

# **CITY OF LOS ANGELES**



## **RULES AND REGULATIONS IMPLEMENTING THE CONTRACTOR EVALUATION ORDINANCE FOR SERVICE CONTRACTORS**

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# RULES AND REGULATIONS IMPLEMENTING THE CONTRACTOR EVALUATION ORDINANCE FOR SERVICE CONTRACTORS

## 1. Applicability of These Rules to Service Contractors

These Rules are applicable to service contracts over \$25,000 and at least three (3) months in duration. A service contract that does not meet both the above thresholds does not require a performance evaluation until an amendment, renewal, or modification makes the total term of the contract exceed \$25,000 and three (3) months in duration. The Department of Public Works, Bureau of Contract Administration, Special Research and Information Section (SRIS) may amend or revise these Rules consistent with applicable law.

## 2. Notifying Prospective Contractors of the Contractor Evaluation Program

- a. When preparing Requests for Proposals (RFP), Request for Qualifications (RFQ), or Request for Bids (RFB), the awarding authority shall notify prospective proposers that the selected proposer's performance on the City service contract will be subject to a performance evaluation by including in all RFPs/RFQs/RFBs the RFP Language (Attachment 1).
- b. If the service contract is not procured through an RFP/RFQ/RFB process, the awarding authority shall notify the selected contractor that its performance will be subject to an evaluation at the end of the contract.

## 3. Selecting a Contractor for Award of a Service Contract

Before awarding a contract, the awarding authority must consider information contained in the Contractor Evaluation Program (CEP) database regarding the prior performance of the potential contractor(s). Information contained in the database may be considered by awarding authorities in several ways; for example:

- a. The awarding authority uses a scoring system to evaluate proposers, and one factor taken into consideration in scoring the proposers is prior work experience. In scoring each proposer in the area of prior experience, the awarding authority consults the CEP database to determine whether there is information that would negatively affect the proposer's score in that area. If there is information that negatively affects a proposer's score in the area of prior work experience, the proposer's score must be adjusted accordingly. The CEP database must be consulted prior to arriving at a final score for each proposer. **The CEP database shall not be used as a basis for increasing a proposer's score in any way.**
- b. The CEP database may also be used as a reference check after the awarding authority has selected a proposer through an evaluation process. If, after the reference check on the selected proposer, the awarding authority determines that the service contract should be awarded to another proposer rather than to

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the selected proposer because of (a) poor performance evaluation(s), the awarding authority must notify the selected proposer of such reason in writing and allow the selected proposer an opportunity to rebut adverse evidence and to present evidence that the proposer is qualified to perform the contract before awarding the contract to any other proposer. To provide the proposer with due process in these instances, each awarding authority must establish a procedure which shall, at minimum, include the following:

- (1) The awarding authority must notify the SRIS and the City Attorney that the awarding authority intends to award away from the proposer because of the poor performance evaluation(s) contained in the CEP database.
- (2) The awarding authority must provide the proposer with written notice of the awarding authority's intent to award away from the proposer. The notice must inform the proposer of the following:
  - (a) The awarding authority intends to award the contract away from the proposer.
  - (b) The intent of the awarding authority to award the contract to a different proposer is based on (a) poor performance evaluation(s) contained in the CEP database.
  - (c) An opportunity to rebut adverse evidence and to present evidence that the proposer is qualified to perform the contract will be provided if the proposer submits a written request for such a proceeding. The written request must be received by the awarding authority within 10 calendar days of the date of the notice.
  - (d) If the awarding authority does not receive the written request for an opportunity to rebut adverse evidence within the 10 calendar days of the date of the notice, the proposer may be deemed to have waived any such proceeding.
  - (e) Any evidence that the proposer wishes to present at the proceeding must be received by the awarding authority within 15 calendar days of the date of the notice.
  - (f) The date the proceeding will be held. The proceeding shall be held only if the awarding authority receives the written request within the required time and shall be at least 20 calendar days from the date of the notice.
  - (g) The proceeding shall be limited to the awarding authority's intent not to award the contract to the proposer because of the poor performance evaluation(s) and to the issues raised in those evaluations.
- (3) The awarding authority must allow the proposer 10 calendar days from the date of the notice to submit a written request for an opportunity to rebut

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adverse evidence. If the awarding authority does not receive a written request for such a proceeding within the 10 calendar days, the awarding authority may deem the contractor to have waived the opportunity for such a proceeding. A request for a proceeding may be submitted by fax in order to meet the 10 calendar day deadline provided that the original of that request is submitted prior to the date of the hearing.

- (4) The awarding authority must allow the proposer 15 calendar days from the date of the notice to submit the evidence that the proposer will present at the proceeding. Evidence not received by the awarding authority within the 15 calendar day period may not be considered by the awarding authority during the proceeding.
- (5) If the awarding authority receives a written request for a proceeding within the required time, the proceeding shall be held at least 20 calendar days from the date of the notice and shall be limited to the awarding authority's intent not to award the contract to the proposer because of the poor performance evaluation(s), and to the issues raised in those evaluations.
- (6) The proceeding may be held by the head of the awarding authority, or his/her designee who shall make a recommendation to the head of the awarding authority. The head of the awarding authority shall make the final decision. The decision of the head of the awarding authority is final and constitutes exhaustion of administrative remedies.

### **4. Departmental Evaluations**

- a. The City contract administrator must document the contractor's performance during the term of the contract. The supporting documentation must form the basis for the contractor's performance evaluations.
- b. At the end of the contract, the contract administrator must complete a draft evaluation of the contractor's performance. The draft evaluation must be completed using the evaluation form. The contract administrator must submit the draft of the performance evaluation to the SRIS within 14 calendar days from the date the contract ends. Supporting documentation, if any, must be submitted with the performance evaluation.

### **5. SRIS Review**

- a. The SRIS, upon receipt of the draft evaluation from the contract administrator, will conduct a review to ensure that it is complete, factual, objective, and supported with documentation. If these criteria are not met, the evaluation will be returned to the contract administrator for clarification.

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- b. When a department's evaluation indicates that the work performed by the contractor was "Marginal" or "Unsatisfactory" in one of the performance indicators, the SRIS will send the final performance evaluation to the contractor. The contractor may submit a written response to the SRIS. The contractor's response must be received by the SRIS within 14 calendar days from the date that the final evaluation is sent to the contractor, unless the SRIS in its discretion agrees to extend the time.
- c. The final performance evaluation and any contractor response received by the SRIS within the appropriate time frame shall become part of the CEP database and part of the public record.

### **6. Debarment**

- a. A department may also debar a contractor from doing business with the City if:
  - (1) the contractor performs poorly on (a) contract(s), and
  - (2) the department determines that based on the contractor's performance, the contractor should be considered a non-responsible contractor.
- b. Before a department proceeds to debar a contractor, the department must:
  - (1) Inform the SRIS of its intent to debar the contractor.
  - (2) Contact the Office of the City Attorney to discuss the basis for the proposed debarment of the contractor.
- c. Each department must establish its own procedure for debarment that, at minimum, must include the following:
  - (1) The department must provide the contractor with written notice of the department's intent to debar the contractor. The notice must inform the contractor of the following:
    - (a) The department intends to debar the contractor.
    - (b) The reason(s) and basis for the debarment.
    - (c) An opportunity to rebut adverse evidence and to present evidence that the contractor is a responsible contractor will be provided if the contractor submits a written request for such a proceeding. The department must receive the written request within 10 calendar days of the date of the notice.
    - (d) If the department does not receive a written request for such a proceeding within 10 calendar days from the date of the notice, the contractor may be deemed to have consented to the debarment.
    - (e) Any evidence that the contractor wishes to present at the proceeding must be received by the department within 15 calendar days of the date of the notice.

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- (f) The date the proceeding will be held. The proceeding shall be held only if the department receives the written request within the required time and shall be least 20 calendar days from the date of the notice.
  - (g) The proceeding shall be limited to the reasons stated in the department's notice of intent to debar.
- (2) The department must allow the contractor at least 10 calendar days from the date of the notice of intent to debar to submit a written request for an opportunity to rebut adverse evidence. If the department does not receive a written request for such a proceeding within the appropriate time frame, the department may deem the contractor to have consented to the debarment. A request for a proceeding may be submitted by fax in order to meet the 10 calendar day deadline provided that the original of that request is submitted prior to the date of the proceeding.
- (3) The department must allow the contractor 15 calendar days from the date of the notice of intent to debar to submit the evidence that the contractor intends to present at the proceeding. Evidence not submitted within the 15 calendar days need not be considered by the department during the proceeding.
- (4) If the department receives a written request for a debarment proceeding within the required time, the proceeding shall be held at least 20 calendar days from the date of the notice of intent to debar. The proceeding must allow the contractor an opportunity to address the issues contained in the notice of the department's intent to debar.
- (5) The proceeding may be held by the head of the debarring department, or his/her designee who shall make a recommendation to the head of the department. The head of the department shall make the final decision. The department's decision shall be final and constitutes exhaustion of administrative remedies. The department's final decision shall be provided to the contractor and to the SRIS for inclusion in the CEP database.
- (6) A contractor debarred by a department because of its performance on a contract may not be awarded any contract with any other department in the City. The Citywide debarment is effective for a period of five (5) years from the date of the City's notice that a contractor has been debarred.
  - (a) A contractor debarred from doing business with the City may not perform any work on any City agreement, whether as a prime contractor, a subcontractor, a partner in a partnership, a participant in a joint venture, a member of a consortium or in any other capacity.
- (7) After two (2) years from the date a contractor has been debarred from doing

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business with the City, the contractor may request to be removed from the list of debarred contractors and may be allowed to contract with the City prior to the end of the five (5) year debarment period if the contractor proves that it has corrected the problems which led to the debarment and is a responsible contractor. Evidence must be submitted to the debarring department that the contractor has satisfactorily performed the same type of services for other governmental entities or private companies since it was originally debarred. The department shall provide the contractor with written notice of its decision on whether to lift the debarment. A copy of that decision shall be provided to the SRIS. Unless otherwise removed from the list of debarred contractors by the debarring department, debarred contractors shall remain on the list for five years from the date of being debarred.

- d. Debarment under the Contractor Evaluation Ordinance constitutes debarment under the Contractor Responsibility Ordinance. Similarly, debarment under the Contractor Responsibility Ordinance constitutes debarment under the Contractor Evaluation Ordinance.

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**ATTACHMENT 1: CONTRACTOR EVALUATION RFP/RFB/RFQ LANGUAGE**

**CONTRACTOR EVALUATION**

At the end of this contract, the City will conduct an evaluation of the Contractor's performance. The City may also conduct evaluations of the Contractor's performance during the term of the contract. As required by Section 10.39.2 of the Los Angeles Administrative Code, evaluations will be based on a number of criteria, including the quality of the work product or service performed, the timeliness of performance, financial issues, and the expertise of personnel that the Contractor assigns to the contract. A Contractor who receives a "Marginal" or "Unsatisfactory" rating will be provided with a copy of the final City evaluation and allowed 14 calendar days to respond. The City will use the final City evaluation, and any response from the Contractor, to evaluate proposals and to conduct reference checks when awarding other service contracts.