

Office of
Management and Budget

	Standard Operating Procedure/Policy	SOP #	PRO-BC-02-INT-001
		Revision #	
	Louisville Metro Government Suspension and Debarment Procedures	Created Date:	2/21/2019
		Implementation Date:	5/1/2019
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Director Approval:	Joel Neaveill <i>Joel Neaveill</i>	Division Mgr. Approval:	Tracey Neathery

1. Introduction

The Purchasing Department is responsible for the management of over 1,100 contracts that assist in the programmatic and operational functions of the city. Suspensions and Debarments are actions that the Director of Procurement may impose in accordance with these procedures.

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3. Purpose

This procedure is to outline the types of violations that warrant suspension or debarment of a vendor from doing business with Louisville Metro Government (LMG). It includes procedures to determine if a vendor should be suspended or debarred, what action to take to suspend or debar, an appeal process for the vendor and ongoing monitoring of LMG's suspension/debarment listing.

4. Scope

Suspension and debarment of vendors receiving Federal or non-Federal funding.

5. Prerequisites

6. Responsibilities

OMB Division of Purchasing is responsible for the administration of these procedures. LMG has the authority to adopt regulations for the prequalification, suspension, debarment and reinstatement of prospective bidders per KRS 45A 360(b).

7. Disclaimer

Louisville Metro Government reserves the right to modify these procedures at any time.

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8. Procedure/Policy

8.1 Types of Violations

8.1.1 Suspension

Suspension may occur as a result of a pattern of noncompliance or a single instance of flagrant noncompliance with the terms and conditions of LMG’s policies, procedures, program guidelines or agreement(s).

Specific grounds for suspension may include, but are not limited to, the following:

1. Evidence that a crime or fraud may have occurred
2. Lack of progress toward completion of project(s) resulting in multiple extensions or recapture of funds
3. Involvement in a current law suit or legal action against LMG or related agencies
4. Default or failure to honor a contract
5. Delivery of commodities, equipment, or services which do not comply with the published requirements or specifications
6. Failure to accept orders offered that are based on firm bids within the allowed period for acceptance
7. Failure to honor warranties and guarantees on products supplied
8. Failure to keep an offer firm for the period stated in the bid specifications
9. Failure to make applicable adjustments or replacement of damaged goods
10. Failure to make delivery or complete a project in the time period specified on the contract or purchase order
11. Failure to provide a performance bond when required as part of the contract documents
12. Failure to make a good faith effort to utilize MFHBE subcontractors, where applicable
13. Repeated worker safety violations
14. Suspension of the vendor or its principals by the Federal Government
15. Making an intentional or in bad faith material misrepresentation in an offer or during the course of the performance of a contract
16. Collusion with other bidders or prospective bidders in an attempt to restrain competition
17. Failure to address compliance issues or findings after repeated attempts by LMG staff to have such issues or findings corrected
18. Any other cause of a serious and compelling nature that suspension is warranted

Terms of Suspension

A vendor shall be suspended for an initial period of 6 months. LMG may extend the period of suspension. The vendor shall be suspended from any contracting opportunities and payments.

8.1.2 Debarment

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Specific grounds for debarment may include, but are not limited to, the occurrence during a contract or within the three (3) years immediately preceding a report of one of the following violations:

- (A). Conviction or Civil Judgment for:
 - (1) Acts of fraud or a criminal offense as an incident to obtaining, attempting to obtain or performing a public or private contract
 - (2) Acts of embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice or any other offense indicating a lack of business integrity or honesty
 - (3) Violation of any Federal or state antitrust statute
 - (4) Violation of the federal Anti-Kickback Acts, 18 U.S.C. section 874 and 40 U.S.C. section 3145
 - (5) Violation of any of the laws governing the conduct of elections of the Federal government or the Commonwealth of Kentucky
 - (6) Violation of any Federal or Kentucky laws governing discrimination and civil rights
 - (7) Violation of any laws governing hours of labor and wage standards
 - (8) Violation of any laws governing the conduct of occupations or professions or regulated industries or
 - (9) Any other offense or violation of any other law(s) which may indicate a lack of responsibility, business integrity or business honesty that seriously and directly affects the present responsibility of a vendor.
- (B). Violation of the terms of any transaction, contract, agreement or program funded or administered by LMG, including but not limited to:
 - (1) A willful failure to perform in accordance with the terms of one or more transaction, contract, agreement or program funded or administered by LMG
 - (2) A history of failure to perform or of unsatisfactory performance in one or more transactions and/or contracts, provided that such failure or unsatisfactory performance has occurred within a reasonable time preceding the determination to debar and was caused by acts within the control of the person to be debarred
 - (3) A willful violation of a statutory or regulatory provision or program requirement
- (C). Violation constituting grounds for disciplinary action with the Commonwealth of Kentucky related to 200 KAR 5:315
- (D). If at any time, debarment by any instrumentality, department, or agency of the Commonwealth of Kentucky; any other state; or any other instrumentality, agency or department of the United States government occurs
- (E). Knowingly doing business with a debarred or ineligible vendor
- (F). Any other cause affecting the responsibility of a person that is of such a serious and compelling nature in the discretion of the Director of Procurement as to warrant debarment, even if such has not been or may not be prosecuted as a violation of any law or contract
- (G). Any act by any vendor of any of the grounds for debarment under Section 8.1.2 (A) may be imputed to an affiliate of a vendor where such conduct was accomplished within the course of the affiliate's official duty or was affected by the vendor with the knowledge of the affiliate

Terms of Debarment

Any vendor determined to have committed any act as provided in Section 8.1.2 (A) may, at the discretion of the Director of Procurement, be debarred from doing any business or

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entering into any contractual relationship with LMG for a period of 3 years depending on the violation. The vendor shall be suspended from any contracting opportunities and payments.

LMG may extend the term of debarment to be permanent upon evidence which demonstrates an egregious misuse of LMG or government funding or other serious incidents of misconduct.

If an individual is debarred from LMG, that debarment will continue to be applicable, regardless of any other employer or business with whom the individual may be affiliated with the future.

8.1.3 Exceptions

LMG may contract with suspended or debarred vendors if they are not suspended or debarred by the federal government and the Procurement Director determines in writing that there is a compelling reason for such action.

8.2 Preliminary Determination

A preliminary written determination shall be made by the Director of Procurement concerning the facts of any allegation or claim that a vendor has committed any act as provided in any of the above sections before any suspension or debarment action is taken against the vendor. Notice of debarment or suspension shall be sent to the vendor at the address shown in LMG's records.

8.3 Appeal Process

A vendor against whom a debarment or suspension action has been taken may appeal the action to the Purchasing Department. The appeal shall be filed within ten (10) days after the date the notice of the disciplinary action has been received by the vendor as shown by the certified mail receipt. The appeal shall be filed in writing and shall state facts showing cause why the debarment or suspension action should be set aside. An appeal constituting a general denial of the charges contained in the notice of debarment or suspension shall be dismissed. If needed, the Director of Procurement may convene an informal conference with the vendor to gather additional information. A decision reached after an informal hearing shall be made by the Director of Procurement who shall issue a written decision concerning the appeal, provided to the vendor.

8.4 Does Not Preclude Other Action

The debarment or suspension action shall not preclude the taking by LMG of any other action, based on the same facts, as may be otherwise available, either at law or in equity, including suits for damages or actions for specific performance.

8.5 Publication of List

Upon exhaustion of the above appeal process, LMG will add the vendor to the Suspended and Debarred Vendor list maintained on its website at <https://louisvilleky.gov/government/management-budget/purchasing>.

8.6 Reinstatement

A vendor may have a suspension or debarment lifted and be reinstated under the following circumstances:

- (1) A request must be submitted to LMG for review by the Director of Procurement. It must include:

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- a. The name, address, telephone and e-mail address of the protestor
- b. The number of the specification/contract solicitation
- c. All information establishing that the protestor is an interested party;
- d. A written statement of the grounds for the protest specifically identifying the Federal, State or local law(s) or regulation(s), and any section of the specification/contract solicitation alleged to have been violated. This statement should be accompanied by any and all relevant support documentation and a statement regarding the course of action the protesting party desires that the Director of Procurement take. Protests should be submitted to:

Office of Management & Budget
Department of Purchasing
611 W. Jefferson Street
Louisville, KY 40202

or purchasing@louisvilleky.gov

- (2) Circumstances constituting grounds for reinstatement may include, but not be limited to:
 - a. A change in the staff or management of the agency or organization;
 - b. A change in the board of directors of the agency or organization;
 - c. A repayment of any outstanding funds that were due or recaptured by LMG;
 - d. Evidence that the vendor took appropriate action to correct the cause for debarment or suspension and the risk to LMG or its funding sources is negligible if business relations resume

8.7 Procedures for Purchasing

To ensure that LMG is not doing business with vendors who have been suspended or debarred from doing business with the Federal government or LMG, the Purchasing Department will check the vendor against the System for Award Management (SAM) and it's Suspended and Debarred Vendor listing before awarding a contract. Instructions on how to check a vendor can be found at www.sam.gov. If a vendor is on either list, no contract will be awarded.

9. References

10. Definitions

<u>Term</u>	<u>Explanation</u>
Days	Business days.

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Debarment

A long-term exclusion from government contracting and subcontracting due to a conviction or civil judgement, willful violation or other violation listed under 8.1.2.

Director of Procurement

The position, authority and duties described and defined in Louisville Metro Purchasing Policy.

Policy

The business rules and guidelines of a company that ensure consistency and compliance with the company's strategic direction. Policies lay out the business rules under which a company, division, or department will operate.

Procedure

Procedures define the specific instructions necessary to perform a task or part of a process.

Suspension

A short-term disqualification from government contracting and subcontracting due a pattern of non-compliance or a single incident of flagrant non-compliance.

Vendor

Any person (a) who is an actual bidder or prospective bidder in the procurement involved; (b) whose direct economic interest would be affected by the award of the contract or by a failure to award the contract; and (c) who demonstrates compliance with these procedures, the terms of the Invitation for Bids and the contract documents (if bid) or Request for Proposals ("RFP") or Request for Qualifications ("RFQ"), as applicable.

11. Appendices

N/A