i)(9) below, except that if a department continues contracts or subcontracts in existence at the time the contractor was debarred, the debarment period shall commence upon the conclusion of the contract, and in the interim the debarred contractor shall not enter into any county contracts.

(3)

Departments may not renew or otherwise extend the duration of current contracts, or consent to subcontracts with debarred contractors, unless the County Manager determines that an emergency exists justifying the renewal or extension or for an approved extension due to delay or time extension for reasons beyond the contractors control, and such action is approved by the Board of County Commissioners.

(4)

No further work shall be awarded to a debarred contractor in connection with a continuing or miscellaneous construction contract, or a continuing or miscellaneous contract for goods or services, including professional services, or similar contract, where the work is divided into separate discrete groups and the county's refusal or denial of further work under the contract will not result in a breach of such contract.

(f)

*Restrictions on subcontracting:*

(1)

When a debarred contractor is proposed as a subcontractor for any subcontract subject to County approval, the department shall not consent to subcontracts with such contractors unless the County Manager determines that an emergency exists justifying such consent, and the Board of County Commissioners approves such decision.

(2)

The County shall not be responsible for any increases in project costs or other expenses incurred by a contractor as a result of rejection of proposed subcontractors pursuant to subsection (f)(1) above, provided the subcontractor was debarred prior to bid opening or opening of proposals.

(g)

*Debarment:*

(1)

The Debarment Committee may, in the public interest, debar a contractor for any of the causes listed in this ordinance, using the procedures outlined below. The existence of a cause for debarment, however, does not necessarily require that the contractor be debarred; the seriousness of the contractor's acts or omissions and any mitigating factors should be considered in making any debarment decision.

(2)

Debarment constitutes debarment of all officers, principals, directors, shareholders owning or controlling ten (10) percent or more of the stock, partners, qualifiers, divisions or other organizational elements of the debarred contractor, unless the debarred decision is limited by its terms to specific divisions, organizational elements, or commodities. The Debarment Committee's decision includes any existing affiliates of the contractor, if they are (i) specifically named and (ii) given written notice of the proposed debarment and an opportunity to respond. Future affiliates of the contractor are subject to the pre-existing Debarment Committee's decision.

(3)

A contractor's debarment shall be effective throughout county government.

(h)

*Causes for debarment:*

(1)

The Debarment Committee may debar a contractor for a conviction or civil judgment:

(i)

For commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain, performing, or making a claim upon a public contract or subcontract, or a contract or subcontract funded in whole or in part with public funds;

(ii)

For violation of federal or State antitrust statutes relating to the submission of offers;

(iii)

For commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(iv)

For commission of any other payment or performance related offense that seriously and directly affects the completion of one (1) or more contracts or the performance of the completed building, or project, or goods and services; or

(v)

Which makes the County the prevailing party in a legal proceeding, and a court determines that the lawsuit between the contractor and the County was frivolous or filed in bad faith.

(2)

The committee may debar a contractor, based upon a preponderance of the evidence, for:

(i)

Violation of the terms of a County contract or subcontract, or a contract or subcontract funded in whole or in part by County funds, such as willful failure to

perform in accordance with the terms of one (1) or more contracts; or the failure to perform, or unsatisfactory performance of one (1) or more contracts.

(ii)

Violation of a County ordinance or administrative order which lists debarment as a potential penalty.

(iii)

Any other cause of so serious or compelling a nature that it affects the responsibility of a county contractor or subcontractor in performing County work.

(3)

The debarment committee may debar a CSBE based upon a preponderance of evidence that the CSBE has forfeited a bond or has defaulted on financial assistance, either of which was provided under the CSBE program; or if any individual or corporation, partnership or other entity, or any individual officer, shareholder with a significant interests, director or partner of such entity, or affiliated business of such entity attempts to comply with the provisions of this ordinance through fraud, misrepresentation, or material misstatement.

(i)

*Debarment procedures:*

(1)

Investigation and referral. Departments shall promptly investigate and prepare written reports concerning a proposed debarment, and prepare written requests to DBD for the debarment of contractors the department believes is subject to any of the causes listed above. The County Manager (or his or her designee), and the Office of the Inspector General, may investigate, prepare written reports on, and prepare written requests for, debarment of contractors or subcontractors.

(2)

Upon receipt of a request for debarment, DBD shall create a Debarment Committee, from the Standing Pool of Committee members appointed by the County Manager, none of whose members shall include a representative from the department making the debarment request. DBD shall act as staff to the Debarment Committee. The department requesting debarment shall present evidence and argument to the Debarment Committee. In the event that the requesting department requests the assistance of the County Attorney's Office, the County Attorney's Office shall provide as counsel to the requesting department a representative of the office independent from any designated to advise the Debarment Committee in the proceedings.

(3)

Notice of proposal to debar. DBD, on behalf of the Debarment Committee, shall issue a notice of proposed debarment advising the contractor and any specifically named affiliates, by certified mail, return receipt requested, or personal service, that:

(i)

Debarment is being considered;

(ii)

Of the reasons and causes for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction(s) upon which it is based;

(iii)

That a hearing shall be conducted before the Debarment Committee on a date and time not less than twenty (20) days after service of the notice. The notice shall also advise the contractor that it may be represented by an attorney, may present documentary evidence and verbal testimony, and may cross-examine evidence and testimony presented against it.

(iv)

The notice shall also describe the effect of the issuance of the notice of proposed debarment, and of the potential effect of an actual debarment.

(4)

No later than seven (7) calendar days prior to the scheduled hearing date, the contractor must furnish DBD a list of the defenses, and the documents and records supporting those defenses, the contractor intends to present at the hearing. If the contractor fails to submit the list of defenses, in writing, and the documents and records supporting those defenses, at least seven (7) calendar days prior to the hearing, or fails to seek an extension of time, in writing, at least seven (7) calendar days prior to the hearing, within which to do so, the contractor shall have waived the opportunity to be heard at the hearing. Failure to request an extension at least seven (7) calendar days prior to the hearing shall constitute an absolute waiver to present defenses and to be heard before the Debarment Committee. The Debarment Committee Chair (or the Director of DBD, or his or her designee) has the right to grant or deny an extension of time so long as the request for an extension of time is made at least seven (7) calendar days prior to the hearing, and [[his or her decision may only be reviewed upon an abuse of discretion standard.

(5)

Discovery. The process of discovery, including the subpoenaing of witnesses, the taking of depositions, the submission of interrogatories, and requests for documents, is not permitted under this ordinance. However, any party may make a public records request under Chapter 119 of the Florida Statutes.

(6)

Hearsay evidence shall be admissible at the hearing but shall not form the sole basis for initiating a debarment procedure nor the sole basis of any determination of debarment. The hearing shall be transcribed, taped or otherwise recorded by use of a court reporter, at the election of the committee and at the expense of the county. Copies of the hearing tape or transcript shall be furnished at the expense and request of the requesting party.

(7)

Debarment Committee's decision. In actions based upon a conviction or judgment, or in which there is no genuine dispute over material facts, the Debarment Committee shall make a decision on the basis of all the undisputed, material information in the administrative record, including any undisputed, material submissions made by the contractor. Where actions are based on disputed evidence, the Debarment Committee shall decide what weight to attach to evidence of record, judge the credibility of witnesses, and base its decision on the preponderance of the evidence standard. In the event that the contractor fails to appear at the debarment hearing or to present competent proof under affirmation or oath through persons with direct knowledge of the contractor's performance, the contractor shall be presumed to be not responsible and subject to debarment. The Debarment Committee's decision shall be based on a majority of the members of the Committee. The Debarment

Committee shall be the sole trier of fact. The committee's decision shall be made within twenty (20) working days after conclusion of the hearing, unless the Debarment Committee extends this period for good cause.

(8)

The committee's decision shall be in writing and shall include the committee's factual findings, the principal causes of debarment as enumerated in this Ordinance, identification of the contractor and all affiliates affected by the decision, and the specific term, including duration, of the debarment imposed.

(9)

Notice of Debarment Committee's decision.

(i)

If the Debarment Committee decides to impose debarment, and the Debarment Committee's decision is not overridden by the County Manager, the county manager shall give the contractor and any affiliates involved written notice by certified mail, return receipt requested, or hand delivery, within twenty (20) working days of the decision, specifying the reasons for debarment and including a copy of the committee's written decision; stating the period of debarment, including effective dates; and advising that the debarment is effective throughout the county departments.

(ii)

If debarment is not imposed by the Debarment Committee, and the Debarment Committee's decision is not overridden by the County Manager, the county manager shall notify the contractor and any affiliates involved, by certified mail, return receipt requested, or personal service, within twenty (20) working days of the decision.

(10)

All decisions of the Debarment Committee shall be final and shall be effective on the date the notice is signed by the county manager unless overridden by the County Manager within twenty (20) working days of the date of the Debarment Committee's written decision. If the County Manager overrides the decision of the Debarment Committee, the County Manager shall state in writing the reasons for his or her override of the Debarment Committee's decision. If the County Manager does not override the Debarment Committee's decision within twenty (20) working days of the date of the Debarment Committee's written decision, and does not sign the notice to the contractor as stated in Section (i)(9) above, the Debarment Committee's decision is final, and becomes effective on the twenty-first (21st) working day after the date of the Debarment Committee's written decision. The Director of DBD or his or her designee shall then issue the notice to the contractor as required in Section (i)(9) above. Decisions of the Debarment Committee may be appealed to the Appellate Division of the Circuit Court within thirty (30) calendar days of the date the notice is signed by the County Manager. Decisions of the Debarment Committee shall not be overturned absent a finding of abuse of discretion. A debarred contractor may seek a stay of the debarment decision in accordance with the Florida Rules of Appellate Procedure.

(j)

*Period of debarment:*

(1)



The period of debarment imposed shall be within the sole discretion of the Debarment Committee. Debarment shall be for a period commensurate with the seriousness of the cause(s), and, where applicable, within the guidelines set forth below, but in no event shall exceed five (5) years.

(2)

The following guidelines in the period of debarment shall apply except where mitigating or aggravating circumstances justify deviation:

(i)

For commission of an offense as described in subsection (h)(1)(i): five (5) years.

(ii)

For commission of an offense as described in subsection (h)(1)(ii): five (5) years.

(iii)

For commission of an offense as described in subsection (h)(1)(iii): five (5) years.

(iv)

For commission of an offense as described in subsection (h)(1)(iv): one (1) to two (2) years.

(v)

For commission of an offense as described in subsection (h)(1)(v): two (2) to five (5) years.

(vi)

For commission of an offense as described in subsections (h)(2)(i) or (ii): two (2) to five (5) years.

(vii)

For commission of an offense as described in subsection (h)(2)(iii): one (1) to two (2) years.

(3)

The Debarment Committee may, in its sole discretion, reduce the period of debarment, upon the contractor's written request, for reasons such as:

(i)

Newly discovered material evidence;

(ii)

Reversal of the conviction or civil judgment upon which the debarment was based;

(iii)

Bona fide change in ownership or management;

(iv)

Elimination of other causes for which the debarment was imposed; or

(v)

Other reasons the Debarment Committee deems appropriate.

(4)

The debarred contractor's written request shall contain the reasons for requesting a reduction in the debarment period. DBD, with the assistance of the affected department, shall have thirty (30) days from receipt of such request to submit a written response thereto.

The decision of the Department Committee regarding a request made under this subsection is final and non-appealable.

(k)

*Scope of debarment:*

(1)

The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, agent, employee, or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct may be evidence of such knowledge, approval or acquiescence.

(2)

The fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct.

(3)

The fraudulent, criminal or other seriously improper conduct of any subcontractor associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the subcontractor's performance of duties for or on behalf of the contractor and the contractor had knowledge of, approved of, or acquiesced in this conduct. The contractor's acceptance of benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

(4)

The fraudulent, criminal, or other seriously improper conduct of one (1) contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct may be evidence of such knowledge, approval, or acquiescence.