

**CITY OF CHICAGO
DEPARTMENT OF PROCUREMENT SERVICES**

DEBARMENT RULES

Effective March 28, 2012

City of Chicago Debarment Rules

Section I. Scope of Rules.

These Rules:

- (a) Prescribe policies and procedures governing the debarment of vendors by the Chief Procurement Officer under the authority of Chapter 2-92 of the Municipal Code of the City of Chicago and of Chapter 65 of the Illinois Compiled Statutes in general and under the authority of 65 ILCS 5/8-10-11 and 8-10-16 in particular, for the causes given in *Section V*;
- (b) Provide for the listing of debarred vendors,
- (c) Do not restrict the Chief Procurement Officer's ability to make determinations pertaining to the responsibility of a vendor on a contract-by-contract basis for any reason, including those stated in *Section V*, or to reject any bid and all bids pursuant to 65 ILCS 5/8-10-12 or any other provision of law or legally permissible reason, and
- (d) Do not restrict the Chief Procurement Officer's ability to apply lesser sanctions than debarment when appropriate, and
- (e) Do not affect the ineligibility of any vendor to contract with or supply services or materials to the City as otherwise imposed by law, and
- (f) Supersede the previous City of Chicago Debarment Rule, adopted October 20, 2004 and the City of Chicago Department of Procurement Services Debarment Protest Procedure adopted July 30, 2004. These rules shall be effective as of December 15, 2005.

Section II. Policy.

Paragraph 2.01 The Chief Procurement Officer shall solicit offers from, award contracts to, and consent to subcontracts and supply agreements with responsible vendors only. Debarments are discretionary actions that, taken in accordance with these Rules, are an appropriate means to effectuate this policy.

Paragraph 2.02 The serious nature of debarment requires that these sanctions be imposed only in the public interest and not for purposes of punishment. The Chief Procurement Officer shall impose debarment only for the causes and in accordance with the procedures set forth in these Rules.

Section III. Definitions.

As used in this Rule-

- (a) "Administrative Contact" means an individual designated by the Chief Procurement Officer to serve as a point of contact for a vendor in relation to a debarment proceeding. The Administrative Contact will be identified pursuant to *Paragraph 7.02(e)*.

- (b) “Affiliate” is a person, including any individual, or entity, that directly or indirectly controls, or has the power to control, another person or is directly or indirectly controlled by another person. Indicia of control include but are not limited to, common or interlocking management or ownership, officers, or directors, identity of interests among relatives, shared facilities and equipment, or common use of employees. “Affiliate” also means a business entity organized during or following any investigation or proceeding, or organized following the debarment or proposed debarment of a person or entity that has the same or similar management, ownership, or principal employees as the person or entity that was investigated, part of the proceeding, debarred, or proposed for debarment or that operates in a manner designed to evade application of these debarment rules.
- (c) “Civil enforcement action” means any judicial or administrative proceeding filed by any governmental agency other than the Chief Procurement Officer for the purpose of civil enforcement of any statute, rule, regulation, or law for the matters specified in *Section V*.
- (d) “Civil judgment” means a judgment or finding of liability by any court or other tribunal of competent jurisdiction against the vendor on a claim brought by any governmental entity, individual, or private entity, including, but not limited to, a civil enforcement action. Civil judgments include findings of liability that may lead to awards of damages, injunctive or other equitable relief, fines, penalties, declaratory relief and restitution, or determinations of liability on any claim, including a civil enforcement action.
- (e) “City contract” is any agreement, subject to the Municipal Code of Chicago or whose cost is to be paid directly or indirectly from funds belonging to or administered in whole or in part by the City of Chicago, regardless of source, between the City and any individual or entity. Contracts include all amendments, modifications, and extensions of contracts.
- (f) “Chief Procurement Officer” means the individual appointed by the Mayor as the purchasing agent pursuant to 65 ILCS 5/8-10-15 and/or as the Chief Procurement Officer pursuant to the Municipal Code of Chicago, section 2-92-010, or that individual’s designee.
- (g) “Days” means calendar days, unless otherwise specified.
- (h) “Debarment” is a determination by the Chief Procurement Officer that a vendor or a person or entity is not responsible and is not eligible to enter into contracts with the City. Debarment may also include or consist of a determination that the vendor or a person or entity is not eligible to serve as a subcontractor of any tier on contracts with the City, including serving as a supplier, and/or that existing contracts with a vendor must be terminated.
- (i) “Department Head” is the commissioner or equivalent of any City department, City officer, City board, or City agency.
- (j) “Indictment” means an action by a grand jury charging a criminal offense. An information or other filing by competent authority charging a criminal offense is given the same effect as an indictment.

- (k) "Vendor" means any person, including any individual, or entity that has entered into a contract with the City or is seeking to or may enter into a contract with the City, in service as a subcontractor or supplier on a City contract, or has applied for or been certified by the City as a Minority-owned Business Enterprise ("MBE"), Woman-owned Business Enterprise ("WBE"), Disadvantaged Business Enterprise ("DBE"), Business Enterprise owned by People with Disabilities ("BEPD"), or any similar program. It includes all units, divisions or other organizational elements of such person or entity. "Vendor," for the purposes of these rules, also means any affiliate, officer, director, or employee who has received Notice of Proposed Debarment under these rules.
- (l) The provisions of 5 ILCS §§ 70/0.01 *et seq.*, in so far as applicable, shall also be applied to these Rules, except where a specific definition, provision, or context indicates a different meaning.

Section IV. General Provisions

Paragraph 4.01 Debarment constitutes debarment of all units, divisions, or other organizational elements of the vendor, no matter how denominated, unless the debarment decision is limited by its terms to specific divisions or organizational elements. The Chief Procurement Officer may extend the debarment decision to include any affiliates of the vendor, as well as individuals associated with or employed by the vendor to whom improper conduct may be imputed pursuant to *Section XI*, when those affiliates or individuals are provided with notice of the proposed debarment pursuant to *Section VII* herein and are allowed to participate. For purposes of these rules, these persons are considered a vendor whether or not a City contractor, subcontractor, or vendor.

Paragraph 4.02 A vendor's debarment shall apply to all City contracts, unless permitted to the extent allowed by *Paragraph 10.04*, a department head states in writing the reasons justifying continued business dealings between that department and the vendor and the Chief Procurement Officer concurs in writing. A debarred vendor also may be debarred from participating in any City contract as a subcontractor or supplier of any tier.

Section V. Causes for debarment.

The Chief Procurement Officer may debar a vendor, subcontractor, or supplier for-

- (a) Conviction of, or civil judgment for,-
 - (1) Commission or attempted commission of fraud or a criminal offense in connection with (A) obtaining, (B) attempting to obtain, or (C) performing a private or public contract or subcontract.
 - (2) Violation or attempted violation of Federal or State statutes, or any other legally applicable law, regulation, or rule relating to the submission of bids, proposals, or claims;

- (3) Commission or attempted commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; or
 - (4) Commission or attempted commission of any other offense, or engaging in or attempting to engage in conduct indicating a lack of truthfulness, veracity, or honesty which affects the responsibility of the vendor.
- (b) Violation of the terms of a City contract or subcontract so serious as to justify debarment, including but not limited to-
- (1) Willful failure to perform in accordance with the terms of one or more contracts or subcontracts;
 - (2) A history of failure to perform one or more contracts or subcontracts;
 - (3) A history of unsatisfactory performance of one or more contracts or subcontracts; or
 - (4) A history of failure to meet MBE/WBE/DBE obligations, Equal Employment Opportunity obligations, City resident worker obligations, base wage or prevailing wage obligations, or any other contracting or subcontracting obligation imposed by the City of Chicago Municipal Code or any other law.
- (c) Making or attempting or causing to be made or attempting to cause to be made any false, deceptive, or fraudulent material statement in any bid, proposal, or application for City or any government work or in the performance of any such contract for the City or a government agency, or application for any permit or license;
- (d) Making or attempting, or causing to be made or attempting to cause to be made, any false, deceptive, or fraudulent material statement in any application to obtain, expand, or continue certification as a minority-owned, woman-owned, persons with disabilities, or disadvantaged business enterprise.
- (e) Refusal to cooperate with reasonable requests of City inspectors, representatives, or other appropriate City personnel with respect to work under contract provisions, plans, or specifications, or otherwise, pursuant to the duties of those City personnel;
- (f) Founding, establishing or operating an entity in a manner designed to evade the application or defeat the purpose of these rules or any provision of the Municipal Code of Chicago, City of Chicago rule or regulation, the statutes, rules or regulations of the State of Illinois, Cook County, or any federal statute, rule or regulation, or any other legally applicable law, regulation, or rule;
- (g) Improper conduct, including but not limited to the commission or attempted commission of;
- (1) intentional or negligent billing irregularities;

- (2) submitting false or frivolous or exaggerated claims, documents, or records;
 - (3) falsification of claims, documents, or records;
 - (4) willful or grossly negligent destruction of documents or records the vendor had an obligation to maintain;
 - (5) bribery or coercion of a government official, or other unlawful tampering with a government official;
 - (6) use of false or deceptive statements to obtain some benefit, or causing competition to be restrained or limited;
 - (7) misrepresentation to any governmental agency or government official;
 - (8) falsely claiming to be a minority-owned, woman-owned, persons with disabilities, or disadvantaged business enterprise, or falsely claiming to be eligible for the Chicago Business Preference or any other bidding preference or protected market program;
 - (9) conspiring to pose, or seek certification, as a minority-owned, woman-owned, persons with disabilities, or disadvantaged business enterprise;
 - (10) violation of ethical standards established by the City, or other dishonesty incident to obtaining, prequalifying for, or performing any contract or modification thereof;
 - (11) violation of ethical standards established by the City or other dishonesty or incident to applying, obtaining, qualifying for, or acquiring any City certification, license, or permit;
 - (12) Any other cause of so serious or compelling a nature that it affects the responsibility of the vendor, including, but not limited to, those specifically enumerated in 65 ILCS 5/8-10-11.
- (h) Any other cause of so serious or compelling a nature that it affects the responsibility of the vendor, including, but not limited to, those specifically enumerated in 65 ILCS 5/8-10-11.
- (i) Debarment by any other government agency.

Section VI. Factors to be Considered in Debarment Procedure

Paragraph 6.01 The Chief Procurement Officer may, in the public interest, debar a vendor for any of the causes in *Section V*, using the procedures in *Section VII*. The existence of a cause for debarment, however, does not necessarily require that the vendor be debarred; the seriousness of the vendor's acts or omissions, and any remedial measures or mitigating factors, should be considered in making any debarment decision. Before arriving at any debarment decision, the Chief Procurement Officer should consider factors such as the following, if such documented and verifiable information is provided by the vendor in its submission as provided by *Paragraph 7.05(d)*:

- (a) Whether the vendor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for debarment or had adopted such procedures prior to any City investigation of the activity cited as a cause for debarment;
- (b) Whether the vendor brought the activity cited as a cause for debarment to the attention of the appropriate City agency in a timely manner;
- (c) Whether the vendor has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the Chief Procurement Officer or other City investigative personnel;
- (d) Whether the vendor cooperated fully with City agencies during any and all investigations and in any court or administrative action;
- (e) Whether the vendor has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity;
- (f) Whether the vendor has paid or has offered to pay any investigative or administrative costs incurred by the City, and/or has made or offered to make full restitution;
- (g) Whether the vendor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment;
- (h) Whether the vendor has implemented or agreed to implement remedial measures, including any identified by the City;
- (i) Whether the vendor has instituted or agreed to institute new or revised review and control procedures and ethics training programs;
- (j) Whether the vendor has had adequate time to eliminate the circumstances within the vendor's organization that led to the cause for debarment; and
- (k) Whether the vendor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent recurrence.

Paragraph 6.02 The presence of any mitigating factors or remedial measures such as those set forth in *Paragraph 6.01* does not necessarily mean that debarment is unwarranted. Accordingly, the vendor has the burden of demonstrating, to the satisfaction of the Chief Procurement Officer that debarment is not warranted under these potentially mitigating factors.

Section VII. Debarment Procedures

Paragraph 7.01 Notice of Proposed Debarment may be issued under any cause(s) under *Section V*.

Paragraph 7.02 Notice of Proposed Debarment. A notice of proposed debarment (hereinafter “the Notice”) shall be issued by the Chief Procurement Officer advising the vendor and any specifically named affiliates or other individuals-

- (a) That debarment is being proposed;
- (b) Of the basic facts and reasons for the proposed debarment in terms sufficient to state a prima facie case putting the vendor on notice of the conduct and/or transaction(s) upon which it is based;
- (c) Of the cause(s) relied upon under *Section V* for proposing debarment;
- (d) That, within 30 days after receipt of the Notice of Proposed Debarment, the vendor may submit, in writing, information and argument in opposition to the proposed debarment, including any additional specific information as well as specifying which information or argument, if any that raises a genuine dispute over the material facts relevant to the debarment;
- (e) Of the identity of an Administrative Contact for matters relating to the debarment. The vendor must direct all correspondence relating to the debarment to that individual.
- (f) That a copy of the City of Chicago Debarment Rules can be obtained at <http://www.cityofchicago.org/city/en/depts/dps/provdrs/comp.html>, which shall be sufficient to inform the vendor of the information specified in these rules.

Paragraph 7.03 Service of the Notice shall be by any means reasonably calculated to provide actual notice to the person who is subject to the Notice and provide proof of service in the record. If the Notice is sent by certified mail, return receipt requested or similar means, the Notice shall be presumed to have been received within three days.

Paragraph 7.04 Consequences of Notice of Proposed Debarment

- (a) From the date of a Notice until a decision is made by the Chief Procurement Officer, the following conditions shall apply to the vendor:
 - (1) The vendor may submit bids or proposals on contracts. New contract(s) may be awarded, but if a vendor is later debarred, the contract(s) may be terminated. The facts underlying a vendor’s proposed debarment and other factors may be considered when evaluating such bids or proposals. When appropriate, contract awards may be delayed a reasonable time to allow the Chief Procurement Officer to reach a decision on the debarment.

- (2) The vendor may continue as a subcontractor or supplier on existing contracts. However, if the vendor is debarred, the Chief Procurement Officer may terminate or suspend the vendor's participation in those contracts unless an exception is granted under *Paragraph 10.04* of these rules.
- (b) When the cause(s) for debarment are sufficiently serious and the evidence supporting debarment is compelling or highly reliable, including but not limited to indictment or the filing of a civil enforcement action for the causes listed under *Section V(a)* or debarment by another government agency, in the sole discretion of the Chief Procurement Officer, he or she may take an interim action constraining the vendor in dealing with the city after the Notice but before a final decision is made. The Chief Procurement Officer shall provide notice of such constraints in his or her Notice of proposed debarment or in separate notice through the means outlined in *Paragraph 7.03*. The Chief Procurement Officer may consider the views of other Departments when determining whether the vendor should be so constrained. Such constraints may include but are not limited to any of the following:
 - (1) Termination of all existing contracts between the vendor and the City.
 - (2) Termination of the vendor's participation as supplier or subcontractor on existing contracts.
 - (3) Ineligibility for the award of new contracts.
 - (c) The vendor shall have ten days after the Notice, or ten days after the date of notice that constraints on contracting pursuant to *Paragraph 7.04(b)* are being considered, whichever is later, to submit a written response stating its reasons why the constraint should not be applied. No restriction shall go into effect until after the time for response has passed, or in the case of a response, until the CPO issues a decision on the application of the interim constraints.
 - (d) If the vendor can prove that it did not receive notice pursuant to *Paragraph 7.04(b)*, the vendor may, within three days of receiving notice of a restriction under this paragraph going into effect without vendor response seek reconsideration of the restrictions.
 - (e) Any such interim constraints put in place under this Paragraph shall remain in effect no longer than when a final debarment decision is rendered pursuant to *Section IX*.

Paragraph 7.05 Procedures following Notice of Proposed Debarment

- (a) In response to the Notice of Proposed Debarment in *Paragraph 7.02*, the vendor shall have the burden of production, i.e., coming forward with sufficient information, documentation, and argument explaining why debarment should not be imposed. If the vendor meets its burden of production, the Chief Procurement Officer must find by the preponderance of the evidence that the City has sufficient evidence to impose debarment or a lesser remedy.
- (b) Within ten days after receipt of the Notice, the vendor must provide the Department of Procurement Services, through the Administrative Contact, with contact information for purposes of the debarment including: a contact person or attorney, address, phone number,

fax number, and email address. Immediate notice must be given of any changes in the information.

- (c) Within ten days after receipt of the Notice or any subsequent notice concerning any additional documentation which may be considered in the proceeding, the vendor may request, in writing from the Chief Procurement Officer, access to the documentation the City relies upon in seeking debarment, including but not limited to any contract where the contract or its terms are at issue, any witness summaries or affidavits, or relevant prior debarment decisions relating to the vendor or an affiliate, if such documentation was not already provided to the vendor with the Notice or otherwise. In the case of voluminous documentation, the vendor may instead be permitted to examine any and all such materials and thereafter request copies of any or all such materials. In such case, the vendor must pay a reasonable copying fee to the Department of Procurement Services. If copies cannot be made available within two days of receiving the request, pursuant to *Paragraph 7.06* the vendor shall be given additional time to submit the answer described under *Paragraph 7.02(d)*. The Administrative Contact will notify the vendor and any City representative of such extensions.
- (d) The vendor must submit, by delivery or sending by U.S. mail or reputable, established private delivery service or personal service, its answer to the Administrative Contact no more than thirty days after receipt of the Notice. Date of delivery will be the date of receipt, if by personal service, or the date of mailing or placing with a private delivery service, with proof of mailing or placement. Deliveries will be accepted only during the regular office hours of the Department of Procurement Services. The vendor's answer must be in writing and shall include an admission, denial, or other response to each of the allegations in the Notice, and the omission of such a response to any allegation in the Notice shall be deemed an admission of that allegation. The answer also must include all the facts, arguments, or other basis upon which the vendor contests the debarment. All supporting documentation, if any, shall be included. Should the vendor fail to file a timely answer to the Notice of Proposed Debarment, all of the allegations of the notice shall be deemed to be admitted. The vendor must also address the potential impact of any prior debarments, if any, for determining the length and/or scope of any new or further debarment under *Paragraph 10.05*, including the potential impact (along with all supporting documentation) of the factors in *Section VI*.
- (e) An officer or other representative for the City may be designated to present the causes for debarment to the Chief Procurement Officer. If a City Representative has been designated prior the date of the vendor's answer, the vendor shall provide a copy of the answer to the City Representative. If a City Representative has been designated, the representative may respond in writing to the vendor's answer within thirty days of its receipt by the Administrative Contact. The vendor must be provided with a copy of the City Representative's response, and any other letter, notice, requests, or filings made by any City Representative. Further written submissions by the City Representative or the vendor shall be at the discretion of the Chief Procurement Officer upon specific request detailing the need for a further reply or as he or she directs. Requests for further written submissions are not favored. Once any City Representative is designated, all notices, correspondence, and any other material shall be sent to that Representative as well as to the vendor (or its representative), if applicable, and to the Administrative Contact.

- (f) If any material information not previously given or offered to the vendor is introduced into the record subsequent to the Notice of Proposed Debarment or after documents are provided pursuant to *Paragraph 7.05(c)*, upon request, the vendor shall have the right to file a further written submission commenting on that information within a time frame set by the Chief Procurement Officer, and the City Representative may file a further written response thereto. Similarly, if material information not previously given or offered to the City is introduced into the record subsequent to the Notice of Proposed Debarment or after documents are provided pursuant to *Paragraph 7.05(c)*, upon request the City Representative shall have the right to file a further written submission commenting on that information within a time frame set by the Chief Procurement Officer, and the vendor may file a further written response thereto.
- (g) When the vendor believes its answer raises a genuine issue of disputed material fact that cannot be resolved on the paper submissions and the vendor wishes to present a witness or witnesses in support of its position, the vendor may request an in-person hearing. When requesting an in-person hearing, the vendor must identify the fact or facts at issue and the witness or witnesses in its request. Vendor requests for in-person hearings must be part of the answer, must demonstrate that the hearing is necessary to decide any matter(s) pertaining to the Chief Procurement Officer's decision on debarment, and must include a detailed description of the expected testimony. Requests for in-person hearings may also be made in a similar manner and for similar reasons by any City Representative designated to present the causes for debarment. In-person hearings may also be held on the Chief Procurement Officer's own initiative. A determination on whether an in-person hearing shall be conducted shall be made by the Chief Procurement Officer as set forth in *Paragraph 7.05(h)* below.
- (h) In instances where The Chief Procurement Officer finds that an in-person hearing is necessary to decide whether debarment should be imposed, including but not limited to cases in which evaluation of the credibility of a witness is necessary to determine a genuine issue of disputed material fact, an in-person hearing shall be conducted. The necessity for each requested witness will be considered individually. The Chief Procurement Officer or officer designated to conduct the hearing reserves the right to limit the number of witnesses and the length and scope of testimony, including but not limited to prohibiting non-relevant, cumulative, or duplicative testimony.
- (1) When the Chief Procurement Officer has found an in-person hearing to be necessary, he or she may designate an official to conduct the hearing to and prepare written findings of facts. The Chief Procurement Officer may reject the findings of an official designated to conduct the hearing if those findings are arbitrary and capricious or clearly erroneous.
 - (2) Notice of any such in-person hearing shall be given to the vendor and to any City representative responsible for presenting the case for debarment no less than twenty days prior to the date and time of the hearing. Any such notice of in-person hearing shall specify the date, location time, and the issue(s) to be examined. The vendor and any representative presenting the case for debarment must submit a list of all attendees under their control no less than five days prior to the in-person hearing,

including identifying those who will be presented as witnesses. The Chief Procurement Officer reserves the right to limit the number of attendees present at the hearing. Witnesses may be excluded from the in-person hearing when they are not testifying.

- (3) Hearings shall be conducted in a manner consistent with principles of fundamental fairness. The official conducting the hearing may use flexible procedures, and is not required to follow formal rules of evidence or procedure unless such rules are adopted by the Chief Procurement Officer. Hearsay evidence may be admitted if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs, and, if admitted, will be given appropriate weight by the official conducting the hearing.
- (4) The vendor may appear with or be represented by counsel, and, as limited by this paragraph, shall have the right to present witnesses and to confront any witnesses presented in support of the proposed debarment. Any City representative responsible for presenting the case for debarment also shall have the right to present witnesses, as limited by this paragraph, and confront those presented in support of the vendor. The Chief Procurement Officer or the officer conducting the in-person hearing may also question the witnesses.
- (5) Where the statement of a witness is relied upon by the vendor, if the witness is under the control of the vendor and vendor fails to present that witness at the hearing, any proffer by the vendor of the witness' statement, whether in the form of a written summary, affidavit, or other form shall be stricken from the record unless the vendor shows good cause why the witness cannot appear. Witnesses under the control of the vendor include, but are not limited to, affiliates, employees, employees of subcontractors or suppliers of any tier, and the relatives and business associates of the vendor or of any person who has a beneficial interest in the contractor or who exercises management or control over the vendor. Similarly, any City representative presenting the case for debarment may not present the statement of a witness who is under the control of the City unless the officer shows good cause why the witness cannot appear. Witnesses under the control of the City are its employees and officials, except for those under the control of a vendor. "Good cause" for non-appearance of a witness shall be limited to military or other official service or duties preventing attendance, death, serious illness, or other similar impediment and shall be determined within the sole discretion of the official conducting the in-person hearing. Witness statements shall be accepted only if the presenting party offers guarantees of the veracity and trustworthiness of the statement that the official conducting the hearing deems sufficient. Such statements and demonstrations of "good cause" must be provided at least five days prior to the in-person hearing unless otherwise allowed by the Chief Procurement Officer or the official conducting the in-person hearing. Reasonable accommodation will be made to facilitate presentation of witnesses. Requests relating to facilitating presentation of witnesses should be made as early as possible. The vendor may request the appearance of witnesses under the control of the City, but such requests must be made no less than fifteen days prior to the in-person hearing if not made in a request for an in-person hearing. Similarly, no less than fifteen days prior to the in-person hearing, the officer

presenting the debarment may request the appearance of witnesses under the control of the vendor.

- (6) Exhibits or other documentary evidence other than that previously submitted or produced pursuant to this *Paragraph 7.07* or *Paragraph 7.09* may not be presented at the in-person hearing without the prior permission of the Chief Procurement Officer or the official conducting the in-person hearing.
- (7) The Chief Procurement Officer shall provide that any such in-person hearings conducted pursuant to these rules shall be recorded on audiotape or other medium and will become part of the record. A copy of the audiotape or other medium shall be made available to the vendor upon written request to the Administrative Contact and at the vendor's expense. With advance notice to the Chief Procurement Officer, the vendor may make its own audiotape, but may not record the proceedings by other means without permission of the Chief Procurement Officer or official conducting the in-person hearing.

Paragraph 7.06 Any deadline in this *Section VII* may be extended in the discretion of the Chief Procurement Officer. Requests for extension of deadlines shall be in writing to the Administrative Contact except as otherwise provided. The Chief Procurement Officer shall issue a response within five days of receipt of the request by the Administrative Contact. When a short time remains before the deadline, the Administrative Contract shall have the discretion to telephonically or by fax, or by email, grant an extension providing sufficient time for the Chief Procurement Officer to respond to the request. Such extensions shall be granted absent extraordinary circumstances. The Administrative Contact shall also have the discretion to grant two-day extensions on the basis of a telephonic, fax, or email request, but such requests are discouraged. The Administrative Contact will notify the vendor and any City representative of any extensions.

Paragraph 7.07 The vendor subject to the debarment proceeding and the Chief Procurement Officer may enter into a settlement agreement relating to the debarment.

Paragraph 7.08 For the purposes of this *Paragraph 7.08* only, "Chief Procurement Officer" shall mean the person of the "purchasing agent" as defined by 65 ILCS 5/8-10-15 or the person of the "Chief Procurement Officer" as defined by Section 2-92-010 of the Municipal Code of Chicago. The Department of Procurement Services may conduct investigations of vendors prior to the issuance of a Notice of Proposed Debarment pursuant to *Paragraph 7.02*. While such investigations may be performed under the ultimate supervision of the Chief Procurement Officer, and the Chief Procurement Officer may make a determination whether to issue a Notice of Proposed Debarment as a result of such investigations, the Chief Procurement Officer shall not be directly and actively involved in such investigations and therefore is a neutral party with respect to making a decision whether to debar a vendor. In a situation where, in the sole opinion and discretion of the Chief Procurement Officer, his or her level of involvement in the investigation leading to the issuance of a Notice of Proposed Debarment to a vendor has rendered him or her unable to act as a neutral decision maker, the Chief Procurement Officer shall designate a neutral officer who has not been directly and actively involved in the investigation to make the Chief Procurement Officer's decision on debarment of that vendor. This does not limit the Chief Procurement Officer's ability to designate an officer or officers to carry out any part of this debarment rule, including making the

Chief Procurement Officer's decision, which he or she deems necessary or desirable for operational or other reasons.

Paragraph 7.09 At any point after the Notice of Proposed Debarment is issued, the Chief Procurement Officer may, in his or her sole discretion, request additional information or other submission or presentation from the vendor, from any City agency, or from any other person or entity to assist in making a decision on debarment. Copies of such information shall be provided to the vendor when the vendor was not the source of the information, and to the City representative presenting the case for debarment when the information was not complied by him or her. The vendor and/or City representative presenting the case for debarment shall be permitted a reasonable period, as determined by the Chief Procurement Officer, to comment on and respond to the information. Such information and comment shall become part of the record. This provision shall not preclude the Department of Procurement Services, or any other City office, board, agency, bureau or any other City administrative unit pursuant to its regulations or any contractual provisions, or any relevant City ordinance, rule, or regulation from seeking information from a vendor in the evaluation of a bid, response to a Request for Proposal, Information or Qualification, for an application for certification or recertification as a minority-owned, woman-owned, or disadvantaged business enterprise, or for any other matter within the jurisdiction of the Department of Procurement Services, or any other City office, board, agency, bureau or any other City administrative unit as defined by any law, regulation, or ordinance.

Paragraph 7.10 The Chief Procurement Officer may withdraw the Notice of Proposed Debarment without prejudice for any reason prior to the final decision.

Section VIII. Decision-Making by Chief Procurement Officer.

Paragraph 8.01 In actions based upon a conviction or civil judgment, or debarment by another government agency, the Chief Procurement Officer shall make a decision on the basis of such conviction or judgment or debarment and/or other information available to the Chief Procurement Officer including any submission made pursuant to these rules.

Paragraph 8.02

- (a) The Chief Procurement Officer will prepare and timely provide the vendor and any City representative presenting the case for the proposed debarment for the City a decision based solely upon the written record as defined in Paragraph 8.03. If debarment, or less than full debarment (including but not limited to those remedies outlined in *Paragraph 8.04*) is imposed, the decision shall contain the elements set forth in *Paragraph 9.02*.
- (b) Past debarments of the vendor or affiliates may be considered as evidence of a history or pattern of conduct when determining an appropriate length or scope for debarment.

Paragraph 8.03 The record shall consist of: the Notice of Proposed Debarment with any attachments or exhibits as well as any documentation made available to the vendor pursuant to *Paragraph 7.05(c)*, all correspondence, notices, requests for information, documentation relating to service, all written submissions and accompanying documents or exhibits, recordings or transcripts of hearing, any exhibits, any other materials submitted pursuant to these rules, any written report or

findings of fact made by the hearing officer, a copy of the Chief Procurement Officer's debarment decision, and any information relating to prior debarment proceedings considered by the Chief Procurement Officer.

Paragraph 8.04 When the Chief Procurement Officer finds that vendor's conduct was improper but does not rise to a level warranting full debarment, the Chief Procurement Officer may impose less than full debarment, including but not limited to, partial debarment or a finding of non-responsibility, or unacceptability as a contractor, subcontractor, or supplier, in relation to particular contracts or classes of contracts. Any decision under these rules does not affect the ability of the Chief Procurement Officer to make a finding of non-responsibility in other contexts.

Paragraph 8.05 The decision of the Chief Procurement Officer shall be final. The vendor's sole remedy shall be judicial review by a common law writ of certiorari.

Section IX. Chief Procurement Officer's decision.

Paragraph 9.01 When the Chief Procurement Officer reaches a determination, a decision shall be issued and the vendor shall be given prompt notice of the decision by certified mail, return receipt requested or by comparable means or by personal service with attestation in the record.

Paragraph 9.02 If the Chief Procurement Officer decides to impose debarment or less than full debarment pursuant to *Paragraph 8.04*, the decision shall include information:

- (a) Referring to the Notice of Proposed Debarment;
- (b) Specifying the reasons for debarment with reference to record facts;
- (c) Stating the period and type of debarment, including effective dates;
- (d) Stating the effect of the debarment on the vendor's existing contracts with the City;
- (e) Stating the effect of the debarment on the vendor's eligibility to act as a subcontractor or supplier of any tier on any existing and/or future contracts with other City vendors; and
- (f) Stating the effect of the debarment on affiliates or any other individuals.

Paragraph 9.03 A list of debarred vendors will be published on the City's website or any media the City in its discretion may choose.

Paragraph 9.04 Any interim constraints put in place under *Paragraph 7.04* shall terminate no later than the issuance of any final debarment decision under this section. A final debarment decision shall supersede any interim action.

Section X. Period of Debarment, Extensions and Reductions

Paragraph 10.01 The period of debarment may be for a stated period of time, or if no duration is set at the time of the debarment, indefinitely. Periods of debarment may be imposed concurrently or consecutively.

Paragraph 10.02 The debarment may be cancelled prospectively or the duration and/or scope may be reduced or waived by the Chief Procurement Officer, upon the written application of the debarred individual or entity, supported by documentation, for any of the following reasons:

- (a) Newly discovered material evidence or documentable error in the findings of the Chief Procurement Officer's decision.
- (b) Reversal of the conviction or judgment on which the ineligibility is based. If the conviction or judgment was based on an admission of conduct that was a cause for debarment under *Section V*, the Chief Procurement Officer shall determine whether such admitted conduct negatively affects the responsibility of the vendor.
- (c) Bona fide change in ownership and/or control of the entity, or other mitigating factors sufficient, in the judgment of the Chief Procurement Officer, to remove the conditions giving rise to the conduct that led to the ineligibility. In addition to the factors identified in *Section VI*, mitigating factors may include, without limitation: disciplinary action against all persons responsible for the acts giving rise to the ineligibility; remedial action designed to prevent a recurrence of the acts giving rise to the ineligibility; or a determination by the Chief Procurement Officer that the past conduct of the entity does not indicate a pattern or history of similar acts.

Paragraph 10.03 An application by or on behalf of a debarred individual or business entity to reduce or waive the duration or scope of the debarment or to cancel the debarment, must be in writing, must state the specific bases for the application, must include all reasons and all documents the applicant intends to rely upon in support of the application, must include the applicant's oath that the statements in the application are true and correct, and must be signed by the applicant whose signature(s) must be notarized. The Chief Procurement Officer may convene an in-person hearing under the same conditions of Paragraph 7.05 for the reasons specified therein.

Paragraph 10.04 The Chief Procurement Officer may suspend a debarred person's or entity's ineligibility to contract with the City in whole or in part in order to allow execution of a specific contract or type of contract with the person or entity, upon written application by a Department Head whose agency is affected by the proposed contract, setting forth facts and providing documentation sufficient in the judgment of the Chief Procurement Officer to establish:

- (a) that the public health, safety or welfare of the City requires the goods or services of the person or entity, or that it is otherwise in the best interest of the City to use the goods or services of the person or entity; or
- (b) that the City is unable to acquire the goods or services at comparable price and quality, or in sufficient quantity from other sources.

Paragraph 10.05 During the duration of a period of debarment, the Chief Procurement Officer may extend the duration and/or broaden the scope of the debarment if he or she determines that expansion is appropriate. However, debarment may not be expanded solely on the basis of the specific facts upon which the initial debarment action was based. Prior to a decision to extend the

duration and/or broaden the scope of an existing debarment, the vendor must be provided with notice of the extension and an opportunity to respond pursuant to *Section VII*.

Section XI. Scope of debarment – Imputation

Paragraph 11.01 The fraudulent, criminal, or other improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a vendor may be imputed to the vendor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the vendor, or with the vendor's knowledge, approval, or acquiescence. The vendor's acceptance or attempted acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

Paragraph 11.02 The fraudulent, criminal, or other improper conduct of a vendor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the vendor who participated in, knew of, should have known, or had reason to know of the vendor's conduct.

Paragraph 11.03 The fraudulent, criminal or other improper conduct of any officer, director, shareholder, partner, employee or other individual associated with a vendor that occurred in connection with the individual's performance of duties for or on behalf of the vendor may be imputed to any other officer, director, shareholder, partner, employee, or other individual associated with that vendor who participated in, knew of, should have known of, or had reason to know of the improper conduct.

Paragraph 11.04 The fraudulent, criminal, or other improper conduct of one vendor participating in a joint venture or similar arrangement may be imputed to other participating vendors or their officers, directors, shareholders, partners, employees or other individuals associated with a vendor, if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these vendors or these vendors had reason to know or should have known of such conduct. Acceptance or attempted acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

Paragraph 11.05 The procedures specified in *Section VII through IX* shall be followed when imposing debarment on the basis of imputed conduct.