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## **CHAPTER 26. Debarment and Suspension**

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## **26.1 Policy**

Offers shall be solicited from, contracts awarded to, and consent given to subcontracts with responsible Contractors only. Contractors may be debarred or suspended when necessary and appropriate.

## **26.2 Debarment**

### **26.2.1 Authority to Debar**

The General Manager has the authority to debar for cause a person or business entity from consideration for award of contracts. The General Manager may appoint in writing one or more debarment officials (hereinafter referred to as designees). The authority to debar may be delegated to the Contracting Officer (as defined in Section 5399.1 of the Procurement Regulations and further discussed in Section 1.4 of this Procurement Manual) who shall also follow the procedures set out herein.

### **26.2.2 Causes for Debarment**

A contractor may be debarred for a conviction of or a civil judgment for, or an administrative finding of:

1. Commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract;
2. Violation of federal, state, or District of Columbia antitrust statutes relating to the submission of offers;
3. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or
4. Commission of any other offense indicating a lack of integrity or business ethics that seriously and directly affects the present responsibility of an Authority contractor or subcontractor.

### **26.2.3 Additional Causes for Debarment**

A contractor may be debarred for a serious violation of the terms of an Authority, federal, District of Columbia, state or local jurisdiction contract or subcontract including by way of example but not limitation:

1. Willful failure to perform in accordance with the terms of one or more contracts;
2. A failure to perform or unsatisfactory performance of one or more Authority contracts;
3. Willful failure to pay subcontractors for work performed on any Authority contract;
4. Willful failure to implement MBE, WBE, and LSDBE participation goals; or
5. Labor Violations (as defined in Section 23.28.6 of this Procurement Manual) adjudicated or admitted in a formal settlement, conciliation agreement, or consent decree during the contract term or in the three (3) year period preceding the proposed effective date of the contract that the Authority determines constitute an unsatisfactory record of integrity or business ethics.

### **26.2.4 Effect of Other Debarment**

A contractor currently debarred by the District of Columbia or any federal, state, or the Authority's participating jurisdiction may be debarred.

### **26.2.5 Reasonable Notice**

The General Manager or his designee (s) shall initiate debarment proceedings by notifying the contractor and any specifically named affiliates by certified mail, return receipt requested or other nationally recognized notification process agreed to by the DC Water Office of the General Counsel, of the following:

1. The factual basis for the proposed debarment, in sufficient detail to put the contractor on notice of the conduct or transaction(s) upon which the proposed debarment is based;
2. That within fifteen (15) calendar days after receipt of the notice, the contractor may submit in writing information and argument in opposition to the proposed debarment, including any genuine dispute of material fact;

3. The potential effect of the proposed debarment; and
4. That DC Water shall not solicit offers from, award contracts to, renew, extend contracts with, or consent to subcontracts with the contractor pending a debarment decision.

#### **26.2.5.1 Opportunity to be Heard**

If the contractor fails to make a submission within fifteen (15) calendar days of receipt of the notice of proposed debarment, the General Manager or his designee(s) shall notify the contractor that it has waived the right to a hearing and a final decision shall be made based upon the facts available.

If a submission is timely received in debarment actions not based upon a conviction or civil judgment and the General Manager or his designee(s) find that the contractor's submission raises a genuine dispute of material fact, the General Manager shall:

1. Provide the contractor with written notice by certified mail, return receipt requested, that (i) informs the contractor that it shall be given an opportunity for a hearing, and (ii) includes the time, place, date, and purpose of the hearing; and
2. Appoint a DC Water employee to act as Hearing Examiner. The General Manager shall have the option, if he determines it is in the Authority's best interest, to select an independent third party to act as Hearing Examiner.

#### **26.2.5.2 Hearing, Proposed Order, Final Order and Right to Appeal**

The hearing may be conducted informally, with all parties given an opportunity to be heard, be represented by counsel, present evidence, cross-examine witnesses and argue in support of their respective positions. The Hearing Examiner's standard of proof shall be a preponderance of the evidence. Within sixty (60) calendar days of the conclusion of the proceedings, the Hearing Examiner shall issue a proposed decision and order, in writing, to the General Manager or the General Manager's designee(s) and to the contractor. The General Manager or the General Manager's designee(s) shall review the proposed decision and order and may affirm, reverse, or modify the proposed decision and order, or remand the case to the Hearing Examiner for further proceedings. The General Manager shall provide a copy of the final decision and order to the contractor and inform the contractor by certified mail, return receipt requested, of the right to appeal the final decision or order in a court of competent jurisdiction within the District of Columbia.

#### **26.2.6 Effective Date of Debarment**

A debarment shall take effect when the General Manager's final decision and order is issued. The contractor shall then be debarred from consideration for the award of contracts until the debarment period specified in the General Manager's final decision and order expires, such time period to be consistent with Section 26.2.7 herein.

#### **26.2.7 Period of Debarment**

A contractor may be debarred for a period commensurate with the seriousness of the cause(s). The period of debarment should not exceed three (3) years. Any prior suspension period shall be considered in determining the debarment period. The debarment period may be extended for an additional period not to exceed three (3) years if an extension is deemed necessary to protect the Authority's interests, as determined by the General Manager, the General Manager's designee(s), or the Contracting Officer. However, a period of debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based.

#### **26.2.8 Reduction of Period of Debarment**

The period of debarment may be reduced upon the contractor's request, supported by documentation, for reasons such as:

1. Newly discovered material evidence;
2. Reversal of the conviction or civil judgment upon which the debarment was based;
3. Bona fide change in ownership or management;
4. Elimination of other causes for which the debarment was imposed; or

5. Other reasons deemed appropriate by the General Manager or the General Manager's designee(s).

### **26.3 Suspensions**

#### **26.3.1 Authority to Suspend**

The General Manager has the authority to suspend a contractor pending the completion of an investigation or legal proceedings when it has been determined that immediate action is necessary to protect the Authority's interests. The General Manager may appoint in writing one or more suspension official(s) (herein after referred to as designees). The authority to suspend may be delegated to the Contracting Officer.

#### **26.3.2 Causes for Suspensions**

A contractor may be suspended for:

1. Commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract;
2. Indictment for any of the causes stated in the section above on Causes for Debarment, including when a cause results from an administrative hearing finding;
3. Being placed on a debarment list by any public body;
4. Commencement of debarment proceedings by the Authority;
5. Labor Violations (as defined in Section 23.28.6 of this Procurement Manual) adjudicated or admitted in a formal settlement, conciliation agreement, or consent decree during the contract term or in the three (3) year period preceding the proposed effective date of the contract that the Authority may determine constitute an unsatisfactory record of integrity or business ethics; or
6. Any other cause of such a serious or compelling nature that it affects the present responsibility of an Authority contractor.

#### **26.3.3 Reasonable Notice**

The General Manager or his designee(s) shall initiate suspension proceedings by notifying the contractor and any specifically named affiliates by certified mail, return receipt requested or other nationally recognized notification process agreed to by the DC Water Office of the General Counsel, of the following:

1. The factual basis for the proposed suspension in sufficient detail to put the contractor on notice of the conduct or transaction(s) upon which the proposed suspension is based;
2. That within fifteen (15) calendar days after receipt of the notice, the contractor may submit in writing, information and argument in opposition to the proposed suspension, including any specific information that raises a genuine issue of material fact;
3. The potential effect of the proposed suspension; and
4. That DC Water shall not solicit offers from, award contracts to, renew, extend contracts with, or consent to subcontracts with the contractor pending a suspension decision.

#### **26.3.3.1 Opportunity to be Heard**

If the contractor fails to make a submission within fifteen (15) calendar days of receipt of the notice of proposed suspension, the General Manager or his designee(s) shall timely notify the contractor that it has waived the right to a hearing and a final decision shall be made based upon the facts available.

If a submission is timely received in a suspension action not based upon a conviction or civil judgment and the General Manager or his designee(s) find that the contractor's submission raises a genuine dispute of material fact, the General Manager shall do the following within fifteen (15) calendar days of receipt of the contractor's submission:

1. Provide the contractor with written notice by certified mail, return receipt requested, that (i) informs the contractor that it shall be given an opportunity for a hearing, and (ii) includes the time, place, date, and purpose of the hearing; and
2. Appoint a DC Water employee to act as Hearing Examiner. The General Manager shall have the option, if he determines it is in the Authority's best interest, to select an independent third party to act as Hearing Examiner.

#### **26.3.3.2 Hearing, Proposed Order, Final Order and Right to Appeal**

The hearing may be conducted informally, with all parties given an opportunity to be heard, be represented by counsel, present evidence, cross-examine witnesses and argue in support of their respective positions. The Hearing Examiner's standard of proof shall be that of substantial evidence. Within sixty (60) calendar days of the conclusion of the proceedings, the Hearing Examiner shall issue a proposed decision and order in writing to the General Manager or the General Manager's designee(s) and to the contractor. The General Manager or the General Manager's designee(s) shall review the proposed decision and order and may affirm, reverse, or modify the proposed decision and order, or remand the case to the Hearing Examiner. The General Manager shall provide a written copy of the final decision and order to the contractor, and inform it in writing by certified mail return receipt requested of the right to appeal the final decision and order in a court of competent jurisdiction in the District of Columbia.

#### **26.3.4 Effective Date of Suspension**

A suspension shall take effect when the General Manager's final decision and order is issued. The contractor shall then be suspended from the consideration for award of contracts until the suspension period specified in the General Manager's final decision and order expires.