Vendor Debarment Policy

EFFECTIVE DATE: January 5, 2015

City Manager_____
Harry Black

Chief Procurement Officer_____
Patrick A. Duhaney

Vendor Debarment Policy

1. Purpose of this Document and General Policy

a. In contracting for goods, services (both professional and non-professional), and construction, the City of Cincinnati ("City") has a responsibility to its citizens to ensure that those vendors it contracts with are responsible and capable. From time to time, the exercise of being good stewards of taxpayers' resources requires the City to debar, either temporarily or permanently, a defaulting, irresponsible, or non-performing vendor from doing business with the City. The purpose of this document is to delineate the policies and procedures to be followed to determine when and how to debar a vendor, bidder, contractor, and subcontractor and what conditions apply to debarment.

b. Debarred vendors are not eligible to submit bids, offers, or proposals to, or to receive any contract or subcontract from, the City. Accordingly, a City department may not solicit or accept a bid, offer, proposal, or other contracting mechanism from, recommend an award to, or execute a contract with any debarred entity.

c. Debarment has serious consequences for the debarred entity and, therefore, should only be taken when required to protect the City's best interests. These actions are not to be construed as punishment. Rather, they are remedies available to the City in addition to, but not as substitutes for other remedies, such as the rejection of bids or proposals, termination of contracts for non-performance, or filing a claim or an action for recovery under a contract or the bond(s) guaranteeing contract performance.

d. Debarment is available with respect to any type of City contract or transaction, including but not limited to the procurement of construction services, procurement of goods and services, professional services, concession agreement, or lease.

2. Authority to Debar

a. Chapter 321, section 153 of the Cincinnati Municipal Code (CMC) gives the City the authority debar an entity from submitting bids, offers, or proposals to, or receiving any contract or subcontract from, the City.

b. Per chapter 321, section 153 (CMC), the Chief Procurement Officer may debar firms and is charged with administering the City's debarment process.

3. Vicarious Liability

a. The City will impute to the contractor all liability, and hold a contractor liable to the City, for all acts of an owner, officer, principal, partner, agent, employee, associate, representative, affiliate, subcontractor, or supplier of the contractor, or other person(s) acting on behalf of the contractor in performance of a City contract. The City will consider a contractor's receipt and acceptance of any benefit derived under or arising out of performance of a City contract, including, but not limited to, compensation, as evidence of its approval, ratification, knowledge of and/or acquiescence in the act of any of the aforementioned persons that may be a basis for debarment.

b. Partnerships/Joint Ventures. The City will consider the act of one entity in a partnership or a joint venture or any person named in subsection a. above acting on behalf of that entity as the act of every other partner or joint venturer.

c. Affiliates. Debarment of an entity shall include debarment of any of its divisions, organizational elements, or any wholly-owned or controlled affiliate or subsidiary unless the debarment decision is limited by its terms to specific divisions, organizational elements or any wholly-owned or controlled affiliate or subsidiary.

4. Restrictions on Contracting and Subcontracting

a. The City will not accept or approve a bid, offer, quote, proposal, or other communication intended to be the basis of a City contract, or enter into any contract for goods or services, including professional services, or construction, or any contract in any capacity with a vendor, bidder, proposer, offeror, contractor, or firm that is debarred by the City, the State of Ohio and any of its political entities, or the federal government.

b. A vendor, bidder, proposer, offeror, contractor, or firm who is awarded a City contract while debarred by the State of Ohio and any of its political entities, or the federal government or who is debarred by the State of Ohio and any of its political entities, or the federal government while working on a City contract will be considered in default of the City contract and subject to debarment.

c. The City will not approve for participation in the performance of a City contract, whether as partner, affiliate, subcontractor, supplier, or otherwise, any firm that is debarred by the City, the State of Ohio and any of its political entities, or the federal government.

d. The list of *Vendors Debarred from Contracting or Subcontracting with the City* may be accessed at: http://www.cincinnati-oh.gov/purchasing or may be furnished in other form upon request to the Chief Procurement Officer.

The State of Ohio *Certified Search for Unresolved Finding for Recovery* may be accessed at: https://ohioauditor.gov/findings/certified/default.aspx.
The Federal government's *Excluded Parties List System (EPLS)* may be accessed at: https://www.epls.gov.

e. The City shall neither accept nor be liable for any increase in costs, or other expenses, delay, loss, or subsequent ineligibility to contract with the City, incurred by a contractor as a result of the City rejecting any proposed person, firm, partner, principal, affiliate, subcontractor or supplier that is debarred or suspended after the submission of a bid, proposal, or other communication leading to a contract, but before the approval or award of the contract.

5. Reasons for Debarment

a. The City may debar a person, company, vendor, bidder, contractor, subcontractor on a contract or bid, or principal or owner of a company, vendor, bidder, contractor, or subcontractor on a contract or bid from submitting a bid or proposal for any business or participating on any contract in any capacity with the City for any of the following reasons:

i. Defaults on any bid, proposal or contract with the City;
ii. Providing false information regarding SBE, SLBE, ELBE, MBE, or WBE status;
iii. Failure to cooperate in the City's monitoring of contract performance by refusing to provide information or documents required by a contract;
iv. Failure to respond adequately to complaints by City representatives regarding performance or other issues;
v. Accumulation of repeated documented complaints regarding performance of a contract;
vi. Failure to be a taxpayer in good standing as defined in Chapter 321;
vii. Failure to pay any financial obligation to the city or any of its departments, boards, or commissions;
viii. Failure to pay prevailing wage as required by state or federal law or comply with similar laws, including without limitation the Davis Bacon and Related Acts and the Contract Work Hours and Safety Standards Act;
ix. Debarment by any federal, state, or local government agency; or
x. Commission of wage theft or payroll fraud as defined in chapter 326 of the Cincinnati Municipal Code.

6. Period of Debarment

a. The Chief Procurement Officer shall fix the debarment for a period of two years from the date of the default. In cases where the reason(s) for debarment remain(s) fundamentally unchanged after expiration of the debarment period, the Chief Procurement Officer may

extend the debarment period until the occurrence of an event set forth in section 12, subsection a.

7. Suspension

a. The Chief Procurement Officer may, with approval of the City Manager, immediately suspend a bidder, vendor, firm, or contractor from eligibility for award of a City contract upon finding a reasonable basis for debarment. A reasonable basis for debarment exists when it is more likely than not that the facts upon which the suspension is based are true. The suspension will be effective until the Chief Procurement Officer issues a final decision regarding debarment. During the suspension period, the City will not do business with the suspended bidder, vendor, firm, or contractor.

b. The Chief Procurement Officer shall send written notice of suspension and shall identify the reasonable basis for debarment. The notice shall be sent by certified mail or other method providing proof of receipt.

8. Notice of Debarment and/or Notice of Suspension

a. The Chief Procurement Officer shall provide written notice by certified mail to any person or business who is to be debarred or suspended. The aggrieved party shall have fourteen calendar days to submit written information to the Chief Procurement Officer regarding why the debarred or suspended person or business should not be debarred or suspended.

9. Decision

a. The Chief Procurement Officer shall have fourteen calendar days following the receipt of written materials challenging the debarment or suspension to issue a written decision regarding the debarment and mail the decision by certified mail to the person or business who challenged the decision.

b. Existence of a reason for debarment of a person or business does not necessarily require the City to determine to suspend or debar. In determining whether to suspend or debar a person or business, the City shall consider the seriousness of the Contractor's actions or failure to act together with any mitigating factors.

10. Appeal

a. The decision of the Chief Procurement Officer shall be final. The decision may be appealed in writing to the City Manager of Cincinnati within fourteen calendar days after receipt of the Chief Procurement Officer's decision. The aggrieved person or business shall concurrently copy the written appeal to the Chief Procurement Officer.

11. <u>List of Vendors Debarred from Contracting or Subcontracting with the City</u>

a. The Chief Procurement Officer shall maintain, disseminate, and make publicly available a current list of debarred persons and firms (*List of Vendors Debarred from Contracting or Subcontracting with the City* (the "List")). The List shall clearly state the name of each suspended or debarred person or firm(s), the date of the debarment or suspension determination, and the term of debarment or suspension.

b. The Chief Procurement Officer will update the List within five working days after any official debarment, suspension or reinstatement action.

c. Publication on the City of Cincinnati website will satisfy the publication requirements of subsection a. above of this Section.

12. <u>Reduction or Termination of Debarment Period; Reinstatement</u>

Upon occurrence of an event set forth in sub-section a. below, a debarred person or business may, in writing, request that the Chief Procurement Officer reduce or terminate the debarment period and, subject to the person or business first satisfying the requirements of subsection b., reinstate the person or business to eligibility.

a. Upon a debarred business' or person's request, the Chief Procurement Officer, with concurrence of the City Manager, may reduce or terminate debarment period by reason of the following:
    i. Discovery of new material evidence pertaining to the reason(s) for debarment;
    ii. Bona fide change in business ownership; or
    iii. Cure or elimination of all reasons for which debarment was imposed.

b. Expiration of the debarment alone does not reinstate a business' or person's eligibility to contract with the City. Before granting a person's or business' reinstatement request, the Chief Procurement shall require, as applicable, the following:
    i. Prompt and complete financial restitution to the City, including all expenses the City incurred to complete any contract on which the person or business has defaulted or breached, and all interest computed on penalties or late payments;
    ii. Written proof from that the person or business is a tax payer in good standing with the City;

iii. Written proof of payment of other financial obligation owed to the City or any of its departments, boards, or commissions including any applicable penalties or late payment;
iv. Elimination of current suspension or debarment by any other public entity;
v. If a Contractor has had a complete or significant (over 50%) change of ownership since debarment, proof that all debarred parties have no financial or management participation in control or conduct of the vendor's or contractor's business;
vi. Three references, at least one of which must be a public entity, confirming that the person or business has satisfactorily performed a similar contract within the immediately preceding two years;
vii. Evidence of the person's or business' financial capacity to perform a City contract of the type it customarily would seek, including but not limited to, two years of audited financial statements or comparable business documents. Access to the vendor's or contractor's place of business must be provided to City representative during business hours to visit, inspect, and evaluate vendor's or contractor's conduct of business and operational capacity; and/or,
viii. Written proof from that the person or business is in good standing with the City in respect to its SBE, SLBE, ELBE, MBE, or WBE status.

13. <u>Contract Requirement</u>

The Chief Procurement Officer and all City departments, boards, and commissions shall distribute and disseminate this policy to all present and prospective contractors and subcontractors by reference in all procurement documents (e.g., Invitation to Bids, Request for Proposals, etc.), at all pre-bid, pre-proposal, or other similar meetings preceding a City contract, by or through the City's website, official City publications, or other means sufficient to enable compliance. A bidder's, vendor's, contractor's, or subcontractor's failure or refusal to apprise itself of or to understand this policy shall not excuse noncompliance with this policy.