

**31414**

**ADOPTED – BOARD OF TRUSTEES COMMUNITY COLLEGE  
DISTRICT NO. 508  
MAY 3, 2012**

**BOARD OF TRUSTEES OF COMMUNITY COLLEGE DISTRICT NO. 508  
COUNTY OF COOK AND STATE OF ILLINOIS**

**RESOLUTION  
TO AMEND DEBARMENT POLICY**

**WHEREAS**, the Board of Trustees of Community College District No. 508 is empowered under Section 3-30 of the Illinois Public Community College Act, 110 ILCS 805/3-30 (“the Act”) to exercise all powers not inconsistent with the Act, “that may be requisite or proper for the maintenance, operation and development of any college or colleges under the jurisdiction of the board;”

**WHEREAS**, Section 4.2 of the Board Bylaws provides that the Board may amend any rule or policy by a vote of a majority of the voting members of the Board then holding office at any regular, special or emergency meeting;

**WHEREAS**, the Office of the General Counsel and the Office of Administrative and Procurement Services has conducted a comprehensive review of the Debarment Policy adopted by the Board on April 7, 2011;

**WHEREAS**, the Office of Administrative and Procurement Services recommends that the Debarment Policy be revised to reflect the new organizational structure within the department and amended Board reporting requirements as set forth in attached Exhibit A; and

**WHEREAS**, the proposed revisions to the Debarment Policy have been reviewed by the Chancellor;

**NOW, THEREFORE, BE IT RESOLVED** that the Chancellor recommends that the Board of Trustees adopts the revisions to the Debarment Policy - Article 5, Section 5.3 of the Board Policies for Management and Government of City Colleges of Chicago and that said revisions will be reflected in updated publications of the Board Policies and the City Colleges of Chicago website.

**May 3, 2012 – Office of Administrative and Procurement Services**

## EXHIBIT A AMENDMENTS TO DEBARMENT POLICY

### 5.3 DEBARMENT POLICY.

In order to ensure the effective and efficient administration of and maintain the integrity of City Colleges of Chicago's procurement practices, it is the policy of City Colleges of Chicago (City Colleges) to conduct business legally and only with responsible Vendors. Toward this end, City Colleges shall have the discretion to exclude from participation in its procurement transactions and activities any Vendor who is debarred pursuant to this Debarment Policy or who appears on any suspended, excluded or debarment list issued by any agency of any Federal, State or local government. Debarment shall be used only punishment.

#### 5.3.1 Applicability.

This Debarment Policy applies to any Vendor, principal of any Vendor or an affiliate of any Vendor who has participated, is currently participating or may reasonably be expected to participate in a transaction, contract or other relationship with City Colleges, irrespective of the source of funding.

The Board of Trustees shall have the authority to debar or suspend a Vendor for cause from consideration for award of contracts and from participating in any City Colleges contracts as a contractor, sub-contractor, supplier of any tier, or any other role related to a City Colleges contract.

#### 5.3.2 Definitions.

- a. Affiliate is a person who directly or indirectly controls, or has the power to control, another person or is directly or indirectly controlled by another person. Indicia of control include but are not limited to, common or interlocking management or ownership, officers, or directors, identity of interests among relatives, shared facilities and equipment, or common use of employees or agents. Affiliate also means a business entity organized during or following any investigation or proceeding, or organized following the debarment or proposed debarment of a person, which has the same or similar management, ownership, or principal employees as the person who was investigated, part of the proceeding, debarred, or proposed for debarment, or which operates in a manner designed to evade application of this Debarment Policy.
- b. Board means the Board of Trustees of Community College District No. 508.
- c. Board Contract is any procurement program, activity, transaction, invoice, purchase order or agreement between the Board and a vendor, including all amendments and modifications to and extensions of a Board contract, regardless of the type, amount or source of funding, and regardless of whether the contract is void or voidable by the Board.
- d. Civil Judgment means the disposition of a civil action by any court or tribunal of competent jurisdiction, entered against a vendor, whether by verdict, decision, consent decree, confession of judgment, settlement, stipulation, or otherwise, creating civil liability for alleged wrongful acts, as well as any agreement terminating a dispute before a civil action has been filed in court.

- e. Conviction means a judgment or conviction of, or an order of court supervision for, any criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of no contest.
- f. Person means any individual, corporation, partnership, joint venture, association, unit of government or other legal entity, however organized.
- g. Principal means any officer, director, owner, partner, key employee or other individual with significant management or supervisory responsibilities within a vendor; also a person who has a critical influence on or substantive control over a Board contract, whether or not employed by a vendor; or any affiliate of a vendor.
- h. Related transaction means a transaction directly related to a Board contract, which assists a vendor in executing a Board contract, regardless of the extent the person performing the related transaction has a critical influence on or substantive control over the Board contract. Examples include but are not limited to contracts between a vendor and its agents, appraisers, brokers, consultants, lenders and suppliers.
- i. Vendor means any person who has entered into a Board contract, or has sought or is seeking to or may enter into a Board contract, or is serving as a subcontractor or supplier on a Board contract. It includes all units, divisions, or other organizational elements of a vendor. Vendor for the purposes of this Policy, also means any affiliate, officer, director, principal or employee who has received a Notice of Proposed Debarment under this Policy.

### 5.3.3 Causes for Debarment

The Board may debar a Vendor for:

a. Conviction of or Civil Judgment for:

- (1) commission or attempted commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a private or public contract or subcontract;
- (2) violation or attempted violation of Federal or State statutes, or any other legally applicable law, regulation, or rule relating to the submission of bids, proposals, invoices, or claims;
- (3) commission or attempted commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; or
- (4) commission or attempted commission of any other offense, or engaging in or attempting to engage in conduct indicating a lack of truthfulness or honesty, which affects the responsibility of the Vendor.

b. Violation of the terms of a Board contract or subcontract so serious as to justify Debarment, including but not limited to:

- (1) willful failure to perform in accordance with the terms of one or more contracts or subcontracts;

(2) a history of failure to perform one or more contracts or subcontracts;

(3) a history of unsatisfactory performance of one or more contracts or subcontracts; or (4) a history of failure to meet goals under the Board's Minority and Women-Owned Business Enterprise Program ("M/WBE"), or to meet its obligations to provide Equal Employment Opportunities, or a drug-free-workplace, or to fulfill any other contracting or subcontracting obligations imposed by Board Rule or policy, or any other law.

- c. Making, causing to be made or attempting to make any false, deceptive, or fraudulent material statement in any bid, proposal, or application for Board or any government work, or in the performance of any such contract for the Board or any governmental unit or agency, or in the application for any permit or license;
- d. Making, causing to be made or attempting to make, any false, deceptive, or fraudulent material statement in any application to obtain, expand, or continue certification as an M/WBE;
- e. Engaging or participating in bid-rigging or stringing, or facilitating the bid-rigging or stringing of any Vendor or entity or individual;
- f. Failure to cooperate with the Office of Inspector General in any investigation;
- g. Failure to cooperate with reasonable requests of inspectors, representatives, or other personnel with respect to work under contract provisions, plans, or specifications, or otherwise;
- h. Founding, establishing or operating an entity in a manner designed to evade the application or to defeat the purpose of this or any other Board Policy or any provision of any federal, state or local statute, ordinance, rule or regulation or any other applicable law, rule or regulation; or
- i. Improper conduct, including but not limited to:
  - (1) intentional or negligent billing or invoicing;
  - (2) submitting false, frivolous or exaggerated claims, documents, or records;
  - (3) falsification of claims, documents, or records;
  - (4) willful or grossly negligent destruction of documents or records the Vendor had an obligation to maintain;
  - (5) bribery or coercion of a government official, or other unlawful tampering with a government official; (6) use of false or deceptive statements to obtain some benefit, or causing competition to be restrained or limited;

- (6) use of false or deceptive statements to obtain some benefit, or causing competition to be restrained or limited;
  - (7) misrepresentation to any governmental entity, agency or official;
  - (8) falsely claiming to be an M/WBE, falsely claiming to be eligible for any bidding preference or protected market program, or assisting any other individual or entity to make such a false claim;
  - (9) violation of ethical standards established by the Board, or other dishonesty incident to obtaining, pre-qualifying for, or performing any Board contract or modification thereof;
  - (10) violation of ethical standards established by the Board or other dishonesty incident to applying, obtaining, qualifying for, or acquiring any certification, license, or permit related in any way to a Board contract;
  - (11) failing to timely pay any judgment or other adjudicated debt owed to the Board after a request for payment;
  - (12) failing to timely pay undisputed bills or invoices submitted by subcontractors;
  - (13) unreasonably disputing bills or invoices submitted by subcontractors;
  - (14) knowingly or negligently involving a temporarily constrained, voluntarily excluded or debarred Vendor or other Person in a Board contract or a Related Transaction;
  - (15) violating any provision of a Voluntary Exclusion agreement or any other settlement of a Debarment action between the Board and a Vendor or other Person;
  - (16) Debarment, Suspension, Voluntary Exclusion or Interim Constraints imposed by any governmental entity or agency;
  - (17) failing to defend, indemnify, or hold City Colleges harmless pursuant to a contractual obligation after having received a request to do so; or
  - (18) assisting or facilitating another Person in any of the foregoing conduct;
- j. A loss or suspension of a license or right to do business or practice a profession, the loss or suspension of which indicates dishonesty, a lack of integrity, or a failure or refusal to perform in accordance with the ethical standards of the business or profession in question;
- k. Any act or omission with respect to any procurement program, activity, transaction, invoice,

purchase order or agreement between a Vendor or other Person and the Public Building Commission of Chicago related to construction, demolition, rehabilitation, renovation or repair of or any other work on any City Colleges property committed with respect to any contract; or

1. Any other cause that the Board, in its sole discretion, deems so serious or of such a compelling nature that it affects the responsibility of the Vendor, including facilitating another Vendor's or other Person's violation of any Board Rule, Board policy, Board contract, or any federal, state or local law relating to public contracting.

#### 5.3.4 Reporting Requirements.

To maintain status as an active Vendor, City Colleges may require Vendors to annually report the following:

- a. All officers of the Vendor;
- b. All persons owning 25% or greater interest in the Vendor; and
- c. Any conviction or violation of state or federal law as determined by a court of competent jurisdiction or in an administrative proceeding attributable to the Vendor, an officer of the Vendor or a person owning a 25% or greater interest in the Vendor within the last 3 years.

#### 5.3.5 Procedure.

The Chief Procurement Officer will issue a Notice of Proposed Debarment to a Vendor subject to debarment and any specifically named affiliates. All of the following shall be included in the notice:

- a. A statement that the proposed debarment action is being considered by City Colleges.
- b. A description of the reasons for the proposed debarment in sufficient detail to put the Vendor on notice of the conduct and causes upon which the proposed debarment is based.
- c. A statement indicating that within 28 calendar days from the date of the notice, the Vendor may submit, in writing, any information in opposition to the proposed debarment, including any additional specific information that raises a genuine dispute of material facts or any mitigating circumstances.
- d. Notification that failure to submit a written protest of the proposed debarment within 28 calendar days from the date of the notice, shall be deemed an admission of allegations set forth in the Notice of the Proposed Debarment.
- e. Notification that the Vendor may request to give an in-person presentation to the Chief Procurement Officer to further support the Vendor's written protest.

- f. A description of the potential scope, duration and implications of debarment.
- g. A copy of this Debarment Policy, to inform the Vendor of its terms, including the procedures applicable to and consequence of Debarment.

5.3.6 Debarment Protest.

- a. A Vendor may protest the proposed debarment action by written submission to the Chief Procurement Officer stating in detail the reasons that the proposed debarment is in error. Any documentation supporting the Debarment Protest must be attached, or if voluminous, indexed and included separately. The Vendor's written Debarment Protest shall be received within twenty-eight (28) days from the date of the Notice of Proposed Debarment. Should the Vendor fail to file a timely written Debarment Protest, all of the allegations of the Notice of the Proposed Debarment shall be deemed admitted.
- b. If the Vendor believes there is a genuine issue of disputed material fact that cannot be resolved in the written Debarment Protest alone, the Vendor may request to give an in-person presentation to the Chief Procurement Officer to further support the Vendor's written Debarment Protest. Any such request must include a description of the proposed in-person presentation.
- c. Within 30 calendar days from receipt of the written Debarment Protest, the Chief Procurement Officer shall provide a written decision denying or granting the Vendor's request for an in-person presentation, or if no request was made by the Vendor, the Chief Procurement Officer may determine that an in-person presentation is warranted and notify the Vendor of such.

5.3.7 Consequences of Notice of Proposed Debarment.

From the date the Notice of Proposed Debarment is issued until a decision is made by City Colleges, the following conditions shall apply to the Vendor:

- a. The Vendor may submit bids or proposals on contracts. New contracts may only be awarded conditionally, and if a Vendor is later debarred, the contract(s) may be terminated. The facts underlying a Vendor's proposed debarment and other factors may be considered when evaluating such bids or proposals. When appropriate, contract awards may be delayed to allow City Colleges to reach a decision on the debarment.
- b. The Vendor may continue to perform under any contract not identified in the Notice. However, if the Vendor is debarred, City Colleges may not only terminate all of the Vendor's existing contracts, but also may terminate the Vendor's participation as a subcontractor or supplier.

5.3.8 Debarment Recommendations and Decision.

- 1) The Chief Procurement Officer shall review all facts on which the debarment was based including the Notice of Proposed Debarment and the Vendor's protest and make a recommendation to the Vice Chancellor of Administrative and Procurement Services. The Vice Chancellor of Administrative and Procurement Services shall then review the recommendation and enter a written decision to uphold, modify or overturn the debarment. A copy of the Vice Chancellor's recommendation shall be provided to the Vendor within thirty (30) calendar days of the decision.
- 2) In actions based upon criminal conviction or civil judgment or in which there is not a genuine dispute over material facts as determined by the Chief Procurement Officer, the Chief Procurement Officer shall make a recommendation for debarment to the Vice Chancellor of Administrative and Procurement Services. These recommendations shall be based upon all of the information in the administrative record, including any submission made by the Vendor.
- 3) A recommendation of Debarment shall include the following information:
  1. reference to the Notice of Debarment;
  2. the reasons for recommending Debarment, with reference to record facts;
  3. the period and scope of Debarment, including effective dates;
  4. a statement regarding the effect of the recommended Debarment on the Vendor's existing contracts;
  5. a statement regarding the effect of the recommended Debarment on the Vendor's eligibility to act as a subcontractor or supplier of any tier on any existing and/or future contracts; and
  6. a statement regarding the effect of the recommended Debarment on the Vendor's affiliates or any other individuals.
- 4) The decision of the Vice Chancellor of Administrative and Procurement Services to uphold or reverse a recommendation of the Chief Procurement Officer regarding the proposed debarment shall be final. All debarments shall be reported to the Board of Trustees on a quarterly basis.

#### 5.3.9 Voluntary Exclusion.

Voluntary Exclusion is defined as a status, voluntarily accepted by a Vendor as part of a settlement agreement with the Board of Trustees, in which the Vendor is excluded from participating in Board contracts and/or related transactions.



- a. The Chief Procurement Officer in conjunction with the Vice Chancellor of Administrative and Procurement Services and the General Counsel may settle a proposed Debarment with a Vendor through Voluntary Exclusion as subject to the Board of Trustees' approval.
- b. Vendors who are voluntarily excluded from participation in Board contracts and transactions shall be placed on a list of excluded participants, which list shall be maintained by the Office of Procurement Services.
- c. Any Vendor who participates in a contract or related transaction during the period of its Voluntary Exclusion will be deemed to have donated any goods or services so provided, will not be paid for the goods and services, and may be considered for Debarment on the basis of that participation.

#### 5.3.10 Period of Debarment.

The period of Debarment may be permanent, and may extend to any and all goods and services the Vendor has provided or may in the future seek to provide, or it may be for a stated period of time of not less than 1 year. Periods of Debarment may be imposed concurrently or consecutively, in the sole discretion of the Vice Chancellor of Administrative and Procurement Services.

The Vice Chancellor of Administrative Services may determine that a Debarment be cancelled prospectively or the duration and/or scope be reduced or waived, upon the verified, written application of the debarred individual or entity, supported by documentation, for any of the following reasons:

- a. Discovery of new material evidence within 2 years after the debarment decision, but only if this evidence could not have been discovered through reasonable diligence before the time to submit it under this Policy had passed (an affidavit explaining why the newly discovered evidence could not have been discovered in time for such submission must be attached), or conclusively documented error in the findings of the Board's decision.
- b. Reversal of the Conviction or judgment on which the ineligibility is based. A Vendor debarred from doing business with City Colleges may not perform any work on any City Colleges 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.

#### 5.3.11 Scope of Debarment – Imputation.

- a. Fraudulent, criminal, or other improper conduct of any officer, director, shareholder, partner, 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 or attempted acceptance of the benefits derived

from the conduct shall be evidence of such knowledge, approval, or acquiescence.

- b. Fraudulent, criminal, or other 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, should have known, or had reason to know of the Vendor's conduct.
- c. Fraudulent, criminal or other improper conduct of any officer, director, shareholder, partner, employee or other individual associated with a Vendor that occurred in connection with the individual's performance of duties for or on behalf of the Vendor may be imputed to any other officer, director, shareholder, partner, employee, or other individual associated with that Vendor who participated in, knew of, should have known of, or had reason to know of the improper conduct.
- d. Fraudulent, criminal, or other improper conduct of one Person participating in a joint venture or similar arrangement may be imputed to other participating Persons or their officers, directors, shareholders, partners, employees, agents or other individuals associated with a Vendor if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval or acquiescence of these Persons or these Persons had reason to know or should have known of such conduct. Acceptance or attempted acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.