

1 [New administrative debarment procedure.]

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3 **Ordinance adding a new Chapter 28 to the San Francisco Administrative Code to**
4 **establish a City-wide administrative debarment procedure; amending Chapter 6 of the**
5 **Administrative Code to reflect the adoption of the new Chapter 28.**

6 Note: Additions are *single-underline italics Times New Roman*; deletions
7 are ~~*strikethrough italics Times New Roman*~~.
8 Board amendment additions are double underlined.
9 Board amendment deletions are ~~strikethrough normal~~.

9

Be it ordained by the People of the City and County of San Francisco:

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Section 1. The San Francisco Administrative Code is hereby amended by adding

11

Chapter 28, to read as follows:

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SEC. 28.0. FINDINGS.

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14 The Board of Supervisors finds that contracting with the City and County of San
15 Francisco is an important municipal affair, and that the award of contracts to contractors who
16 fail to deal with the City and County in good faith compromises the integrity of the contracting
17 process and results in the improper expenditure of public funds. The Board of Supervisors
18 recognizes that the City and County must afford contractors due process in any determination
19 that precludes any individual or business entity from participating in the contracting process.
20 This Chapter does not apply to a determination of nonresponsibility for a single contract or
21 identifiable group of contracts, but for the broader determination of nonresponsibility of a
22 contractor for the general purpose of contracting with the City and County of San Francisco
23 for a specified period. The Board of Supervisors therefore adopts this Chapter 28 to prescribe
24 standard procedures for the prosecution, determination and implementation of administrative
25 debarments.

1 **SEC. 28.1. DEFINITIONS.**

2 The following definitions apply for only the purposes of this Chapter 28:

3 **(A) Affiliate.** Any individual person or business entity related to a contractor where
4 such individual or business entity, directly or indirectly, controls or has the power to control the
5 other, or where a third person controls or has the power to control both. Indicia of control
6 include, but are not limited to: interlocking management or ownership; identity of interests
7 among family members; shared facilities and equipment; common use of employees or a
8 business entity organized or following the suspension, debarment, bankruptcy, dissolution or
9 reorganization of a person which has the same or similar management; and/or ownership or
10 principal employee as the contractor.

11 **(B) Charging Official.** Any City department head or the President of any Board or
12 Commission authorized to award or execute a contract under the San Francisco Charter or
13 the Administrative Code, the Mayor, the Controller, the City Administrator, the Director of
14 Administrative Services or the City Attorney. All charging officials are authorized to act on
15 behalf of the City and County in prosecuting any administrative debarment proceeding and in
16 issuing an Order of Debarment under this Chapter.

17 **(C) Contractor.** Any individual person or business entity who submits a qualification
18 statement, proposal, bid or quote or who contracts directly or indirectly with the City and
19 County of San Francisco for the purpose of providing any goods or services to or for the City
20 and County of San Francisco, including without limitation any contractor, subcontractor,
21 consultant, subconsultant or supplier at any tier. The term "contractor" shall include any
22 responsible managing corporate officer who has personal involvement and/or responsibility in
23 obtaining a contract with the City and County of San Francisco or in supervising and/or
24 performing the work prescribed by the contract.

1 **(D) Debarment.** The administrative determination against a potential bidder or
2 contractor declaring such potential bidder or contractor irresponsible and disqualified from
3 participating in the competitive process for contracts with the City and County of San
4 Francisco or from entering into contracts with the City and County of San Francisco for a
5 period specified in the debarment order.

6 **SEC. 28.2. DEBARMENT AUTHORITY.**

7 Notwithstanding any other provision of the Administrative Code, any charging official
8 shall have authority to issue Orders of Debarment against any contractor in accordance with
9 the procedures set forth in this Chapter.

10 **SEC. 28.3. GROUNDS FOR DEBARMENT.**

11 A charging official shall issue an Order of Debarment for any contractor whom the
12 hearing officer, based on evidence presented, finds to have engaged in any willful misconduct
13 with respect to any City bid, request for qualifications, request for proposals, purchase order
14 and/or contract. Such willful misconduct may include, but need not be limited to the following:
15 (a) submission of false information in response to an advertisement or invitation for bids or
16 quotes, a request for qualifications or a request for proposals; (b) failure to comply with the
17 terms of a contract or with provisions of this Administrative Code; (c) a pattern and practice of
18 disregarding or repudiating terms or conditions of City contracts, including without limitation
19 repeated unexcused delays and poor performance; (e) failure to abide by any rules and/or
20 regulations adopted pursuant to the San Francisco Municipal Codes; (f) submission of false
21 claims as defined in this Administrative Code, Chapter 6, Article V; (g) a verdict, judgment,
22 settlement, stipulation or plea agreement establishing the contractor's violation of any civil or
23 criminal law against any government entity relevant to the contractor's ability or capacity
24 honestly to perform under or comply with the terms and conditions of a City contract; and/or
25 (h) collusion in obtaining award of any City contract or payment or approval thereunder.

1 **SEC. 28.4. INITIATING THE PROCEEDINGS: COUNTS AND ALLEGATIONS.**

2 Any charging official may initiate an administrative debarment proceeding by issuing
3 Counts and Allegations. A charging official may issue Counts and Allegations against any
4 contractor relating to any matter consistent with the foregoing grounds for debarment. A
5 charging official may issue Counts and Allegations regardless whether such charging official
6 awarded, was responsible for or was involved in any way with the underlying contract or
7 circumstances leading to the Counts and Allegations.

8 The charging official shall append to the Counts and Allegations a photocopy of this
9 Chapter 28 of the Administrative Code. Failure to append this Chapter 28, however, shall not
10 affect the force or validity of the Counts and Allegations.

11 **SEC. 28.5. SERVICE OF THE COUNTS AND ALLEGATIONS.**

12 The charging official shall serve the Counts and Allegations on each named individual
13 person or business entity in a manner ensuring confirmation of delivery. For example, service
14 may be achieved by United States Postal Service certified mail, return receipt requested or
15 with other delivery confirmation, hand delivery (messenger service) or other commercial
16 delivery service that provides written confirmation of delivery.

17 The charging official shall also serve the Counts and Allegations on the Controller and
18 the City Attorney.

19 **SEC. 28.6. REQUEST FOR A HEARING.**

20 Within 15 days after receipt of the Counts and Allegations, the contractor may submit a
21 written request for an administrative hearing. The contractor may make such request through
22 counsel or other authorized representative. Any such request shall be filed with the Controller
23 and copied to the charging official.

1 **SEC. 28.7. FAILURE TO RESPOND TO THE COUNTS AND ALLEGATIONS.**

2 Failure of the contractor to submit to the City a written request to be heard within the
3 time required by this Chapter, or failure of the contractor or the contractor's representative to
4 appear for a requested hearing that has been duly noticed, shall be deemed admission by the
5 contractor to the Counts and Allegations. In accordance with the procedures set forth below,
6 the charging official shall present evidence in support of the debarment to the appointed
7 hearing officer and the hearing officer shall make a determination on such evidence.

8 **SEC. 28.8. APPOINTMENT OF THE HEARING OFFICER.**

9 A charging official shall request either the Controller or the Director of Administrative
10 Services to appoint a hearing officer for any debarment proceeding. If either the Controller or
11 the Director of Administrative Services is the charging official then he or she shall request the
12 other to appoint the hearing officer. Within 15 days of the request, the Controller or the
13 Director of Administrative Services shall appoint a hearing officer and notify the contractor and
14 the charging official of the appointment. The notice of appointment shall include the name of
15 the hearing officer. The contractor or the charging official may object to the appointed hearing
16 officer within five business days of the notification. If the Controller or the Director of
17 Administrative Services, at his/her sole discretion, appoints a new hearing officer, then he/she
18 shall notify the contractor and the charging official as soon as practicable but not more than
19 15 days after receipt of the objection.

20 **SEC. 28.9. PRE-HEARING PROCEDURE.**

21 Within 15 calendar days of his/her appointment, the hearing officer shall notify each
22 contractor named in the Counts and Allegations and the charging department of the
23 scheduled hearing date. The hearing date shall be set at the hearing officer's sole discretion,
24 except the hearing must commence within 120 days of the date the charging official served
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1 the Counts and Allegations. The hearing officer may extend the 120-day period only upon
2 good cause shown; proceeding as expeditiously as possible is in the public's best interests.

3 Discovery pursuant to the California Code of Civil Procedure is not applicable to this
4 administrative debarment procedure.

5 The hearing officer may, in his/her sole discretion, direct any named contractor and the
6 charging official to submit in advance of the hearing, statements, legal analyses, lists of
7 witnesses, exhibits, documents or any other information the hearing officer deems pertinent to
8 the determination of wilful misconduct. The hearing officer may request the respective parties
9 to submit rebuttals to such information. The hearing officer may limit the length, scope or
10 content of any such statement, analysis, list, rebuttal, document or other requested
11 information. The hearing officer shall set firm due dates for all written presentations.

12 If the hearing officer determines, with the written agreement of each named contractor
13 and the charging official, that the hearing shall be by written presentation, all final writings
14 shall be due no later than 120 days of the date the charging official served the Counts and
15 Allegations.

16 **SEC. 28.10. HEARINGS AND DETERMINATIONS.**

17 Hearings may occur in person or in writing, as set forth in the foregoing section 28.09.
18 If the hearing is to occur in person, the hearing officer shall specify the time and place for the
19 charging official to present the case and for the contractor to rebut the charges. The hearing
20 officer may, in his/her sole discretion, allow offers of proof, set time limitations and limit the
21 scope of evidence presented based on relevancy. Each side shall be entitled to call
22 witnesses, and the hearing officer may allow cross-examination of witnesses. The hearing
23 officer may ask questions of any party for the purpose of reaching a determination.

24 The hearing officer shall consider the evidence submitted by the charging department
25 and the contractor. Within 15 days of the hearing, or of the date final written presentations are

1 due, the hearing officer shall issue his/her Findings and Recommendation. The hearing
2 officer shall serve the Findings and Recommendation on the charging official, the named
3 contractor(s), and/or their respective counsels or authorized representatives, and shall submit
4 the same to the Controller.

5 If the hearing officer finds that the named contractor has committed wilful misconduct
6 as described in the foregoing section 28.3 and recommends a term of debarment, the
7 charging official shall issue an Order of Debarment consistent with the hearing officer's
8 recommendation. The charging official shall serve the Order on each named contractor,
9 his/her/their counsel or authorized representative, if any, the City Attorney and the Controller.
10 An Order of Debarment under this Chapter shall be the final administrative determination by
11 the City in the matter.

12 **SEC. 28.12. TERM AND EFFECT OF ADMINISTRATIVE DEBARMENT; VIOLATION**
13 **OF ORDER.**

14 An Order of Debarment shall provide for a term of debarment not to exceed five years
15 from the date of the Order. The Order shall prohibit any named contractor and the
16 contractor's affiliates from participating in any contract at any tier, directly or indirectly, with or
17 for the City and County; any contractor and the contractor's affiliates named in an Order of
18 Debarment shall be deemed irresponsible and disqualified for the purposes of all City and
19 County contracts. Upon such Order, any department head, board or commission may cancel
20 any existing contract with a debarred contractor or direct the cancellation of an existing
21 subcontract to which a debarred contractor is a party. In the event of such cancellation, no
22 recovery shall be had on that contract by the debarred party other than for work satisfactorily
23 completed as of the date of cancellation.

24 Administrative Debarment shall neither exclude nor preclude any other administrative
25 or legal action taken by the City and County.

1 Violation of an Order of Debarment, such as by submission of a proposal, bid or sub-
2 bid during the debarment period, may be considered a false claim as provided in this
3 Administrative Code and the California Government Code.

4 **SEC. 28.13. PUBLICATION AND REPORTS OF DEBARMENT.**

5 Any Order of Debarment issued under this Chapter shall be a public record. The
6 Controller shall maintain and publish on the City's Internet website a current list of contractors
7 subject to Orders of Debarment and the expiration dates for the respective debarment terms.
8 The Controller shall submit a semi-annual report to the Clerk of the Board of Supervisors that
9 includes (a) the contractors then subject to Orders of Debarment and the expiration dates for
10 the respective debarment terms; (b) the status of any pending debarment matters; and (c) any
11 Orders of Debarment received by the Controller since the date of the last report.

12 Section 2. The San Francisco Administrative Code is hereby amended by amending
13 sections 6.80 and 6.82 as follows:

14 **SEC. 6.80. VIOLATIONS AND FALSE CLAIMS; DEBARMENT AND MONETARY**
15 **PENALTIES.**

16 Any contractor, subcontractor, supplier, consultant or subconsultant, who fails to
17 comply with the terms of its contract with the City and County; or who violates any provision of
18 Administrative Code Chapter 6; or who fails to abide by any rules and/or regulations adopted
19 pursuant to Administrative Code Chapter 6; or who submits false claims; or who has violated
20 against any government entity a civil or criminal law relevant to its ability to perform under or
21 comply with the terms and conditions of *its* contract with the City and County, may be
22 declared an irresponsible bidder or an unqualified consultant and debarred according to the
23 procedures set forth *below in Chapter 28 of this Administrative Code.* Additionally, any contractor,
24 subcontractor, supplier, consultant or subconsultant who submits a false claim to the City and
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1 County may also be subject to monetary penalties, investigation and prosecution as described
2 below.

3 In the event that such a violation of this Chapter, including the submission of one or
4 more false claims, comes to the attention of a board or commission or department head
5 responsible for public work, the department head must investigate the matter. The
6 department head must report the findings of any such investigation by letter to the Board of
7 Supervisors within 30 days of the completion of the investigation. The investigation letter to
8 the Board of Supervisors must state the name of the contractor, subcontractor, supplier,
9 consultant or subconsultant; the nature of the violation; the results of the investigation; and the
10 department head's plan for addressing the violation, if any. A hearing shall also be called in
11 the Audit Committee of the Board of Supervisors to report on this investigation.

12 **SEC. 6.82. PROCEDURES FOR ADMINISTRATIVE DEBARMENT.**

13 Notwithstanding and not exclusive or preclusive of any pending or contemplated legal
14 action, ~~the Mayor, board or commission or department head responsible for the public work may bring~~
15 ~~charges against a any contractor, subcontractor, supplier, consultant or subconsultant directly or~~
16 ~~indirectly subject to the provisions of this Chapter may be determined irresponsible and disqualified~~
17 ~~from contracting with the City and County of San Francisco in accordance with the provisions of~~
18 ~~Chapter 28 of this Administrative Code, for violation of a contract, for violation of Chapter 6, for~~
19 ~~violating against any government entity a civil or criminal law relevant to its ability to perform work~~
20 ~~for the City and County, for submitting a false claim or for engaging in collusion. The department~~
21 ~~head, upon approval of the Mayor or the board or commission concerned, as appropriate to the~~
22 ~~department, shall give written notice to the contractor, subcontractor, supplier, consultant or~~
23 ~~subconsultant of the charges and of all evidence supporting such charges. The contractor,~~
24 ~~subcontractor, supplier, consultant or subconsultant, and/or his or her attorney or other authorized~~
25 ~~representative shall be entitled to offer rebuttal evidence and any other evidence in support of his or~~

1 ~~her position. The department head or the board or commission, as appropriate to the department, shall~~
2 ~~conduct a hearing where the charges and all evidence shall be presented. In the alternative, such~~
3 ~~department head, board or commission may appoint a hearing officer to conduct such a hearing and~~
4 ~~make written findings of fact to be submitted to the department head, board or commission. For~~
5 ~~departments under the Mayor, the department head shall then render a final written decision. For~~
6 ~~departments under boards or commissions, the commission president or his or her designee shall~~
7 ~~render a written decision which shall become final upon adoption by resolution of the board or~~
8 ~~commission concerned.~~

9 ~~Any final written decision by a department head, board or commission that includes a~~
10 ~~determination of nonresponsibility or disqualification shall provide for a term of debarment. A~~
11 ~~contractor, subcontractor, supplier, consultant or subconsultant (or any other entity with substantially~~
12 ~~the same officers, directors, owners or principals) may be debarred for a period of up to five years.~~
13 ~~During such debarment period, the contractor, subcontractor, supplier, consultant or subconsultant~~
14 ~~shall not be permitted to act as a contractor or consultant at any tier, directly or indirectly, for any~~
15 ~~public work or improvement for the City and County.~~

16 ~~Upon a written determination of nonresponsibility or disqualification, any department head,~~
17 ~~board or commission may cancel any contract with the nonresponsible or disqualified contractor or~~
18 ~~consultant or direct the cancellation of the subcontract or subconsultancy. In the event of such~~
19 ~~cancellation, no recovery shall be had on that contract by the contractor, subcontractor, consultant or~~
20 ~~subconsultant.~~

21 ~~Following any decision finding a contractor, subcontractor, supplier, consultant or~~
22 ~~subconsultant nonresponsible, the department head, board or commission who made the finding of~~
23 ~~nonresponsibility retains authority to modify the decision.~~

1 APPROVED AS TO FORM:
2 DENNIS J. HERRERA, City Attorney

3 By: _____
4 GEORGE K. WONG
5 Deputy City Attorney
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