

**IMPLEMENTATION OF PROCEDURES FOR  
DETERMINATIONS OF  
CONTRACTOR NON-RESPONSIBILITY  
AND  
CONTRACTOR DEBARMENT**



**December 2014**

# TABLE OF CONTENTS

<b>I.</b>	<b>Introduction</b> .....	<b>1</b>
<b>II.</b>	<b>Definitions</b> .....	<b>2</b>
<b>III.</b>	<b>General Description of the Ordinance</b> .....	<b>3</b>
	A. Determination of Contractor Non-Responsibility .....	3
	B. Difference Between Non-Responsibility and Non-Responsive .....	4
	C. Debarment of Contractors.....	5
<b>IV.</b>	<b>Requirements for Solicitations and Contracts</b> .....	<b>6</b>
	A. Solicitation Documents .....	6
	B. Standard Contract Language.....	6
	C. List of Debarred Contractors.....	6
<b>V.</b>	<b>Contractor Performance Monitoring</b> .....	<b>6</b>
	A. All Contracts .....	6
	B. County Contract Database .....	7
	C. Contractor Alert Reporting Database (CARD) .....	7
	D. Department Head Annual Certification of Compliance.....	7
<b>VI.</b>	<b>Specific Departmental Roles</b> .....	<b>8</b>
	A. All County Departments.....	8
	B. Internal Services Department .....	8
	C. Auditor-Controller.....	9
	D. Department of Public Works .....	9
	E. Chief Executive Office.....	9
	F. Department of Health Services .....	9
	G. Department of Parks and Recreation.....	9
	H. Department of Public Social Services .....	9

## **TABLE OF CONTENTS**

I.	Other County Departments .....	9
J.	County Counsel .....	9
<b>VII.</b>	<b>Determination of Contractor Non-Responsibility.....</b>	<b>9</b>
A.	Departmental Assessment of Cause for a Non-Responsibility Finding .....	10
B.	County Counsel Assistance .....	10
C.	Written Notice of Departmental Non-Responsibility Hearing.....	11
D.	Non-Responsibility Hearing .....	12
E.	Recording the Departmental Hearing .....	14
F.	Proposed Decision and Recommendation to the Board .....	15
G.	Board of Supervisors Decision.....	17
H.	County Contract Database Entry .....	17
<b>VIII.</b>	<b>Determination of Contractor Debarment .....</b>	<b>18</b>
A.	Departmental Assessment of Cause for Debarment.....	18
B.	County Counsel Assistance .....	19
C.	Contractor Hearing Board (CHB) .....	19
D.	Written Notice of CHB Debarment Hearing.....	20
E.	Debarment Hearing .....	21
F.	Recording the CHB Hearing .....	24
G.	Deliberations of the CHB .....	24
H.	Proposed Decision and Recommendation to the Board .....	25
I.	Board of Supervisors Decision.....	30
J.	Contract Database Entry.....	30
K.	Contractor's Request for Reduction of Debarment Period or Termination of Debarment.....	30

## **IMPLEMENTATION OF PROCEDURES FOR DETERMINATIONS OF CONTRACTOR NON-RESPONSIBILITY AND CONTRACTOR DEBARMENT**

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On January 11, 2000, the Los Angeles County Board of Supervisors (Board) adopted an ordinance for Determinations of Contractor Non-Responsibility and Contractor Debarment, Los Angeles County Code Chapter 2.202 (Ordinance), which is applicable to all County of Los Angeles (County) contracts except to the extent applicable State and/or Federal laws are inconsistent with the terms of the Ordinance. These implementation of procedures provide guidelines and necessary interpretation to assist departments in implementing the Ordinance.

### **I. Introduction**

In adopting the Ordinance, the Board made a finding that, in order to promote integrity in the County's contracting processes and to protect the public interest, the County's policy shall be to conduct business only with responsible contractors. The Board further found that debarment is to be imposed only in the public interest for the protection of the County, and not for the purpose of punishment.

Requirements for finding contractors or potential contractors non-responsible and debaring contractors are applicable to all County contracts, unless Federal or State law otherwise applies.

Other procedures in these implementation of procedures describe the requirements for use of a County Contract Database to monitor contractor performance and contractor labor law violations; these procedures are applicable only to Proposition A/Living Wage, cafeteria services, information technology, and construction contracts.

Individual departments remain responsible for:

1. Reviewing past contractor performance prior to recommending contracts (e.g., past labor law issues on both County and non-County contracts);
2. Monitoring contractor performance;
3. Entering relevant contractor information in the County Contract Database and the Contractor Alert Reporting Database (CARD);
4. Recommending findings of non-responsibility; and
5. Initiating debarment procedures, as applicable.

Semi-annually, the Internal Services Department (ISD) will review the County Contract Database to assess departmental follow up on documented violations or other performance deficiencies which may merit debarment. Information in the County Contract Database will pertain to current contracts. Persons or entities bidding for County contracts will be required to disclose past performance as part of the solicitation process.

## **IMPLEMENTATION OF PROCEDURES FOR DETERMINATIONS OF CONTRACTOR NON-RESPONSIBILITY AND CONTRACTOR DEBARMENT**

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Contractor performance problems and contractor labor law violations that are identified in the semi-annual Contract Database review, and for which the relevant department has not initiated appropriate action, will be referred to the Auditor-Controller (A-C). The A-C has responsibility for overall monitoring of departmental compliance with Ordinance requirements.

### **II. Definitions**

For purposes of these implementation of procedures the following words as used herein shall be construed to have the following meaning, unless otherwise apparent from the context in which they are used.

- A. The term "**bidder**" or "**proposer**" means a person, partnership, corporation, or other entity who is seeking to contract with, the County or a nonprofit corporation created by the County to provide goods to, or perform services for or on behalf of, the County or a nonprofit corporation created by the County. A bidder/proposer includes an officer, director, shareholder, partner, manager, employee, or other individual associated with the bidder/proposer who participated in, knew of, or had reason to know of the non-responsible conduct.
- B. The term "**bid**" or "**proposal**" means a bid, proposal, or any other response to a solicitation submitted by or on behalf of a person, partnership, corporation, or other entity seeking an award of a contract.
- C. The term "**contract**" means any agreement to provide goods to, or perform services for or on behalf of, the County or a nonprofit corporation created by the County.
- D. The term "**contractor**" means a person, partnership, corporation, or other entity who has contracted with the County or a nonprofit corporation created by the County to provide goods to, or perform services for or on behalf of, the County or a nonprofit corporation created by the County. A contractor includes a contractor, subcontractor, vendor, or any of their respective officers, directors, shareholders, partners, managers, employees, or other individuals associated with the contractor, subcontractor, vendor who participated in, knew of, or had reason to know of any wrongdoing.
- E. The term "**debarment**" means an action taken by the County which results in a contractor or bidder/proposer being prohibited from bidding or proposing on, being awarded and/or performing work on a contract with the County. A contractor or bidder/proposer who has

**IMPLEMENTATION OF PROCEDURES FOR DETERMINATIONS OF  
CONTRACTOR NON-RESPONSIBILITY AND CONTRACTOR DEBARMENT**

---

been determined by the County to be subject to such a prohibition is "debarred."

- F. The term "**department head**" means either the head of a department responsible for administering a particular contract for the County or the designee of same.
- G. The term "**County**" means the County of Los Angeles, any public entities for which the Board is the governing body, and any joint powers authorities of which the County is a member that have adopted County contracting procedures.
- H. The term "**Contractor Hearing Board (CHB)**" means the persons designated to preside over contractor debarment hearings and make recommendations on debarment to the Board of Supervisors. The CHB is comprised of the Internal Services Department, Chief Executive Office and Department of Public Works. The Departments of Health Services, Parks and Recreation, Public Social Services and other County departments serve as alternate members.
- I. The term "**non-responsibility**" means an action taken by the County which results in a bidder/proposer who submitted a bid or proposal on a particular contract being prohibited from being awarded and/or performing work on that contract. A bidder/proposer who has been determined by the County to be subject to such a prohibition is "non-responsible" for purposes of that particular contract.

**III. General Description of the Ordinance**

A. Determination of Contractor Non-Responsibility

The Ordinance provides that prior to a contract award, the County may determine that a bidder/proposer submitting a bid or proposal is non-responsible for purposes of that contract. A finding of non-responsibility means that the bidder/proposer is prohibited from being awarded and/or performing work on that contract. This finding would be appropriate if the County, in its discretion, finds that the bidder/proposer has done any of the following:

- 1. Violated a term of a contract with the County or a nonprofit corporation created by the County;

**IMPLEMENTATION OF PROCEDURES FOR DETERMINATIONS OF  
CONTRACTOR NON-RESPONSIBILITY AND CONTRACTOR DEBARMENT**

---

2. Committed an act or omission which negatively reflects on the contractor's quality, fitness or capacity to perform a contract with the County, any other public entity, or a nonprofit corporation created by the County, or engaged in a pattern or practice which negatively reflects on same;
3. Committed an act or omission which indicates a lack of business integrity or business honesty; or
4. Made or submitted a false claim against the County or any other public entity.

Such bidders/proposers are entitled to written notice of the basis for the proposed non-responsibility finding(s) and a hearing before the department head or his/her designee. The department head makes a recommendation regarding finding of the non-responsibility to the Board. The Board can modify, deny, or adopt the recommendation of the department. The Board makes the final determination of the non-responsibility.

**B. Difference between Non-Responsible and Non-Responsive**

Finding a bidder/proposer non-responsible is not the same as finding a bidder/proposer non-responsive to solicitation requirements.

Non-responsibility refers to finding a bidder/proposer incapable of performing as a responsible County contractor, based on past performance history or other relevant documentation.

Non-responsive refers to the failure of a bidder/proposer to comply with some or all solicitation requirements making the bidder/proposer ineligible for consideration in the bid/proposal evaluation process. It is generally not a reflection on the bidder's/proposer's capacity to perform as a responsible County contractor and does not require the exercise of the department's judgment in determining whether the bidder/proposer is responsive. In some instances, however, the distinction may not be clear based on the nature of the bidder's/proposer's omission. If department staff are unsure as to whether an action by a bidder/proposer is an indication of non-responsibility or non-responsiveness, County Counsel shall be consulted.

**IMPLEMENTATION OF PROCEDURES FOR DETERMINATIONS OF  
CONTRACTOR NON-RESPONSIBILITY AND CONTRACTOR DEBARMENT**

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C. Debarment of Contractors

The Ordinance provides that the County may debar a contractor who has had a contract with the County in the preceding three years and/or a bidder/proposer who submits a bid or proposal for a new contract with the County. Debarment would be appropriate if the County, in its discretion, finds that the contractor or bidder/proposer has done any of the following:

1. Violated a term of a contract with the County or a nonprofit corporation created by the County;
2. Committed an act or omission which negatively reflects on the contractor's quality, fitness or capacity to perform a contract with the County, any other public entity, or a nonprofit corporation created by the County, or engaged in a pattern or practice which negatively reflects on same;
3. Committed an act or omission which indicates a lack of business integrity or business honesty; or,
4. Made or submitted a false claim against the County or any other public entity.

Such a contractor or bidder/proposer is entitled to written notice of the basis for the proposed debarment and a hearing before the Contractor Hearing Board (CHB), comprised of regular members from Internal Services Department (ISD), Chief Executive Office (CEO), and the Department of Public Works (DPW), with the Departments of Health Services (DHS), Parks and Recreation (DPR), Public Social Services (DPSS) and other County departments serving as alternate members. The CHB makes a recommendation to the Board regarding whether the contractor or bidder/proposer should be debarred and, if so, the appropriate length of time for the debarment. The Board can modify, deny or adopt the recommendation of the CHB. A debarment finding becomes final upon the approval of the Board.

Debarment results in a contractor or bidder/proposer being prohibited from bidding or proposing on, being awarded and/or performing work on a contract with the County for a period up to five years, or if circumstances warrant, the County may impose a longer period up to and including permanent debarment. In addition, the Board may also instruct County departments to terminate any or all existing contracts consistent with the terms of any existing contracts that the contractor may have with the County.

**IMPLEMENTATION OF PROCEDURES FOR DETERMINATIONS OF  
CONTRACTOR NON-RESPONSIBILITY AND CONTRACTOR DEBARMENT**

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**IV. Requirements for Solicitations and Contracts**

Effective February 10, 2000, the requirements set forth in the Ordinance are required for all solicitations and contracts, except to the extent applicable State and/or Federal laws are inconsistent with the terms of the Ordinance.

**A. Solicitation Documents**

All solicitations, including but not limited to, Request for Proposals (RFP), Invitation for Bids (IFB) and Request for Statement of Qualifications (RFSQ) shall include the standard approved determination of non-responsibility and debarment language in the ISD models. The language is available on the Internal Services Department's Purchasing and Contracts website:

<http://svcscontracting.mylacounty.info/msd.asp>

In addition, solicitations must include the most current listing of debarred contractors. (See Section C below)

**B. Standard Contract Language**

All County contracts shall include the standard approved determination of non-responsibility and debarment language available on the following website at:

<http://svcscontracting.mylacounty.info/msd.asp>

**C. List of Debarred Contractors**

Departmental staff shall include the County's list of Debarred Contractors in all solicitations. The list is available at:

<http://purchasingcontracts.co.la.ca.us/DebarmentList.asp>

**V. Contractor Performance Monitoring**

**A. All Contracts**

Departments remain responsible for monitoring contractor performance and compliance with all contract terms, consistent with existing Board policy that requires at least an annual evaluation of contractor performance.

## **IMPLEMENTATION OF PROCEDURES FOR DETERMINATIONS OF CONTRACTOR NON-RESPONSIBILITY AND CONTRACTOR DEBARMENT**

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### B. County Contract Database

The County Contract Database includes performance information for Proposition A/Living Wage, Cafeteria Services, Information Technology and Construction contracts only. The County Contract Database is located on the County's intranet site at:

<http://camisdv4.co.la.ca.us/contractdatabasedev/>

Upon approval of a contract, departments are required to enter specific information into the County Contract Database regarding a contractor's performance, compliance with contract wage requirements and labor law violations. The County Contract Database must be updated at least annually.

### C. Contractor Alert Reporting Database (CARD)

CARD is a system to report and track poorly performing contractors. The system which is maintained by A-C provides a central repository (shared database) within the County, so that departments' contract administration personnel can identify and utilize relevant information in:

- Evaluating the contractors' prior County work history during the solicitation process for new or renewed County contracts.
- Alerting other County departments of existing contractors that have prior, well-documented contract compliance issues so that the County departments can implement the appropriate levels of monitoring.

The CARD Manual is available on the County's Purchasing and Contracts intranet site at:

[http://file.lacounty.gov/auditor/portal/cms1\\_163517.pdf](http://file.lacounty.gov/auditor/portal/cms1_163517.pdf)

### D. Department Head Annual Certification of Compliance

Department heads are required to annually certify to the A-C that they have complied with all required procedures, including completing at least annual contractor performance reviews, inputting required information in the County Contract Database, and proceeding with non-responsibility and debarment procedures where required. A copy of this certification shall be included with the department heads' annual submission of performance assessments.

**IMPLEMENTATION OF PROCEDURES FOR DETERMINATIONS OF  
CONTRACTOR NON-RESPONSIBILITY AND CONTRACTOR DEBARMENT**

---

**VI. Specific Departmental Roles**

The following briefly describes the roles of designated departments in the contract monitoring and non-responsibility/debarment process.

A. All County departments:

1. Enter contracts into the County Contract Database and/or CARD timely and accurately.
2. Take remedial action with respect to contractor performance problems, where appropriate. This includes conducting investigations and identifying charges for non-responsibility and debarment proceedings.
3. Conduct a contractor non-responsibility hearing, or participate in debarment proceedings, as appropriate.
4. Make recommendations for the final determination of non-responsibility or debarment.
5. Append a list of debarred contractors to all solicitations.

B. Internal Services Department:

1. Hosts the County Contract Database.
2. Conducts semi-annual review of the County Contract Database to identify potential problem contractors which show no indication of departmental action.
3. Provides contracting expertise related to contract performance monitoring and monitoring prevailing wage, labor law violations, employment discrimination, civil rights violations, and Living Wage compliance.
4. Participates on the CHB to bring general contracting and Countywide perspective to the process.
5. Unless otherwise provided, chairs the CHB and votes as a regular member.

**IMPLEMENTATION OF PROCEDURES FOR DETERMINATIONS OF  
CONTRACTOR NON-RESPONSIBILITY AND CONTRACTOR DEBARMENT**

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- C. Auditor-Controller (A-C):
  - 1. Evaluates the contract monitoring process in conjunction with departmental audits, and provides Countywide auditing expertise.
  - 2. Hosts the Contractor Alert Reporting Database (CARD).
- D. Department of Public Works: Unless otherwise provided, participates on the CHB as a regular member to bring expertise in the variety of contracts they administer, including construction contracts.
- E. Chief Executive Office: Unless otherwise provided, participates on the CHB as a regular member to provide general contracting and Countywide perspective to the process.
- F. Department of Health Services: Unless otherwise provided, participates as an alternate member of the CHB to provide general contracting and Countywide perspective to the process.
- G. Department of Parks and Recreation: Unless otherwise provided, participates as an alternate member of the CHB to provide general contracting and Countywide perspective to the process.
- H. Department of Public Social Services: Unless otherwise provided, participates as an alternate member of the CHB to provide general contracting and Countywide perspective to the process.
- I. Other County Departments: Unless otherwise provided, participate as an alternate member of the CHB to provide general contracting and Countywide perspective to the process.
- J. County Counsel: Provides legal advice to departments throughout the process. Separate County Counsel attorneys will act as legal advisors to the County departments and CHB.

**VII. Determination of Contractor Non-responsibility**

The Ordinance provides that prior to a contract award, the County may determine that a bidder/proposer submitting a bid or proposal is non-responsible for purposes of that contract. A finding of non-responsibility means that the bidder/proposer is prohibited from being awarded and/or performing work on that contract.

**IMPLEMENTATION OF PROCEDURES FOR DETERMINATIONS OF  
CONTRACTOR NON-RESPONSIBILITY AND CONTRACTOR DEBARMENT**

---

**A. Departmental Assessment of Cause for a Non-Responsibility Finding**

In pursuing a finding of non-responsibility against a bidder/proposer, the burden of proof is on the department to show by a preponderance of the evidence that a finding of non-responsibility is appropriate.

1. Department staff who become aware of information concerning the existence of a cause for finding a bidder/proposer non-responsible shall immediately advise departmental management. The department head shall designate a departmental staff member who will investigate information concerning the proposed debarment (departmental investigator).
2. Departments must develop evidence to support such a finding and discuss the adequacy of the evidence with its assigned County Counsel attorney.
3. The Ordinance provides that the County declare a bidder/proposer to be non-responsible if the County finds, in its discretion, that the bidder/proposer has done any of the following:
  - a. Violated a term of a contract with the County or a nonprofit corporation created by the County;
  - b. Committed an act or omission which negatively reflects on the contractor's quality, fitness or capacity to perform a contract with the County, any other public entity, or a nonprofit corporation created by the County, or engaged in a pattern or practice which negatively reflects on same;
  - c. Committed an act or omission which indicates a lack of business integrity or business honesty; or
  - d. Made or submitted a false claim against the County or any other public entity.

**B. County Counsel Assistance**

A County Counsel attorney will consult with and assist the department in determining if there is sufficient cause to proceed with a non-responsibility hearing and provide legal advice throughout the process. A separate County Counsel attorney shall consult the Departmental Hearing Officer.

**IMPLEMENTATION OF PROCEDURES FOR DETERMINATIONS OF  
CONTRACTOR NON-RESPONSIBILITY AND CONTRACTOR DEBARMENT**

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**C. Written Notice of Departmental Non-Responsibility Hearing**

1. Prior to initiating a hearing on a bidder's/proposer's non-responsibility, the department shall prepare a written notice to the bidder/proposer stating that the department intends to recommend to the Board that the bidder/proposer be found non-responsible. Such notice must be approved by department management and approved as to form by County Counsel.
2. County Counsel will advise as to the appropriate delivery method for the notice, pursuant to this Section. Notices made pursuant to this Section shall be deemed served and effective upon the date the notice is provided in person, by electronic mail, facsimile, or by certified mail. Notice by certified mail shall be deemed served and effective two (2) business days after delivery. Notices served by methods other than personal delivery, must also be delivered by certified mail to the last known address of the bidder/proposer.
3. The notice shall provide the bidder/proposer with the following:
  - a. The date, time and location of the hearing;
  - b. The basis for the proposed recommendation of non-responsibility;
  - c. A summary of any evidence to support such recommendation;
  - d. That the parties may agree to submit the matter on the basis of documentary evidence only;
  - e. That the bidder/proposer is required to confirm with the department, in writing, within the date specified in the notice that the bidder/proposer intends to attend the hearing;
  - f. That failure of a bidder/proposer to (i) confirm attendance at the hearing on the hearing date with the department; and attend the hearing, or (ii) otherwise respond to the department by the date specified in the notice, may result in waiver by the bidder/proposer of all rights to a hearing before the hearing officer

**IMPLEMENTATION OF PROCEDURES FOR DETERMINATIONS OF  
CONTRACTOR NON-RESPONSIBILITY AND CONTRACTOR DEBARMENT**

---

- g. If the bidder/proposer confirms its attendance, the department will provide to the bidder/proposer a list of prospective witnesses and copies of all documentary evidence to the bidder/proposer prior to the scheduled hearing;
- h. That if the bidder/proposer intends to present evidence responding to the proposed non-responsibility finding, the bidder/proposer must provide to the department its responses which may include a list of prospective witnesses and copies of any documentary evidence to the department prior to the hearing; and
- i. The names and mailing addresses of the individuals to whom all copies shall be delivered.

**D. Non-Responsibility Hearing**

- 1. On the date, time and location specified in the written notice, the department shall conduct a hearing where evidence on the proposed non-responsibility determination is presented; the burden of proof is on the department to show by a preponderance of the evidence that a finding of non-responsibility is appropriate. Nonattendance at the hearing by the bidder/proposer without justification may result in waiver of all rights to a hearing before the departmental hearing officer.
- 2. Specific Roles
  - a. Departmental Hearing Officer

The department head, or a designee, shall conduct the hearing, examine the evidence on the issue of a bidder's/proposer's responsibility, and prepare a proposed decision and recommendation to the Board regarding whether the bidder/proposer should be found non-responsible. The person acting as the departmental hearing officer must be a different person than the department staff who investigates or presents the charges in support of a finding of non-responsibility at the hearing.
  - b. Departmental Advocate

The department head shall designate a department staff member or its County Counsel attorney to present charges of a bidder's/proposer's non-

**IMPLEMENTATION OF PROCEDURES FOR DETERMINATIONS OF  
CONTRACTOR NON-RESPONSIBILITY AND CONTRACTOR DEBARMENT**

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responsibility at a hearing before the departmental hearing officer. The departmental investigator may also act as the departmental advocate.

c. County Counsel

County Counsel will provide legal advice and representation, as necessary to the departmental investigator/advocate. County Counsel will also provide legal advice to the departmental hearing officer. The departmental investigator/advocate and the departmental hearing officer shall be advised by separate County Counsel attorneys.

d. Bidder/Proposer

The bidder/proposer and/or other authorized representative of the bidder/proposer shall be afforded an opportunity to appear at the hearing and to submit documentary evidence, present witnesses and offer rebuttal evidence. An authorized representative may be designated by the bidder/proposer in person at the hearing or by letter received at or prior to the departmental hearing, signed by the bidder/proposer who submitted the bid/proposal.

3. Presentation of Evidence and Rebuttal

a. At the departmental hearing, the departmental advocate shall first present evidence to support a finding that a bidder/proposer is non-responsible. During the departmental advocate's presentation of its case, the bidder/proposer and/or other authorized representative shall not interrupt the presentation, unless otherwise agreed to by both parties and the departmental hearing officer.

b. The departmental advocate has the right to call and examine witnesses, to cross-examine opposing witnesses, to present documentary or any other evidence in support of a finding that the bidder/proposer is non-responsible.

c. After the departmental advocate's presentation of its case, the bidder/proposer and/or other authorized representative shall be afforded an opportunity to rebut evidence that is the basis for the department's recommendation. During the bidder's/proposer's presentation of his or her case, the departmental

**IMPLEMENTATION OF PROCEDURES FOR DETERMINATIONS OF  
CONTRACTOR NON-RESPONSIBILITY AND CONTRACTOR DEBARMENT**

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advocate shall not interrupt the presentation, unless otherwise agreed to by both parties and the departmental hearing officer.

- d. The bidder/proposer has the right to call and examine witnesses, to cross-examine opposing witnesses, to present documentary or any other evidence to rebut evidence that is the basis for the department's recommendation or evidence of mitigating factors.
- e. Each party shall have the opportunity to rebut the evidence presented by the other party.
- f. The departmental hearing officer may ask questions, seek clarification and request additional information from the parties at any time during the hearing. The departmental hearing officer has discretion to continue the hearing, as necessary.
- g. The departmental hearing officer shall close the hearing at the conclusion of the presentation of the evidence. All evidence to be considered by the departmental hearing officer shall be submitted prior to the close of the hearing, unless otherwise specified by the departmental hearing officer.

4. Rules of Evidence

Formal rules of evidence do not apply in the departmental hearing. At the hearing, the departmental hearing officer can 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 rely in the conduct of serious affairs.

5. Burden of Proof and Standard of Proof

The burden of proof is on the department proposing a non-responsibility determination to show by a standard of preponderance of the evidence that a finding of non-responsibility is appropriate. 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.

**E. Recording the Departmental Hearing**

The hearing before the departmental hearing officer shall be recorded by any method deemed appropriate by the hearing officer

**IMPLEMENTATION OF PROCEDURES FOR DETERMINATIONS OF  
CONTRACTOR NON-RESPONSIBILITY AND CONTRACTOR DEBARMENT**

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(audio tape, video tape, reporter/transcriber) and a copy of the record of the proceeding shall be made available to the bidder/proposer at the appropriate cost, upon request.

**F. Proposed Decision and Recommendation to the Board**

1. After the hearing, the departmental hearing officer shall prepare a written proposed decision, which shall contain a recommendation regarding whether or not the bidder/proposer should be found non-responsible regarding the contract(s) at issue. The departmental hearing officer's proposed decision and recommendation regarding whether the bidder/proposer be found non-responsible shall be based on the record of the hearing.
2. In making the proposed decision and recommendation, the departmental hearing officer may consider such items, including but not limited to, the seriousness and extent of the bidder's/proposer's acts or omissions, patterns or practices, as well as any relevant mitigating or aggravating factors presented at the hearing in determining whether a bidder/proposer should be deemed non-responsible, which include but are not limited to the following:
  - (1) Actual or potential harm or impact that results or may result from the wrongdoing
  - (2) Frequency and/or number of incidents and/or duration of the wrongdoing.
  - (3) Whether there is a pattern or prior history of wrongdoing.
  - (4) Bidder/Proposer's overall performance record, e.g., the County may evaluate the bidder/proposer's activity cited as the basis for the non-responsibility finding in the broader context of the bidder/proposer's overall performance history.
  - (5) Whether a bidder/proposer has been debarred, found non-responsible, or disqualified by another public entity on a basis of conduct similar to one or more of the grounds for a non-responsibility finding specified in the Ordinance.
  - (6) Whether a bidder/proposer's wrongdoing was intentional or inadvertent. For example, the

**IMPLEMENTATION OF PROCEDURES FOR DETERMINATIONS OF  
CONTRACTOR NON-RESPONSIBILITY AND CONTRACTOR DEBARMENT**

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departmental hearing officer may consider whether and to what extent a bidder/proposer planned, initiated, or carried out the wrongdoing.

- (7) Whether a bidder/proposer has accepted responsibility for the wrongdoing and recognizes the seriousness of the misconduct that led to the grounds for a non-responsibility finding and/or has taken corrective action to cure the wrongdoing, such as establishing ethics training and implementing programs to prevent recurrence.
- (8) Whether and to what extent a bidder/proposer has paid or agreed to pay criminal, civil, and administrative liabilities for the improper activity, and to what extent, if any, has the bidder/proposer made or agreed to make restitution.
- (9) Whether a bidder/proposer has cooperated fully with the County during the investigation, and any court or administrative action. In determining the extent of cooperation, the departmental hearing officer may consider when the cooperation began and whether the bidder/proposer disclosed all pertinent information known to the bidder/proposer.
- (10) Whether the wrongdoing was pervasive within a bidder/proposer's organization.
- (11) The positions held by the individuals involved in the wrongdoing.
- (12) Whether a bidder/proposer's principals or other individual associated with the bidder/proposer participated in, knew of, or tolerated the offense.
- (13) Whether a bidder/proposer brought the activity cited as a basis for a non-responsibility finding to the attention of the County in a timely manner.
- (14) Whether a bidder/proposer has fully investigated the circumstances surrounding the cause for a non-responsibility finding and, if so, made the result of the investigation available to the County.

**IMPLEMENTATION OF PROCEDURES FOR DETERMINATIONS OF  
CONTRACTOR NON-RESPONSIBILITY AND CONTRACTOR DEBARMENT**

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- (15) Whether a bidder/proposer had effective standards of conduct and internal control systems in place at the time the questioned conduct occurred.
  - (16) Whether a bidder/proposer has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes the cause for a non-responsibility finding.
  - (17) Other factors that are appropriate to the circumstances of a particular case.
- 3. If the bidder/proposer is found non-responsible by the departmental hearing officer, the department shall present to the Board the proposed decision, a recommendation on a finding of non-responsibility and a record of the hearing before the departmental hearing officer.
  - 4. The departmental hearing officer shall give notice to the bidder/proposer of the proposed decision and recommendation. The notice shall include the proposed decision and recommendation and specify the date, time and location of the hearing before the Board. Delivery of the notice must be by certified mail to the bidder/proposer and/or other authorized representative of same.

**G. Board of Supervisors Decision**

The Board may, in its discretion, limit any further hearing to the presentation of evidence previously presented. The Board shall have the right to modify, deny or adopt the proposed decision and recommendation of the departmental hearing officer. A non-responsibility finding shall become final upon approval of the Board; if non-responsibility is determined, the bidder/proposer is ineligible for the award of the contract(s) at issue.

**H. County Contract Database Entry**

Designated departmental staff shall enter a Board finding of non-responsibility into the County Contract Database. (See Section V. for information on the County Contract Database).

**IMPLEMENTATION OF PROCEDURES FOR DETERMINATIONS OF  
CONTRACTOR NON-RESPONSIBILITY AND CONTRACTOR DEBARMENT**

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**VIII. Determination of Contractor Debarment**

The County may debar a contractor who has had a contract with the County in the preceding three years and/or a bidder/proposer who has submitted a bid or proposal for a new contract with the County. For purposes of this Section only, the term "contractor" shall also include a bidder or proposer.

Debarment is an action taken by the County that results in a contractor being prohibited from bidding or proposing on, being awarded, and/or performing work on a contract with the County. Ordinarily, the period of debarment should not exceed five years; however, if warranted by the circumstances, the County may impose a longer period of debarment up to and including permanent debarment. A contractor who has been determined by the County to be subject to such a prohibition is "debarred."

**A. Departmental Assessment of Cause for Debarment**

In pursuing a debarment action against a contractor, the burden of proof is on the department to show by a preponderance of the evidence that debarment is appropriate.

1. Department staff who become aware of information concerning the existence of a cause that may justify debarment shall immediately advise departmental management. The department head shall designate a departmental staff member who will investigate information concerning the proposed debarment (departmental investigator).
2. Departments must develop evidence to support such a finding and discuss the adequacy of the evidence with its assigned County Counsel attorney.
3. Contractor performance problems may be identified during routine contract monitoring, the annual performance review, A-C reviews, reviews of CARD, the semi-annual review of the County Contract Database by ISD, and/or other reports of information concerning the existence of a cause for a debarment action, including complaints from the public or contractor employees.
4. The Ordinance provides that the County may debar a contractor if the County finds, in its discretion, that the contractor has done any of the following:

**IMPLEMENTATION OF PROCEDURES FOR DETERMINATIONS OF  
CONTRACTOR NON-RESPONSIBILITY AND CONTRACTOR DEBARMENT**

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- a. Violated a term of a contract with the County or a nonprofit corporation created by the County;
  - b. Committed an act or omission which negatively reflects on the contractor's quality, fitness or capacity to perform a contract with the County, any other public entity, or a nonprofit corporation created by the County, or engaged in a pattern or practice which negatively reflects on same;
  - c. Committed an act or omission which indicates a lack of business integrity or business honesty; or
  - d. Made or submitted a false claim against the County or any other public entity.
5. Department staff shall also provide notice to all other County departments to determine if the contractor has a contract with other County departments. The notice shall include a request for the other department's contract and a request to the other department to review its contract with the contractor.

**B. County Counsel Assistance**

A County Counsel attorney will assist the department in determining if there is sufficient cause to proceed with a debarment hearing and provide legal advice throughout the process. A separate County Counsel attorney shall assist the CHB.

**C. Contractor Hearing Board (CHB)**

1. Composition/Structure

The regular membership of the CHB is comprised of the Internal Services Department (ISD), Chief Executive Office (CEO), and Department of Public Works (DPW). The Departments of Health Services (DHS), Parks and Recreation, Public Social Services (DPSS) and other County departments serve as alternate members. Alternate members normally serve only when one or more regular members cannot participate due to a contract administered by their department. However, they may be called to serve on other occasions (e.g., increased CHB workload). As the chair of the CHB, ISD arranges meeting dates, times, and locations, as well as presides over the debarment hearings. County Counsel serves as the legal advisor to the CHB.

**IMPLEMENTATION OF PROCEDURES FOR DETERMINATIONS OF  
CONTRACTOR NON-RESPONSIBILITY AND CONTRACTOR DEBARMENT**

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Neither regular nor alternate members may participate if the contract at issue is administered by their department. If such an instance occurs, an alternate member will participate in that hearing. If a contract before the CHB involves ISD, the other departmental representatives shall designate an acting chair (who will also be a voting member), and ISD will not participate on the CHB.

CHB members must be a senior manager in their department.

2. Scheduling the CHB Hearing

The department requesting a debarment hearing shall contact ISD, Contracting Division, or if the contract before the CHB involves the ISD, the department shall contact the County Counsel assigned to advise the CHB to schedule a hearing date. ISD or CHB's County Counsel shall confirm a hearing date with the other CHB member departments. The requesting department shall be advised of the hearing date for purposes of issuing a written hearing notice to the contractor subject to the debarment process, consistent with the requirements in Section VIII. D, below.

**D. Written Notice of CHB Debarment Hearing**

1. Prior to initiating a debarment hearing before the CHB, the department shall prepare a written notice to the contractor stating that the department intends to recommend to the Board that the contractor be debarred. Such notice must be approved by department management and approved as to form by County Counsel.
2. County Counsel will advise as to the appropriate delivery method for the notice, pursuant to this Section. Notices made pursuant to this Section shall be deemed served and effective upon the date the notice is provided in person, by electronic mail, facsimile, or by certified mail. Notice by certified mail shall be deemed served and effective two (2) business days after delivery. Notices served by methods other than personal delivery, must also be delivered by certified mail to the last known address of the contractor.
3. The notice shall provide the contractor with the following:
  - a. The date, time and location of the hearing before the CHB;

**IMPLEMENTATION OF PROCEDURES FOR DETERMINATIONS OF  
CONTRACTOR NON-RESPONSIBILITY AND CONTRACTOR DEBARMENT**

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- b. The basis for the proposed debarment recommendation;
- c. A summary of any evidence to support such recommendation;
- d. That the parties may agree to submit the matter to the CHB on the basis of documentary evidence only;
- e. That the contractor is required to confirm with the department, in writing, within the date specified in the notice that the contractor intends to attend the CHB hearing.
- f. That failure of a contractor to (i) confirm attendance at the hearing on the hearing date with the department; and attend the hearing, or (ii) otherwise respond to the department by the date specified in the notice, may result in waiver by the contractor of all rights to a hearing before the CHB;
- g. If the contractor confirms its attendance, in writing, the department will provide the contractor a list of prospective witnesses and copies of all documentary evidence to the contractor by the date specified in the notice which shall be no less than ten (10) business days prior to the scheduled hearing. The CHB shall be provided five (5) copies of each item so exchanged;
- h. If the contractor intends to present evidence that rebuts the department's proposed debarment, the contractor must provide to the department a list of prospective witnesses and copies of any documentary evidence no less than five (5) business days prior to the hearing. The CHB shall be provided copies of each item so exchanged;
- i. To the extent contractor has contracts with another County department, those contracts may be terminated if the contractor is debarred; and
- j. The names and mailing addresses of the individuals to whom all copies shall be delivered.

**E. Debarment Hearing**

On the date and location specified in the written notice to the contractor, the CHB shall conduct a hearing where evidence on the proposed debarment action is presented by the department initiating such debarment action and rebuttal information is provided

## **IMPLEMENTATION OF PROCEDURES FOR DETERMINATIONS OF CONTRACTOR NON-RESPONSIBILITY AND CONTRACTOR DEBARMENT**

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by the contractor. The burden of proof is on the department to show by a preponderance of the evidence that debarment is appropriate. Nonattendance at the hearing by the contractor without justification may result in waiver of all rights to a hearing before the CHB.

The CHB meeting agenda will be posted at the third floor of the County's Hall of Administration (500 W. Temple Street, Los Angeles, CA 90012), as well as at the meeting site, in accordance with the Brown Act requirements (Government Code §54954).

1. Contractor Hearing Board (CHB)

The chair of the CHB shall conduct the hearing and CHB members shall examine the evidence on the issues of the proposed debarment and the recommended period of debarment, and prepare a proposed decision and recommendation to the Board regarding whether the contractor should be debarred and, if so, the appropriate length of time for debarment.

2. Departmental Advocate

The department head shall designate a department staff member or its County Counsel to present charges in support of contractor debarment at a CHB hearing. The departmental investigator may act as the departmental advocate at a CHB hearing.

3. County Counsel

County Counsel will provide legal advice and representation, as necessary, to the department initiating the debarment action. County Counsel will also provide legal advice to the CHB. The department and the CHB shall be advised by separate County Counsel attorneys.

4. Contractor

The contractor and/or other authorized representative of the contractor shall be afforded an opportunity to appear at the hearing and to submit documentary evidence, present witnesses and offer rebuttal evidence. An authorized representative may be designated by the contractor in person at the hearing or by letter received at or prior to the hearing, signed by the contractor.

**IMPLEMENTATION OF PROCEDURES FOR DETERMINATIONS OF  
CONTRACTOR NON-RESPONSIBILITY AND CONTRACTOR DEBARMENT**

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5. Presentation of Evidence and Rebuttal
  - a. At the hearing, the departmental advocate, shall first present evidence to support a finding that a contractor should be debarred. The departmental advocate's presentation shall also include a recommendation of the proposed period of debarment and any evidence in support thereof. During the departmental advocate's presentation of its case, the contractor shall not interrupt the presentation.
  - b. The departmental advocate has the right to call and examine witnesses, to cross-examine opposing witnesses, to present documentary or any other evidence in support of a debarment determination.
  - c. After the departmental advocate's presentation of its case, the contractor shall be afforded an opportunity to rebut evidence that is the basis for the department's recommendation. The contractor may also present evidence relevant to the proposed period of debarment. During the contractor's presentation of its case, the departmental advocate shall not interrupt the presentation.
  - d. The contractor has the right to call and examine witnesses, to cross-examine opposing witnesses, to present documentary or any other evidence to rebut evidence that is the basis for the department's debarment recommendation or evidence of mitigating factors.
  - e. Each party shall have the opportunity to rebut the evidence presented by the other party.
  - f. Members of the CHB may ask questions, seek clarification and request additional information from the parties at any time during the hearing. The CHB has discretion to continue the hearing, as necessary.
  - g. At the conclusion of the evidentiary presentations, each party may provide an oral, closing statement to the CHB. The chair of the CHB shall then close the hearing. All evidence to be considered by the CHB shall be submitted prior to the close of the hearing, unless otherwise specified by the chair.

**IMPLEMENTATION OF PROCEDURES FOR DETERMINATIONS OF  
CONTRACTOR NON-RESPONSIBILITY AND CONTRACTOR DEBARMENT**

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6. Rules of Evidence

Formal rules of evidence do not apply in the CHB hearing. At the hearing, the CHB can 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 rely in the conduct of serious affairs.

7. Burden of Proof and Standard of Proof

The burden of proof is on the department proposing debarment and must be established by a standard of preponderance of the evidence. 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.

**F. Recording the CHB Hearing**

The hearing before the CHB shall be recorded by any method deemed appropriate by the chair (audio tape, video tape, reporter/transcriber) and a copy of the record of the proceeding shall be made available to the contractor at the appropriate cost, upon request.

**G. Deliberations of the CHB**

1. Upon closing of the evidentiary portion of the hearing, the CHB shall deliberate and vote on whether to recommend that the contractor should be debarred.
2. If a majority of the CHB votes in the affirmative to recommend debarment, the CHB shall then deliberate and vote on the recommended period of debarment.
3. The chair shall announce the decision of the CHB and inform the parties that a written, tentative proposed decision and recommendation will be prepared and transmitted within a reasonable period of time to the parties for review and comment. No additional evidence or testimony will be received once the CHB has closed the evidentiary portion of the hearing.
4. All deliberations and voting by the CHB shall be conducted in public during the hearing.

**IMPLEMENTATION OF PROCEDURES FOR DETERMINATIONS OF  
CONTRACTOR NON-RESPONSIBILITY AND CONTRACTOR DEBARMENT**

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**H. Proposed Decision and Recommendation to the Board**

1. After the hearing, the CHB shall prepare a written tentative proposed decision, which shall contain a proposed decision and recommendation regarding whether or not the contractor should be debarred. If the CHB recommends debarment, the CHB shall identify the appropriate length of time for debarment. The CHB's tentative proposed decision and recommendation regarding debarment shall be based on the record of the hearing.

Additionally, the CHB may identify the other departments with existing contracts with the contractor. If the CHB recommends debarment, and the contractor has any existing contracts with other departments, the CHB may recommend the existing contracts be terminated consistent with their terms.

2. In making the tentative proposed decision and recommendation, the CHB may consider such items, including but not limited to, the seriousness and extent of the contractor's acts or omissions, patterns or practices, as well as any mitigating or aggravating factors presented at the hearing.
3. If the CHB decides to recommend debarment of a contractor, and the recommended period is longer than five (5) years, up to and including permanent debarment, the CHB must also make findings that the contractor's acts or omissions are of such an extremely serious nature that removal of the contractor from future County contracting opportunities for the specified period is necessary to protect the County's interests.
4. As set forth in the Ordinance, mitigating and aggravating factors that the CHB may consider in determining whether to recommend debarment of a contractor, and if so, the recommended length of the period of debarment include, but are not limited to, the following:
  - (1) Actual or potential harm or impact that results or may result from the wrongdoing
  - (2) Frequency and/or number of incidents and/or duration of the wrongdoing.

**IMPLEMENTATION OF PROCEDURES FOR DETERMINATIONS OF  
CONTRACTOR NON-RESPONSIBILITY AND CONTRACTOR DEBARMENT**

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- (3) Whether there is a pattern or prior history of wrongdoing.
- (4) Contractor's overall performance record, e.g., the County may evaluate the contractor's activity cited as the basis for the wrongful conduct in the broader context of the contractor's overall performance history.
- (5) Whether a contractor has been debarred, found non-responsible, or disqualified by another public entity on a basis of wrongful conduct similar to one or more of the grounds for a finding of debarment as specified in the Ordinance.
- (6) Whether a contractor's wrongdoing was intentional or inadvertent. For example, the CHB may consider whether and to what extent a contractor planned, initiated, or carried out the wrongdoing.
- (7) Whether a contractor has accepted responsibility for the wrongdoing and recognizes the seriousness of the misconduct that led to the grounds for a debarment and/or has taken corrective action to cure the wrongdoing, such as establishing ethics training and implementing programs to prevent recurrence.
- (8) Whether and to what extent a contractor has paid or agreed to pay criminal, civil, and administrative liabilities for the improper activity, and to what extent, if any, has the contractor made or agreed to make restitution.
- (9) Whether a contractor has cooperated fully with the County during the investigation, and any court or administrative action. In determining the extent of cooperation, the CHB may consider when the cooperation began and whether the contractor disclosed all pertinent information known to the contractor.
- (10) Whether the wrongdoing was pervasive within a contractor's organization.
- (11) The positions held by the individuals involved in the wrongdoing.

**IMPLEMENTATION OF PROCEDURES FOR DETERMINATIONS OF  
CONTRACTOR NON-RESPONSIBILITY AND CONTRACTOR DEBARMENT**

---

- (12) Whether a contractor's principals or other individuals associated with the contractor participated in, knew of, or tolerated the offense.
  - (13) Whether a contractor brought the activity cited as a basis for the debarment to the attention of the County in a timely manner.
  - (14) Whether a contractor has fully investigated the circumstances surrounding the cause for the debarment and, if so, made the result of the investigation available to the County.
  - (15) Whether a contractor had effective standards of conduct and internal control systems in place at the time the questioned conduct occurred.
  - (16) Whether a contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes the cause for the debarment.
  - (17) Other factors that are appropriate to the circumstances of a particular case.
5. Examples of Recommended Debarment and Appropriate Period of Debarment

Note: the following examples are not intended to limit or control the judgment of the CHB in a particular case. In other words, while these examples may provide guidance, the CHB's recommendations must ultimately be based on the particular facts and circumstances presented during the debarment proceedings.

a. Recommendation of 2 years or less

This recommendation may be appropriate where there are few aggravating factors compared to mitigating factors. An example of such instance is where the contractor has no prior history of contract violations or wrongdoing; the violations or wrongdoing at issue are not the result of intentional or grossly negligent acts or omissions of the contractor (such as lack of full understanding of the contract requirements); and there is limited actual or potential harm or impact to the County or others as a result of the violations or wrongdoing.

**IMPLEMENTATION OF PROCEDURES FOR DETERMINATIONS OF  
CONTRACTOR NON-RESPONSIBILITY AND CONTRACTOR DEBARMENT**

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b. Recommendation of 2 years through 5 years

This recommendation may be appropriate where there are more aggravating factors and fewer mitigating factors. An example of such instance is where there are contract violations or wrongdoing that are not solely unintentional or inadvertent but fall short of dishonest or intentional acts or omissions; the actual or potential harm to the County or others is limited; and the contractor has taken immediate steps to remedy the violations or wrongdoing and prevent future violations or wrongdoing.

c. Recommendation of over 5 years to permanent

This recommendation may be appropriate where there are very serious and/or multiple aggravating factors with very few or no mitigating factors. As set forth in the Ordinance, this recommendation must be based on a finding that the aggravating factors are of such an extremely serious nature that debarment for the recommended period is necessary to protect the County's interests. Examples of serious aggravating factors supporting such a recommendation include the following: multiple contract violations involving conduct that is dishonest, intentional, and/or illegal, which occur over an extended time period (such as an ongoing pattern of intentional violations of federal, state or local laws and regulations); an existing history of contract violations or other wrongdoing; the actual or potential harm to the County or others is substantial; the contractor purposely obstructed or interfered with the investigation of the contract violations or other wrongdoing; and/or the contractor's principals were involved in the wrongdoing.

6. The CHB shall serve its tentative proposed decision and recommendation to the parties, which shall also identify a date to file written objections. The objection filing deadline shall be no less than five (5) business days, but no more than ten (10) business days after the tentative proposed decision and recommendation has been served. Notices made pursuant to this Section shall be deemed served and effective the next business day after notice is provided in person, by electronic mail or facsimile, or by certified mail. Notice by certified mail shall be deemed served and effective two (2) business days after delivery. Notices served by methods other than personal delivery, must also be

**IMPLEMENTATION OF PROCEDURES FOR DETERMINATIONS OF  
CONTRACTOR NON-RESPONSIBILITY AND CONTRACTOR DEBARMENT**

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delivered by certified mail to the last known address of the contractor.

- a. A contractor or the department may submit written objections to the tentative proposed decision and recommendation of the CHB. A contractor can only submit objections to the tentative proposed decision and recommendation if the contractor submitted written responses to the department's allegations to the CHB or attended the hearing to present objections to the department's allegations.
  - b. All objections by the contractor or the department shall be made in writing and served to the CHB (with a copy to the other party) by the objection filing deadline.
  - c. All objections must specify the objectionable portion(s) of the tentative proposed decision and recommendation, and the basis for the objections. These objections shall be based on the evidence on the record.
  - d. If written objections are timely served and received by the CHB, the CHB shall schedule a subsequent hearing to allow the department and contractor to present their objections and/or rebuttals based on the evidence on the record of the first hearing, and limited to issues raised in the written objections. During this subsequent hearing, the department and contractor may agree to submit the matter to the CHB on the basis of documentary evidence only. The CHB may, in its discretion, consider relevant evidence outside the record of the first hearing if it finds that, in the exercise of reasonable diligence, the evidence could not have been produced at that hearing.
  - e. After conducting a hearing on the objections and/or consideration of the written objections, the CHB may modify, correct or otherwise amend the proposed decision and recommendation as it deems appropriate.
  - f. If no objections are received by the CHB, by the objection filing deadline, no further hearings will be scheduled.
7. The CHB shall present to the Board a written report containing the final proposed decision and a

**IMPLEMENTATION OF PROCEDURES FOR DETERMINATIONS OF  
CONTRACTOR NON-RESPONSIBILITY AND CONTRACTOR DEBARMENT**

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recommendation on debarment, and a record of the hearing before the CHB.

8. The CHB shall give written notice to the contractor of the final proposed decision and recommendation. The written notice shall include a copy of the final proposed decision and recommendation and specify the date, time and location of the hearing before the Board. Delivery of the notice must be by certified mail to the contractor or their authorized representative.

**I. Board of Supervisors Decision**

When considering the final proposed decision and recommendation of the CHB, the Board may, in its discretion, limit any further hearing to the presentation of evidence previously presented. The Board shall have the right to modify, deny or adopt the final proposed decision and recommendation of the CHB. A debarment determination shall become final upon approval of the Board.

In the final proposed decision and recommendation of the CHB, the CHB may recommend termination of any existing contracts that the contractor may have with other departments. The Board may instruct other departments to terminate any or all existing contracts consistent with the terms of the existing contracts that the contractor may have with the County. In the event that any existing contract is terminated by the Board, the County shall maintain the right to pursue all other rights and remedies provided by the contract and/or applicable law.

Upon Board approval of the debarment of the contractor, the CHB will send a notice informing the contractor that a contractor who has been debarred for a period longer than five (5) years may request to ISD, Contracting Division a review of the debarment determination as set forth on Section K2.

**J. County Contract Database Entry**

Designated departmental staff shall enter a Board determination to debar a contractor into the County Contract Database. (See Section V., for information on the County Contract Database).

**K. Contractor's Request for Reduction of Debarment Period or Termination of Debarment**

1. With respect to a contractor who has been debarred for a period longer than five years, the contractor may, after the

**IMPLEMENTATION OF PROCEDURES FOR DETERMINATIONS OF  
CONTRACTOR NON-RESPONSIBILITY AND CONTRACTOR DEBARMENT**

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debarment has been in effect for at least five years, request that the County review the debarment determination to reduce the period of debarment or terminate the debarment. The County may in its discretion reduce the period of debarment or terminate the debarment if it finds that the contractor has adequately demonstrated one or more of the following: (1) elimination of the grounds for which the debarment was imposed; (2) a bona fide change in ownership or management; (3) material evidence discovered after debarment was imposed; or (4) any other reason that is in the best interests of the County.

2. The contractor's request for review shall be in writing, supported by documentary evidence, and submitted to ISD, Contracting Division. The ISD, Contracting Division may either: (1) determine that the written request is insufficient on its face and deny the contractor's request for review; or (2) schedule the matter for consideration by the CHB.
  - a. The ISD, Contracting Division may summarily deny all requests that do not meet the following requirements: (1) the contractor has been debarred for a period longer than five years, (2) the debarment has been in effect for at least five years, and (3) the written request, states one or more of the grounds for reduction of the debarment period or termination of debarment, and includes supporting documentation.
  - b. If the contractor's request to conduct a hearing has been approved by the ISD, Contracting Division, the ISD, Contracting Division shall provide notice of the scheduled hearing to the contractor and the department which recommended the initial debarment. The CHB shall conduct the hearing and make its recommendation pursuant to the same procedures as for a debarment.