

1 [Administrative Code - Debarment and Suspension of City Contractors]

2

3 **Ordinance amending Administrative Code, Chapter 28 to add a Contractor’s prohibited**
 4 **provision of gifts or money to a public official as an express ground for debarment and**
 5 **revising debarment procedures; to amend the definition of “Contractor” by expressly**
 6 **including grant applicants and grantees in the defined term; and to add provisions**
 7 **authorizing suspension of a Contractor from participating in the procurement process**
 8 **for entering into City contracts or applying for grants if the Contractor is the subject of**
 9 **a criminal or civil charge brought by a government agency against the Contractor**
 10 **alleging that the Contractor committed a violation of any civil or criminal law or**
 11 **regulation against any government entity relevant to the Contractor’s ability or capacity**
 12 **honestly to perform under or comply with the terms and conditions of a City contract,**
 13 **including but not limited to the grounds for debarment set forth in Chapter 28.**

14

15 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
 16 **Additions to Codes** are in *single-underline italics Times New Roman font*.
 17 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
 18 **Board amendment additions** are in double-underlined Arial font.
 19 **Board amendment deletions** are in ~~strikethrough Arial font~~.
 20 **Asterisks (* * * *)** indicate the omission of unchanged Code
 21 subsections or parts of tables.

18

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

20

21 Section 1. Overview and Background.

21

22 (a) Chapter 28 of the Administrative Code provides tools and procedures to protect the
 23 integrity of the City’s public contracting process and fight corruption in the procurement of
 24 public contracts. Chapter 28 has provided an exemplary list of grounds to debar contractors
 25 found guilty of misconduct; however, a specific type of corruption that is a matter of recent

1 concern has not been included in that exemplary list of grounds for debarment. Existing
2 provisions also have not specified that grants are a part of the public contracting process
3 protected by Chapter 28. In addition, the City has not had Administrative Code authority to
4 protect the City’s public contracting process from contractors or grant applicants charged or
5 accused of misconduct in criminal or civil proceedings prior to resolution of such proceedings.

6 (b) Chapter 28 of the Administrative Code provides administrative procedures by
7 which the City may debar a Contractor for engaging in willful misconduct relating to the
8 process for procurement of a City contract or entering into a contract with the City. This
9 ordinance adds to the listed examples of grounds for debarment a Contractor’s offer or
10 provision of any gift or money to a public official, if any law or regulation prohibits the public
11 official from accepting the gift or money. This ordinance also includes provisions to make
12 clear that grants are a part of the public contracting process protected by Chapter 28.

13 (c) In addition, this ordinance establishes procedures empowering the City to suspend
14 a Contractor that is the subject of an indictment or otherwise subject to a criminal or civil
15 charge alleging that the Contractor committed a violation of any civil or criminal law or
16 regulation against any government entity relevant to the Contractor’s ability or capacity
17 honestly to perform under or comply with the terms and conditions of a City contract, including
18 but not limited to the grounds for debarment set forth in Chapter 28.

19
20 Section 2. Chapter 28 of the Administrative Code is hereby amended by revising
21 Sections 28.0, 28.1, 28.2, 28.3, 28.4, 28.5, 28.6, 28.7, 28.8, 28.9, and 28.10, renumbering
22 Sections 28.12 and 28.13 as Sections 28.11 and 28.12 respectively, and revising renumbered
23 Sections 28.11 and 28.12, to read as follows:

24
25 **SEC. 28.0. FINDINGS.**

1 (a) The Board of Supervisors finds that: (1) contracting with the City ~~and County of San~~
2 ~~Francisco~~ is an important municipal affair, and that the award of contracts to eContractors who
3 fail to deal with the City ~~and County~~ in good faith compromises the integrity of the contracting
4 process and results in the improper expenditure of public funds; and (2) the public contracting
5 process is for the benefit of the public, not Contractors, and it serves the public interest to empower the
6 City to Debar or Suspend a Contractor that has engaged in conduct that undermines the integrity of the
7 public contracting process.

8 (b) The Board of Supervisors recognizes that the City ~~and County~~ must afford
9 eContractors due process in any determination that precludes any individual or business entity
10 from participating in the contracting process. This Chapter 28 does not apply to a
11 determination of nonresponsibility for a single contract or identifiable group of contracts, but
12 ~~for~~ rather to the broader determination of irresponsibility of a eContractor for the general
13 purpose of contracting with the City ~~and County of San Francisco~~ for a specified period. The
14 Board of Supervisors therefore adopts this Chapter ~~28~~ to prescribe standard procedures for
15 the prosecution, determination, and implementation of administrative ~~d~~ Debarments and
16 Suspensions.

17
18 **SEC. 28.1. DEFINITIONS.**

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

20 ~~(A)~~ **Affiliate.** Any individual person or business entity related to a eContractor where
21 such individual or business entity, directly or indirectly, controls or has the power to control the
22 other, or where a third person controls or has the power to control both. Indicia of control
23 include, but are not limited to: interlocking management or ownership; identity of interests
24 among family members; shared facilities and equipment; common use of employees or a
25 business entity organized ~~or~~ following the ~~s~~ Suspension, dDebarment, bankruptcy, dissolution

1 or reorganization of a person which has the same or similar management; and/or ownership
2 or principal employee as the eContractor.

3 ~~(B)~~ **Charging Official.** Any City department head or the President of any Bboard or
4 eCommission authorized to award or execute a contract under the ~~San Francisco~~ Charter or the
5 Administrative Code, the Mayor, the Controller, the City Administrator, the Director of
6 Administrative Services, or the City Attorney. All eCharging eOfficials are authorized to act on
7 behalf of the City ~~and County~~ in prosecuting any administrative ~~d~~Debarment proceeding and in
8 issuing an Order of Debarment or issuing an Order of Suspension under this Chapter 28.

9 City. The City and County of San Francisco.

10 ~~(C)~~ **Contractor.** Any individual person, ~~or~~ business entity, or organization that ~~who~~
11 submits a qualification statement, proposal, bid, ~~or quote, or grant request, or that~~ ~~who~~ contracts
12 directly or indirectly with the City ~~and County of San Francisco~~ for the purpose of providing any
13 goods or services or construction work to or for, or applies for or receives a grant from, the City
14 ~~and County of San Francisco~~ including without limitation any eContractor, subcontractor,
15 consultant, subconsultant or supplier at any tier, or grantee. The term "eContractor" shall
16 include any responsible managing corporate officer, or responsible managing employee, or other
17 owner or officer of a Contractor who has personal involvement and/or responsibility in seeking or
18 obtaining a contract or grant with the City ~~and County of San Francisco~~ or in supervising and/or
19 performing the work prescribed by the contract or grant.

20 Day. A calendar day unless otherwise specified.

21 ~~(D)~~ **Debarment.** The administrative determination against a ~~potential bidder, or~~
22 eContractor declaring such ~~potential bidder or~~ eContractor irresponsible and disqualified from
23 participating in the ~~competitive procurement~~ process for contracts ~~with the City and County of San~~
24 ~~Francisco,~~ or from entering into contracts, directly or indirectly, with, or applying for or receiving
25

1 grants or other benefits from, the City ~~and County of San Francisco~~ for a period specified in the
2 ~~a~~Debarment order.

3 **Suspension.** Ineligibility of a Contractor that is the subject of an arrest, indictment, or other
4 criminal or civil charge by a governmental entity (federal, state or local), as specified in greater detail
5 in Section 28.3(b) from participating in the procurement process for contracts or from entering into
6 contracts directly or indirectly with, or applying for or receiving grants from, the City.

7
8 **SEC. 28.2. DEBARMENT AND SUSPENSION AUTHORITY.**

9 Notwithstanding any other provision of the Administrative Code, any ~~e~~Charging ~~o~~Official
10 shall have authority to issue Orders of Debarment or Suspension against any ~~e~~Contractor in
11 accordance with the procedures set forth in this Chapter 28.

12
13 **SEC. 28.3. GROUNDS FOR DEBARMENT AND SUSPENSION.**

14 (a) **Debarment.** A ~~e~~Charging ~~o~~Official shall issue an Order of Debarment for any
15 ~~e~~Contractor who the hearing officer, based on evidence presented, finds to have engaged in
16 any willful misconduct with respect to any City bid, request for qualifications, request for
17 proposals, grant request, purchase order and/or contract, or grant award. Such willful
18 misconduct may include, but need not be limited to the following: (~~a~~1) submission of false
19 information in response to an advertisement or invitation for bids or quotes, a request for
20 qualifications, or a request for proposals; (~~b~~2) failure to comply with the terms of a contract or
21 with provisions of ~~this Administrative~~ the Municipal Code; (~~e~~3) a pattern and practice of
22 disregarding or repudiating terms or conditions of City contracts or grants, including without
23 limitation repeated unexcused delays and poor performance; (~~a~~4) failure to abide by any rules
24 and/or regulations adopted pursuant to the ~~San Francisco~~ Municipal Codes; (~~e~~5) submission of
25 false claims as defined in this Administrative Code, Chapter 6, Article V, or Chapter 21, Section

1 21.35, or other applicable federal, state, or municipal false claims laws; (6f) a verdict, judgment,
2 settlement, stipulation, or plea agreement establishing the eContractor's violation of any civil or
3 criminal law or regulation against any government entity relevant to the eContractor's ability or
4 capacity honestly to perform under or comply with the terms and conditions of a City contract
5 or grant; ~~and/or (g7)~~ collusion in obtaining award of any City contract or grant, or payment or
6 approval thereunder; and/or (8) the offer or provision of any gift or money to a public official, if that
7 public official is prohibited from accepting the gift or money by any law or regulation.

8 (b) Suspension. Any Charging Official may issue an Order of Suspension to a Contractor on
9 the basis that the Contractor has been arrested or indicted, or become the subject of a criminal, civil or
10 administrative complaint issued by a government entity, where the arrest or indictment, criminal, civil,
11 or administrative complaint alleges that the Contractor has violated a civil or criminal law or
12 regulation against any government entity relevant to the Contractor's ability or capacity honestly to
13 perform under or comply with the terms and conditions of a City contract or grant including, but not
14 limited to, the grounds for Debarment set forth in Section 28.3(a).

15
16 **SEC. 28.4. INITIATING ~~THE DEBARMENT~~ PROCEEDINGS; COUNTS AND**
17 **ALLEGATIONS.**

18 (a) Any eCharging eOfficial may initiate an administrative ~~d~~Debarment proceeding by
19 issuing Counts and Allegations. A eCharging eOfficial may issue Counts and Allegations
20 against any eContractor relating to any matter consistent with the ~~foregoing~~ grounds for
21 debarment as stated in Section 28.3(a). A eCharging eOfficial may issue Counts and Allegations
22 regardless whether such eCharging eOfficial awarded, was responsible for, or was involved in
23 any way with the underlying contract or circumstances leading to the Counts and Allegations.
24
25

1 **(b)** The eCharging eOfficial shall append to the Counts and Allegations a photocopy of
2 this Chapter 28 of the Administrative Code. Failure to append this Chapter 28, however, shall
3 not affect the force or validity of the Counts and Allegations.
4

5 **SEC. 28.5. SERVICE OF THE COUNTS AND ALLEGATIONS OR SUSPENSION**
6 **ORDER.**

7 **(a) Debarment Counts and Allegations.** The eCharging eOfficial shall serve the
8 Counts and Allegations on each named individual person or business entity in a manner
9 ensuring confirmation of delivery. For example, *the Charging Officer may achieve service ~~may be~~*
10 *~~achieved~~* by United States Postal Service certified mail, return receipt requested or with other
11 delivery confirmation, hand delivery (messenger service), or other commercial delivery service
12 that provides written confirmation of delivery.

13 The eCharging eOfficial shall also serve the Counts and Allegations on the Controller,
14 City Administrator and the City Attorney.

15 **(b) Suspension Order.** *The Charging Official shall serve the Suspension Order on the*
16 *named Contractor in a manner ensuring confirmation of delivery. For example, the Charging Officer*
17 *may achieve service by United States Postal Service certified mail, return receipt requested or with*
18 *other delivery confirmation, hand delivery (messenger service), or other commercial delivery service*
19 *that provides written confirmation of delivery.*

20 *The Charging Official shall also serve the Suspension Order on the Controller, City*
21 *Administrator and the City Attorney.*

22
23 **SEC. 28.6. REQUEST FOR A HEARING.**

24 **(a) Debarment Counts and Allegations.** Within 15 business days after receipt of the
25 Counts and Allegations, the eContractor may submit a written request for an administrative

1 hearing. The eContractor may make such request through counsel or other authorized
2 representative. The Contractor shall file Any such request shall be filed with the Controller with
3 and copies to the eCharging eOfficial, the City Attorney, and the City Administrator.

4 (b) Order of Suspension. At any time during a period of Suspension, a suspended
5 Contractor may submit a written request to the Charging Official requesting the official to lift the
6 Order of Suspension on the grounds that the Contractor's alleged conduct does not meet the legal
7 requirement for Suspension, or based on facts or circumstances unknown to the Charging Official, or
8 based on new facts, circumstances, or law. The Charging Official shall provide a written response
9 within 14 Days. If the Charging Official's written response declines to lift the Order of Suspension, or
10 the Charging Official fails to provide a written response within 14 Days, the suspended Contractor may
11 submit in writing within 7 Days a request for an administrative hearing. The suspended Contractor
12 may make such request through counsel or other authorized representative. The suspended Contractor
13 shall file any such request with the Controller with copies to the Charging Official, the City
14 Administrator, and the City Attorney.

15
16 **SEC. 28.7. FAILURE TO ~~RESPOND TO THE COUNTS AND ALLEGATIONS~~**
17 **REQUEST A HEARING OR TO APPEAR.**

18 Failure of the eContractor to submit to the City a written request to be heard within the
19 time required by this Chapter 28, or failure of the eContractor or the eContractor's
20 representative to appear for a requested hearing that has been duly noticed, shall be deemed
21 admission by the eContractor to the Counts and Allegations. ~~In accordance with the procedures~~
22 ~~set forth below, the charging official shall present evidence in support of the debarment to the~~
23 ~~appointed hearing officer and the hearing officer shall make a determination on such evidence.~~

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

2 (a) A eCharging official shall request either the Controller or the City Administrator
3 ~~Director of Administrative Services~~ (“City Representative”) to appoint a hearing officer for any
4 ~~d~~Debarment or Suspension proceeding. If either the Controller or the City Administrator ~~Director~~
5 ~~of Administrative Services~~ is the eCharging official, then ~~that City Representative~~ he or she shall
6 request the other to appoint the hearing officer.

7 (b) Within ~~145~~ dDays of the Charging Official’s request, the City Representative ~~Controller~~
8 ~~or the Director of Administrative Services~~ shall appoint a hearing officer and notify the
9 eContractor and the eCharging official of the appointment. The notice of appointment shall
10 include the name of the hearing officer. The eContractor or the eCharging official may object
11 to the appointed hearing officer within five business days of the notification. If the City
12 ~~Representative~~ ~~Controller or the Director of Administrative Services~~, at the City Representative’s
13 ~~his/her~~ sole discretion, appoints a new hearing officer, then ~~the City Representative~~ he/she shall
14 notify the eContractor and the eCharging official as soon as practicable, but not more than
15 ~~145~~ dDays after receipt of the objection.

16
17 **SEC. 28.9. PRE-HEARING PROCEDURE.**

18 (a) Within ~~145 calendar~~ dDays of ~~his/her~~ appointment, the hearing officer shall notify
19 each eContractor named in the Counts and Allegations or Suspension Order and the eCharging
20 ~~department~~ Official, the Controller, the City Administrator and the City Attorney of the scheduled
21 hearing date. The hearing date shall be set at the hearing officer's sole discretion, except, for
22 a Debarment hearing, the hearing must commence within 120 dDays of the date the eCharging
23 official served the Counts and Allegations; a Suspension hearing must commence within 30 Days
24 of the date the Suspended Contractor requested a hearing pursuant to Section 28.6(b). The hearing
25

1 officer may extend the deadline for holding a hearing ~~120-day period~~ only upon good cause
2 shown; proceeding as expeditiously as possible is in the public's best interests.

3 (b) Discovery pursuant to the California Code of Civil Procedure is not applicable to this
4 administrative debarment or suspension procedure.

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

13 (d) If the hearing officer determines, with the written agreement of each named
14 eContractor and the eCharging oOfficial, that the hearing shall be by written presentation, all
15 final writings shall be due no later than 120 ~~d~~Days of the date the eCharging oOfficial served
16 the Counts and Allegations or Order of Suspension.

18 **SEC. 28.10. HEARINGS AND DETERMINATIONS.**

19 (a) Hearings may occur in person, on an electronic meeting platform if deemed necessary by
20 the hearing officer, or in writing, as set forth in the foregoing Section 28.09. If the hearing is to
21 occur in person or on an electronic meeting platform, the hearing officer shall specify the time
22 and place for the eCharging oOfficial to present the case and for the eContractor to rebut the
23 charges. The hearing officer shall have the sole discretion to ~~may, in his/her sole discretion,~~ allow
24 offers of proof, set time limitations, and limit the scope of evidence presented based on
25 relevancy.

1 **(b) The Charging Official shall present evidence in support of the Debarment or Suspension to**
2 **the hearing officer. The Contractor may present evidence in defense and/or mitigation. Each side**
3 **shall be entitled to call witnesses, and the hearing officer may allow cross-examination of**
4 **witnesses. The hearing officer may ask questions of any party. ~~for the purpose of reaching a~~**
5 **~~determination.~~**

6 **(c) The hearing officer shall consider the evidence submitted by the eCharging**
7 **department Official and the eContractor. Within 145 ~~d~~Days of the hearing, or of the date final**
8 **written presentations are due, the hearing officer shall issue ~~his/her~~ Findings and a**
9 **Recommendation Decision.** The hearing officer shall serve the Findings and
10 **Decision Recommendation** on the eCharging eOfficial, the named eContractor(s), and/or their
11 respective counsels or authorized representatives, and shall submit the same to the
12 Controller, City Administrator, and City Attorney.

13 **(d) If the hearing officer finds that the named eContractor has committed willful**
14 **misconduct as described in ~~the foregoing~~ Section 28.3 and ~~orders/recommends~~ a term of**
15 **~~d~~Debarment, the eCharging eOfficial shall issue an Order of Debarment consistent with the**
16 **hearing officer's ~~decision/recommendation.~~** The eCharging eOfficial shall serve the Order on each
17 named eContractor, ~~his/her~~ their counsel or authorized representative, if any, the City Attorney,
18 the City Administrator, and the Controller. An Order of Debarment under this Chapter 28 shall
19 be the final administrative determination by the City in the matter.

20 **(e) For a Suspended Contractor, the hearing officer may consider evidence and argument by**
21 **the Contractor to support its assertion that the City should terminate the Order of Suspension, provided**
22 **that the Charging Official shall be entitled to offer evidence and argument in opposition to the**
23 **Contractor's assertion. If the Contractor establishes that the underlying basis of the Order of**
24 **Suspension has been finally resolved without a verdict, judgment, settlement agreement or plea**
25 **agreement against the Contractor, the hearing officer shall terminate the Order of Suspension. An**

1 Order of Suspension upheld by a hearing officer under this Chapter shall be the final administrative
2 determination by the City in the matter. Any termination of an Order of Suspension shall not preclude
3 a Charging Officer from initiating Debarment proceedings against the Contractor based on the
4 underlying conduct of the Suspension Order pursuant to section 28.4 following termination of the
5 Order of Suspension.

6
7 **SEC. 28.1211. TERM AND EFFECT OF ADMINISTRATIVE DEBARMENT OR**
8 **ORDER OF SUSPENSION; VIOLATION OF ORDER.**

9 (a) An Order of Debarment shall provide for a term of ~~d~~Debarment not to exceed five
10 years from the date of the Order. ~~An Order of Suspension shall remain in effect until the Contractor~~
11 establishes to the Charging Officer or the City Administrator that the underlying basis of the Order of
12 Suspension has been finally resolved without a verdict, judgment, or plea agreement against
13 Contractor.

14 (b) At any time during the pendency of an Order of Suspension, the City may initiate debarment
15 proceedings against the Contractor. If the City suspends and later debars a Contractor for the same
16 underlying conduct, the period of Suspension shall count towards the period of Debarment.

17 (c) ~~The~~ An Order of Debarment or Suspension shall prohibit any named eContractor and
18 the eContractor's affiliates from participating in any contract or grant at any tier, directly or
19 indirectly, with or for the City ~~and County~~; any eContractor and the eContractor's affiliates
20 named in an Order of Debarment shall be deemed irresponsible and disqualified for the
21 purposes of all City ~~and County~~ contracts and grants. Upon such Order, any department head,
22 board, or commission may cancel any existing contract or grant with a Suspended or ~~d~~Debarred
23 eContractor or direct the cancellation of an existing subcontract to which a Suspended or
24 ~~d~~Debarred eContractor is a party. In the event of such cancellation, the Suspended or Debarred
25 Contractor's recovery under the ~~no recovery shall be had on that~~ contract or grant by the debarred

1 ~~party other than~~ shall be limited to compensation for work satisfactorily completed as of the date
2 of cancellation.

3 (d) Administrative Debarment shall neither exclude nor preclude any other
4 administrative or legal action taken by the City ~~and County~~ against the Contractor.

5 (e) Violation of an Order of Suspension or Debarment, such as by submission of a
6 proposal, bid or sub-bid, or grant request, during the Suspension or ~~Debarment~~ period, may be
7 considered a false claim as provided in this Administrative Code and the California
8 Government Code.

9
10 **SEC. 28.1312. PUBLICATION AND REPORTS OF DEBARMENT OR SUSPENSION.**

11 Any Order of Debarment or Suspension issued under this Chapter 28 shall be a public
12 record. The Controller shall maintain and publish on the City's Internet website a current list of
13 ~~e~~Contractors subject to Orders of Debarment or Suspension and the expiration dates for the
14 respective debarment terms. The Controller shall submit a semi-annual report to the Clerk of
15 the Board of Supervisors that includes (a) the ~~e~~Contractors then subject to an Order of
16 Debarment or Suspension and the expiration dates for the respective debarment terms; (b) the
17 status of any pending debarment or suspension matters; and (c) any Order of Debarment or
18 Suspension received by the Controller since the date of the last report.

19
20 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
21 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
22 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
23 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
24 additions, and Board amendment deletions in accordance with the "Note" that appears under
25 the official title of the ordinance.

1 Section 4. Severability. If any section, subsection, sentence, clause, phrase, or word
2 of this Chapter, or any application thereof to any person or circumstance, is held to be invalid
3 or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not
4 affect the validity of the remaining portions or applications of the Chapter. The Board of
5 Supervisors hereby declares that it would have passed this Chapter and each and every
6 section, subsection, sentence, clause, phrase, and word not declared invalid or
7 unconstitutional without regard to whether any other portion of this Chapter or application
8 thereof would be subsequently declared invalid or unconstitutional.
9

10 Section 5. Effective Date. This ordinance shall become effective 30 days after
11 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
12 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
13 of Supervisors overrides the Mayor's veto of the ordinance.
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15 APPROVED AS TO FORM:
16 DENNIS J. HERRERA, City Attorney

17 By: /s/ Randy Parent
18 RANDY PARENT
19 Deputy City Attorney

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