



Board of County Commissioners  
Office of Purchasing  
**Title: Suspension and Debarment**

Effective Date: 10/27/98    Supersedes Date:

Procedure No: PP-161

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I. General:

This procedure shall serve as a *specific* guideline for the protested solicitations and awards in accordance with Chapter 1-14, Article II, Section 1-14-21(4) of the Code of Ordinance of Escambia County, Florida (Ord. No. 96-36) as amended on 10/27/98.

II. Procedure:

A. **Authority** - As set out below, the Purchasing Manager, upon the approval of the County Administrator, may suspend or debar for cause the right of a vendor to be included on the County's vendor list and any subsequent bid or proposal during the pendency of such suspension or debarment from that vendor shall be rejected by the County; provided, however, the Board shall have the power at any time to waive, stay or lift such suspension or debarment upon the application of the vendor as provided herein.

B. **Suspension** - A vendor may be suspended based upon the following:

1. Failure to fully comply with the conditions, specifications, or terms of a bid, proposal or contract with the County.
2. Commission of any misrepresentation in connection with a bid, quotation or proposal.
3. Charged by a court of competent jurisdiction with the commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract. If charges are dismissed or the vendor is found not guilty, the suspensions shall be lifted automatically upon written notification and proof of final court disposition provided by the vendor to the County.



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4. Charged by a court of competent jurisdiction with the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County government contractor. If charges are dismissed or the vendor found not guilty, the suspension shall be lifted automatically upon written notification and proof of final court disposition provided by the vendor to County.
5. Vendor becomes insolvent, has proceedings in bankruptcy instituted against it or, compounds its debts or assigns over its estate or effects for payment thereof, or has a receiver or trustee appointed over its property.
6. Commission of any act or omission to perform any act which is grounds for debarment.
7. Any other cause the Purchasing Manager determines to be so serious and compelling as to materially and adversely affect responsibility of a business as a County government contractor, including but not limited to suspension by another governmental entity for substantial cause.
8. Violation of the ethical standards set forth in local, state, or federal law.

C. **Debarment** - A vendor may be debarred for the following:

1. Repeated failure to fully comply with the conditions, specifications, drawings, or terms of a bid, proposal or contract with the County.
2. Conviction by or judgment obtained in a court of competent jurisdiction for commission of those offenses in connection with the vendor's commercial enterprise stated in subsections II.B.3. and II.B.4. of this section. If the conviction or judgment is reversed through the appellate process, the debarment shall be removed immediately upon written notification and proof of final court disposition from the vendor to the County.



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3. Conviction for the commission of any fraud or act of collusion in connection with any sale, bid, quotation, proposal or other act incident to doing business with the County.

- D. **Purpose of Suspension and Debarment** - The County shall solicit offers from, award contracts to, and consent to subcontracts with responsible vendors only. To effectuate this policy, the suspension or debarment of vendors from County work may be undertaken. The serious nature of suspension or debarment requires that such sanction be imposed only when it is in the public interest for the County's protection, and not for purposes of punishment. Such suspension or debarment shall be imposed in accordance with the procedures contained in this section.
- E. **Effects of suspension and debarment** - Suspended or debarred vendors are excluded from receiving contracts, and departments shall not solicit offers from, award contracts to, or consent to subcontracts with these vendors, unless the County Administrator determines that an emergency exists justifying such action and obtains approval from the Board of County Commissioners. Such vendors are also excluded from conducting business with the County as agents, representatives, subcontractors, or partners of other vendors.
- F. **Continuation of Current Contracts** - Commencing on the effective date of this ordinance, all proposed County contracts shall incorporate this ordinance and specify that suspension or debarment may constitute grounds for termination of such contract.
  1. The suspension or debarment shall take effect in accordance with the notice provided by the Purchasing Manager, except that if a department continues contracts or subcontracts in existence at the time the vendor was suspended or debarred, the suspension or debarment period shall commence upon the conclusion of the contract, and in the interim, the vendor shall not enter into any county contracts.



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2. Departments may not renew or otherwise extend the duration of current contracts, or consent to subcontracts with suspended or debarred vendors, unless the County Administrator determines that an emergency exists justifying the renewal or extension of such contracts, and such action is approved by the Board of County Commissioners.

G. **Suspension or debarment procedures** - The following procedures shall be used for the suspension or debarment of a vendor:

1. Investigation and referral. The using department shall promptly investigate and prepare a written report concerning a vendor's proposed suspension or debarment, which shall be forwarded to the County Administrator stating with specificity the facts supporting such a request for the suspension or debarment.
2. Notice of suspension or debarment. Within five (5) days of the receipt of a department's request, the County Administrator, after examining such reports, may direct the Purchasing Manager to issue a preliminary notice of suspension or debarment for a maximum period of up to six (6) months. The Purchasing Manager shall immediately advise the subject vendor and any specifically named affiliates, by certified mail, return receipt requested, or personal service that:
  - (a) Suspension or debarment has been imposed by the County Administrator effective upon the receipt of such notice;
  - (b) This notice contains the reasons and causes for the suspension or debarment in terms which are sufficient to put the vendor on meaningful notice of the conduct or transaction(s) upon which it is based;



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- (c) If requested within twenty-one (21) calendar days after the date of the receipt of such notification by the vendor, a hearing to contest the County Administrator's decision will be conducted before a special master at a date and time not more than ten (10) days after the receipt of such request. The notice shall also advise the vendor that it may be represented by an attorney, may present documentary evidence, verbal testimony, and may cross-examine testimony presented against it; and
  - (d) Such suspension or debarment action may only be stayed after petition by the vendor to the Board of County Commissioners.
3. Finality of County Administrator's decision. The preliminary suspension or debarment notice of the County Administrator shall become final and conclusive unless the suspended or debarred vendor timely requests a hearing before a special master to contest said notice.
  4. The special master shall be the sole trier of fact and shall ensure that the proceeding affords meaningful due process and fundamental fairness to the vendor. In actions based upon a conviction or judgment, or in which there is no genuine dispute over material facts, the special master shall make a decision on the basis of all the undisputed, material information in the administrative record, including any undisputed, material submissions made by the vendor. Where actions are based on disputed evidence, the special master shall decide what weight to attach to evidence of the record, judge the credibility of witnesses, and base his or her decision on the preponderance of the evidence standard. The special master's decision shall be made and shall be announced at the conclusion of the parties' arguments and evidence.
  5. Hearsay evidence shall be admissible at the hearing but shall not form the sole basis for initiating a suspension or debarment procedure nor the sole basis of any determination by the special master of the suspension or debarment of the vendor. The hearing shall be recorded by use of a court reporter at the expense of the County.



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6. A written decision and recommendation thereafter shall be filed within five (5) days with the Board of County Commissioners which shall include the special master's factual findings, conclusions of law, and shall include either a recommended specific term of suspension or debarment to be imposed by the Board or a recommended dismissal of the County Administrator's preliminary notice of suspension or debarment.
7. After filing, the special master's decision and recommendation shall then be presented for action at the next regularly scheduled meeting of the Board of County Commissioners together with a recommendation of the County Administrator relating to the disposition of the case. The matter shall be resolved by the Board on the basis of the record before the special master and no evidence or issue which was not presented or raised at such hearing shall be considered. Presentations to the Board by parties shall be limited to thirty (30) minutes per side. The foregoing time limitation shall be inclusive of all speakers addressing the Board on behalf of each side. At the conclusion of such testimony, the Board shall by majority vote accept or reject the decision and recommendation of the special master. The Board may also in its sole discretion refer the matter back to the special master for additional proceedings. An appeal of the decision of the Board, which is filed within thirty (30) days of its receipt by vendor, shall be subject to review by the appellate division of the circuit court. A suspended or debarred vendor also may seek a stay of the board's decision in circuit court.
8. The period of suspension or debarment imposed upon a vendor shall be within the sole discretion of the Board of County Commissioners. Suspension or debarment shall be for a period commensurate with the seriousness of the cause(s), and, where applicable, within the guidelines set forth below, but in no event shall such period exceed five (5) years.
9. The following guidelines for such period of suspension or debarment shall apply except where mitigating or aggravating circumstances justify deviation:
  - (a) For commission of offenses as described in subsections II.B.1, II.B.2, and II.B.8: six (6) months to two (2) years.



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- (b) For commission of an offense as described in subsection II.B.3: six (6) months to one (1) year.
  - (c) For commission of offenses as described in subsections II.B.4, II.B.5, and II.B.6: six (6) months to three (3) years.
  - (d) For commission of an offense as described in subsection II.B.7: one (1) to two (2) years.
  - (e) For commission of an offense as described in subsection II.C.1: one (1) to two (2) years.
  - (f) For commission of an offense as described in subsection II.C.2: two (2) to five (5) years.
  - (g) For commission of an offense as described in subsection II.C.3: two (2) to five (5) years.
10. After imposition of such suspension or debarment, the Board of County Commissioners, in its sole discretion, may reduce or may vacate such suspension or debarment, upon the vendor's written request, for reasons such as:
- (a) Newly discovered material evidence;
  - (b) Reversal of the conviction or civil judgment upon which the debarment was based;
  - (c) Bona fide change in ownership or management;
  - (d) Elimination of other causes for which the suspension or debarment was imposed; or
  - (e) Other reasons the Board of County Commissioners deems appropriate.



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11. The vendor's written request shall contain the reasons for requesting a reduction in the suspension or debarment period. The County Administrator, with the assistance of the affected department, shall have thirty (30) days from receipt of such request to submit a written response thereto. The decision of the Board of County Commissioners regarding a request made under this subsection is final and not appealable.
12. Scope of suspension or debarment. The following shall be scope of suspension or debarment under this section.
  - (a) The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, agent, 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 of the benefits derived from the conduct may be evidence of such knowledge, approval, or acquiescence.
  - (b) The fraudulent, criminal, or other seriously 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, or had reason to know of the vendor's conduct.
  - (c) The fraudulent, criminal, or other seriously improper conduct of any subcontractor associated with a vendor may be imputed to the vendor when the conduct occurred in connection with the subcontractor's performance of duties for or on behalf of the vendor, and the vendor has knowledge of, approved of, or acquiesced in this conduct. The vendor's acceptance of benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.
  - (d) The fraudulent, criminal, or other seriously improper conduct of one vendor participating in a joint venture or similar arrangement may be imputed to other participating vendors 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. Acceptance of the benefits derived from the conduct may be evidence of such knowledge, approval, or acquiescence.