

**PUBLIC BUILDING COMMISSION OF CHICAGO
MINUTES OF THE AUDIT COMMITTEE MEETING HELD ON
AUGUST 6, 2013**

The Audit Committee Meeting of the Public Building Commission of Chicago was held in the Board Room on the 2nd Floor, Richard J. Daley Center on August 6, 2013 at 3:00 p.m.

The following Committee members attended

Commissioner Cabrera – Chairman
Commissioner Samuel Wm. Sax

Also attending:

Erin Lavin Cabonargi
Lori Lypson
Paul Spieles
Eileen Ryan
Daryl McNabb
Mary Pat Witry
Ilyas Lakada
Lisa Giderof
Langdon Neal, Neal & Leroy
Anne Fredd, Neal & Leroy
Maribeth Vander Weele, Vander Weele Group
Candace Hansford, Vander Weele Group

The reading of the minutes of the July 2, 2013 meeting, which had previously been distributed, was dispensed with and upon motion duly made and seconded the minutes of said meeting were unanimously adopted.

The Pursuant to Section 2.06(g) of the Open Meetings Act, a public comment period was held. No comments or statements were presented by any persons.

The committee met to discuss the proposed adoption of rules and regulations for debarment and imposition of sanctions (follow up from July 2, 2013 Audit Committee meeting). Langdon Neal, PBC's Legal Counsel presented the Audit Committee with an Executive Summary which provided background information regarding the proposed rules along with a summary of the salient provisions of the recommended guidelines. Mr. Neal advised the Audit Committee that the adoption of legally sufficient rules and regulations were necessary to impose debarment or sanctions upon a PBC Contractor in order to comply with procedural safeguards afforded by the U. S. Constitution for "due process", including "notice" and an "opportunity to be

heard". Proposed rules governing the debarment process are substantially similar to rules adopted by other public agencies including the City of Chicago and the Board of Education of the City of Chicago.

In view of potential litigation and pending investigations by the PBC's Inspector General, an Executive Session was convened under Section 5 ILCS 120/2 (c) (11) of the Open Meetings Act to discuss the procedural safeguards. At the conclusion of the Executive Session, the Audit Committee reconvened in open session and accepted the recommendation of Legal Counsel to adopt "Procedural Guidelines for Debarment and Imposition of Sanctions", substantially in the form attached hereto as Exhibit A.

The meeting was adjourned.

PUBLIC BUILDING COMMISSION OF CHICAGO

PROCEDURAL GUIDELINES

FOR

DEBARMENT AND IMPOSITION OF SANCTION(S)

**Procedural Guidelines for
PBC Debarment and Imposition of Sanction(s)**

Article I. Policy.

Section 1.01. Background. It is the policy of the Public Building Commission of Chicago (PBC) to promote honesty, integrity effectiveness, efficiency and economy in the Commission's programs, contracts and operations. In order to ensure this policy, PBC seeks to do business with responsible Contractors only. These Procedural Guidelines for Debarment and Imposition of Sanction(s) (hereinafter "Procedural Guidelines") prescribe rules and regulations governing the Debarment of and imposition of Sanction(s) against Contractors by the PBC.

Section 1.02. Necessity for Debarment Rules. The PBC shall solicit bids and proposals from and award contracts to responsible Contractors only, and consent to subcontracts with responsible subcontractors only. Debarments and the imposition of Sanction(s) are discretionary actions that, taken in accordance with these Procedural Guidelines are an appropriate means to effectuate this policy.

Section 1.03. Purpose of Sanction(s). The serious nature of Debarment requires that it and other Sanction(s) be imposed only in the public interest and not for purposes of punishment. The PBC shall impose Debarment and other Sanction(s) only for the causes and in accordance with the procedures set forth in these Procedural Guidelines.

Article II. Definitions.

Section 2.01. As used in these Procedural Guidelines:

- (a) "Affiliate" is a person, including any individual, or entity, that 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. "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 or entity that has the same or similar management, ownership, or principal employees as the person or entity that was investigated, part of the proceeding, debarred, or proposed for debarment or that operates in a manner designed to evade application of these Procedural Guidelines.
- (b) "Audit Chair" is the chairperson of the Board's Audit Committee.
- (c) "Board" is the Board of Commissioners of the PBC.
- (d) "Cause" is cause for Debarment or the imposition of Sanction(s) for the reasons set forth in Article IV.

- (e) “Civil enforcement action” means any judicial or administrative proceeding filed by any governmental agency other than the PBC for the purpose of civil enforcement of any statute, rule, regulation, or law.
- (f) “Civil judgment” means a judgment or finding of liability by any court or other tribunal of competent jurisdiction against the Contractor on a claim brought by any governmental entity, individual, or private entity, including, but not limited to, a civil enforcement action. Civil judgments include findings of liability that may lead to awards of damages, injunctive or other equitable relief, fines, penalties, declaratory relief and restitution, or determinations of liability on any claim, including a civil enforcement action.
- (g) “Contractor” means any individual, or entity that has entered into a contract with the PBC or is seeking to or may enter into a contract with the PBC, including any service-provider or subcontractor on a PBC contract. It includes all units, divisions or other organizational elements of such person or entity. “Contractor,” for the purposes of these Procedural Guidelines, also means any affiliate, officer, director, or employee who has received Notice of Proposed Debarment or imposition of Sanction(s) under these Procedural Guidelines.
- (h) “Days” means calendar days, unless otherwise specified.
- (i) “Debarment” is the final determination by Board of the PBC that a Contractor is not responsible and is not eligible to enter into contracts with the PBC. Debarment may also include or consist of a determination that the Contractor is not eligible to serve as a subcontractor of any tier on contracts with the PBC, and/or that existing contracts with a Contractor must be terminated.
- (j) “Executive Director” is the Executive Director of the PBC.
- (k) “Indictment” means an action by a grand jury charging a criminal offense. An information or other filing by competent authority charging a criminal offense is given the same effect as an indictment.
- (l) “Inspector General” or “PBC IG” is the Inspector General of the PBC.
- (m) “PBC contract” is any agreement between the PBC and any individual or entity, whose cost is to be paid directly or indirectly from funds belonging to or administered in whole or in part by the PBC, regardless of source. Contracts include all amendments, modifications, and extensions of contracts.
- (n) “Procedural Guidelines” means these Procedural Guidelines for Debarment and imposition of Sanction(s) as adopted by the PBC.
- (o) “Sanction(s)” means less than full Debarment, including but not limited to, suspension for a specified period of time, partial debarment or a finding of non-responsibility as a contractor or subcontractor in relation to particular contracts or classes of contracts, imposition of investigative administrative costs or monetary

damages, or additional reporting and/or monitoring requirements for PBC contracts.

Article III. Application.

Section 3.01. Application of Debarment. Debarment constitutes debarment of all units, divisions, or other organizational elements of the Contractor, no matter how denominated, unless the debarment decision is limited by its terms to specific units, divisions or organizational elements. The PBC may extend the debarment decision to include any Affiliates of the Contractor, as well as individuals associated with or employed by the Contractor to whom improper conduct may be imputed pursuant to these Procedural Guidelines. For purposes of these Procedural Guidelines, a Contractor includes a PBC contractor as well as a subcontractor of any tier on a PBC contract.

Section 3.02. Application to all Contracts. A Debarment shall apply to all PBC contracts. A debarred Contractor shall be debarred from participating in any PBC contract as a subcontractor of any tier.

Article IV. Cause.

Section 4.01. Definition of Cause. The PBC may impose Debarment or Sanction(s) against a Contractor, including any subcontractor, for Cause, which shall include the following:

- (a) Conviction of, or civil judgment for:
 - (1) Commission or attempted commission of fraud or a criminal offense in connection with (A) obtaining, (B) attempting to obtain, or (C) performing a private or public contract or subcontract; or
 - (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, or claims; or
 - (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, veracity, or honesty which affects the responsibility of the Contractor.
- (b) Material violation of the terms of a PBC contract or subcontract, including but not limited to:
 - (1) Willful failure to perform in accordance with the terms of one or more contracts or subcontracts; or
 - (2) A history of failure to perform one or more contracts or subcontracts; or

- (3) A history of unsatisfactory performance of one or more contracts or subcontracts; or
 - (4) A history of failure to meet MBE/WBE/DBE obligations, Equal Employment Opportunity obligations, City resident and community hiring obligations, prevailing wage obligations, or any other contracting or subcontracting obligation imposed by the PBC or any other law; or
- (c) Making or attempting or causing to be made or attempting to cause to be made any false, deceptive, or fraudulent material statement in any bid, proposal, or application for PBC or any government work or in the performance of any such contract for the PBC or a government agency, or application for any permit or license; or
 - (d) Refusal to cooperate with reasonable requests of the PBC IG, PBC Ethics Officer, inspectors, representatives, or other appropriate PBC personnel with respect to work under contract provisions, plans, or specifications, or otherwise; or
 - (e) Founding, establishing or operating an entity in a manner designed to evade the application or defeat the purpose of these Procedural Guidelines or any rule or regulation of the PBC, the statutes, rules or regulations of the State of Illinois, Cook County, City of Chicago or any federal statute, rule or regulation, or any other legally applicable law, regulation, or rule; or
 - (f) Improper conduct, including but not limited to the commission or attempted commission of:
 - (1) intentional or negligent billing irregularities; or
 - (2) submitting false or frivolous or exaggerated claims, documents, or records; or
 - (3) falsification of claims, documents, or records; or
 - (4) willful or grossly negligent destruction of documents or records the Contractor had an obligation to maintain; or
 - (5) bribery or coercion of a government official, or other unlawful tampering with a government official; or
 - (6) use of false or deceptive statements to obtain some benefit, or causing competition to be restrained or limited; or
 - (7) misrepresentation to any governmental agency or government official; or
 - (8) falsely claiming to be a minority-owned, woman-owned, persons with disabilities, or disadvantaged business enterprise, or falsely claiming to be eligible for any bidding preference or protected market program; or

- (9) violation of ethical standards established by the PBC, or other dishonesty incident to obtaining, pre-qualifying for, or performing any contract or modification thereof; or
 - (10) any other cause of so serious or compelling a nature that it affects the responsibility of the Contractor, including, but not limited to, those specifically enumerated in 65 ILCS 5/8-10-11; or
 - (11) Failing to defend, indemnify, or hold harmless the PBC pursuant to a contractual obligation after having received a request to do so.
- (g) Any other cause of so serious or compelling a nature that it affects the responsibility of the Contractor; or
- (h) Debarment or Sanction(s) imposed by any other government agency.

Article V.

Factors to be Considered in Debarment or in the Imposition of Sanction(s).

Section 5.01. Mitigating Factors. The PBC will consider the seriousness of the Contractor's acts or omissions, and any remedial measures or mitigating factors, in making any Debarment or decision regarding the imposition of Sanction(s). Before arriving at any decision, the PBC shall consider factors such as the following:

- (a) Whether the Contractor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for Debarment or the imposition of Sanction(s) or had adopted such procedures prior to any PBC investigation of the activity cited as a cause for Debarment or imposition of Sanction(s);
- (b) Whether the Contractor brought the activity cited as a cause for Debarment or the imposition of Sanction(s) to the attention of the PBC Inspector General or other appropriate PBC personnel in a timely manner;
- (c) Whether the Contractor has fully investigated the circumstances surrounding the Cause for Debarment or the imposition of Sanction(s) and, if so, made the result of the investigation available to the PBC Inspector General or other PBC investigative personnel;
- (d) Whether the Contractor cooperated fully with PBC during its investigations and in court or administrative action;
- (e) Whether the Contractor has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity;

- (f) Whether the Contractor has paid or has offered to pay any investigative or administrative costs incurred by the PBC, and/or has made or offered to make full restitution;
- (g) Whether the Contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for Debarment or the imposition of Sanction(s);
- (h) Whether the Contractor has implemented or agreed to implement remedial measures, including any identified by the PBC;
- (i) Whether the Contractor has instituted or agreed to institute new or revised review and control procedures and ethics training programs;
- (j) Whether the Contractor has had adequate time to eliminate the circumstances within the Contractor's organization that led to the cause for Debarment or the imposition of Sanction(s); and
- (k) Whether the Contractor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for Debarment or imposition of Sanction(s) and has implemented programs to prevent recurrence.

Section 5.02. Burden. The Contractor has the burden of demonstrating that Debarment or the imposition of Sanction(s) is not warranted under the foregoing potentially mitigating factors.

Article VI. Debarment or the Imposition of Sanction(s).

Section 6.01. Inspector General to Investigate Alleged Violations. It is the responsibility of the Inspector General to investigate facts or circumstances that may give rise to Cause for Disbarment or the imposition of Sanction(s). Nothing herein shall prevent the Executive Director from referring facts or circumstances that may give rise to Cause for Debarment or the imposition of Sanction(s) to the Audit Committee.

Section 6.02. Final Report of Inspector General. Upon conclusion of any investigation or review if the Inspector General determines that there is reason to believe that Cause exists, the Inspection General shall submit a final report to the Audit Chair. The Inspector General's report shall be confidential and not disclosed to any other person.

Section 6.03. Inspector General to Give Notice. Where there is reason to believe that Cause exists, the Audit Committee or its designee shall authorize the issuance of the Notice of Proposed Debarment or Imposition of Sanction(s) ("Notice").

Section 6.04. Notice of Proposed Debarment or Imposition of Sanction(s). A Notice shall advise the Contractor and any specifically named affiliates or other individuals:

- (a) That Debarment or the imposition of Sanction(s) is being proposed;

- (b) Of the basic facts and reasons for the proposed Debarment or Sanction(s) in terms sufficient to put the Contractor on notice of the conduct and/or transaction(s) upon which it is based;
- (c) Of the Cause(s) relied upon to proposed Debarment or the imposition of Sanction(s);
- (d) That, within 35 days after receipt of the Notice, the Contractor may submit, in writing, information and argument in opposition to the proposed Debarment or Sanction(s);
- (e) The notice address for matters relating to the proposed Debarment or Sanction(s); and
- (f) That a copy or summary of the PBC Procedural Guidelines can be obtained at <http://www.pbcchicago.org> which shall be sufficient to inform the Contractor of the information specified in these Procedural Guidelines.

Section 6.05. Answer. The Contractor may submit its answer no more than 35 calendar days after receipt of the Notice. The Contractor's answer must be in writing and shall include an admission, denial, or other response to each of the allegations in the Notice. The date of delivery will be the date of receipt by the PBC. The omission of such a response to any allegation in the Notice shall be deemed an admission of that allegation. The answer also must include all the facts, arguments, or other basis upon which the Contractor contests the Debarment or imposition of Sanction(s). Should the Contractor fail to file a timely answer to the Notice, all of the allegations of the Notice shall be deemed to be admitted. The Contractor must provide contact information for purposes of the Debarment or imposition of Sanction(s) including a contact person or attorney, address, phone number, fax number, and email address. The Contractor may rest on its written answer and/or may request an evidentiary hearing.

Section 6.06. Hearing. At the request of the Contractor, an evidentiary hearing shall be held before the Audit Committee on the proposed Debarment or imposition of Sanction(s).

Section 6.07. Hearing Date. Within five days of the time for the Contractor to file its answer, the Audit Chair shall notify the Contractor of the time, date and location of the hearing, which hearing shall commence not less than 30 calendar days nor more than 60 calendar days following such notice.

Section 6.08. Presiding Officer. The hearing shall be presided over by the Audit Chair or designee ("Presiding Officer"). The Inspector General or Audit Chair designee shall present the PBC's case.

Section 6.09. Hearing Procedures. The hearing shall be conducted in a manner consistent with principles of due process and fundamental fairness. The Presiding Officer may use flexible procedures, and is not required to follow formal rules of evidence or procedure. Hearsay evidence may be admitted if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The Contractor shall have the right to be represented by counsel, present witnesses and evidence on its own behalf and to cross-examine witness

presented by the PBC. The Presiding Officer and the members of the Audit Committee may also question the witnesses. The Contactor, Inspector General, or Audit Chair designee shall submit a list of all attendees 10 days prior to the hearing, including identifying those persons who will be presented as witnesses. The Presiding Officer designated to conduct the hearing reserves the right to limit the number of witnesses and the length and scope of testimony, including but not limited to prohibiting non-relevant, cumulative, or duplicative testimony.

Section 6.10. Record of Proceedings. Hearings conducted pursuant to these Procedural Guidelines shall be recorded in any reliable manner and the evidence shall be entered in the record of the proceedings. A copy of the transcript, audiotape or other medium shall be made available to the Contractor upon written request.

Section 6.11. Extension of Time. Any deadline set forth in Article VI may be extended in the discretion of the Audit Chair or Audit Chair designee in the interest of fairness and justice.

Section 6.12. Settlement. The Contractor subject to the debarment or sanction proceeding may enter into a settlement agreement with the PBC relating to the proposed Debarment or the imposition of Sanction(s).

Section 6.13. Withdrawal of Notice of Proposed Debarment or Imposition of Sanction(s). The Inspector General or Executive Director may withdraw the Notice without prejudice for any reason prior to the final decision.

Section 6.14. Partial Remedy. When the Audit Committee determines that the Contractor's conduct was improper but does not rise to a level warranting full debarment, it may recommend imposition of any Sanction as provided in Section 2.01(o), including but not limited to any of the following, suspension for a specified period of time, partial debarment or a finding of non-responsibility as a contractor or subcontractor in relation to particular contracts or classes of contracts.

Article VII. Decisions.

Section 7.01. Submittal of Recommendation and Record to Board. Within 60 calendar days of the close of evidence, the Audit Committee shall make its determination with respect to the charges brought. All Audit Committee members who attended the hearing or who were furnished with the complete record of proceedings may vote. The Audit Committee shall prepare its recommendation for action on the charges and submit its recommendation to the Board, together with the complete record of the proceeding before the Audit Committee. The Audit Committee shall, within the same time, notify the Contractor of its recommendation.

Section 7.02. Contents of Audit Committee Recommendation. The Audit Committee's recommendation shall:

- (a) Refer to the Notice of Proposed Debarment or Imposition of Sanction(s);
- (b) Specify the reasons for Debarment, imposition of Sanction(s) or other action, with reference to record facts;

- (c) State the period and type of Debarment or Sanction(s), including effective dates;
- (d) State the effect of the Debarment or Sanction(s) on the Contractor's existing contracts with the PBC;
- (e) State the effect of the Debarment or Sanction(s) on the Contractor's eligibility to act as a subcontractor or supplier of any tier on any existing and/or future contracts with other PBC Contractors; and
- (f) State the effect of the Debarment or Sanction(s) on Affiliates or any other individuals.

Section 7.03. Action by the Board. Every recommendation shall be submitted to the Board for final action.

Section 7.04. Board Consideration of Audit Committee Recommendation. The Board shall give due consideration to the findings, recommendations and record of the Audit Committee in making its determination with respect to the proposed Debarment or imposition of Sanction(s), but is not bound thereby.

Section 7.05. Board's Action Final. The Board shall issue its decision in writing and notify the Contractor of its determination. No action, other than the Board action described in this section, is a final action. The Contractor may seek review of final Board action by way of common law *certiorari*.

Section 7.06. Consequences of Notice of Proposed Debarment. From the date of issuance of Notice until a decision is made by the Board, the Contractor may:

- (a) Submit bids or proposals on PBC contracts and be awarded contracts and perform work on behalf of the PBC. If a Contractor is later debarred, any contract(s) awarded to the Contractor may be terminated unless an exception is granted pursuant to Section 8.02.
- (b) Continue as a Contractor, subcontractor or supplier on existing contracts. However, if the Contractor, subcontractor or supplier is debarred, the PBC may terminate or suspend the participation by such entity in those contracts unless an exception is granted pursuant to Section 8.02.

Article VIII. Period of Debarment, Sanction, Extensions and Reductions.

Section 8.01. Duration of Debarment. The period of Debarment or Sanction(s) may be for a stated period of time, or if no duration is set at the time of the Debarment or Sanction(s), indefinitely. Periods of Debarment or Sanction(s) may be imposed concurrently or consecutively.

Section 8.02. Emergency Suspension of Debarment or Sanction(s). The PBC may peremptorily suspend a Debarment or Sanction in whole or in part in order to allow the Contractor to bid on or execute a specific contract where:

- (a) the public health, safety or welfare requires the goods or services of the debarred or sanctioned person or entity, or it is otherwise in the best interest of the PBC to use the goods or services of the person or entity; or
- (b) the PBC is unable to acquire the goods or services at comparable price and quality, or in sufficient quantity from other sources.

Section 8.03. Relief from Debarment or Sanction(s). A Contractor may seek relief from a final order of Debarment or the imposition of Sanction(s) on the ground of a material and unforeseen change of circumstance. The Contractor's request for relief shall be submitted to the Audit Chair or Audit Chair designee, who, after determining that the request states on its face grounds for relief, shall schedule a hearing on the request. The hearing, recommendation and determination shall proceed in the manner of a Debarment or imposition of Sanction(s) proceeding. A Contractor's request pursuant to this section is not a mandatory action and seeking relief hereunder is not a prerequisite for common law action for *certiorari*.

Article IX. Scope of Debarment — Imputation.

Section 9.01. Imputation. The fraudulent, criminal, or other improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a Contractor, subcontractor or supplier may be imputed to such entity when the conduct occurred in connection with the individual's performance of duties for or on behalf of such entity, or with the knowledge, approval, or acquiescence of such entity. The acceptance or attempted acceptance of the benefits derived from the conduct by the Contractor, subcontractor or supplier shall be evidence of knowledge, approval, or acquiescence by such entity.

Article X. Miscellaneous.

Section 10.01. No Restriction on Other Procurement. These Procedural Guidelines do not restrict the Executive Director's ability to make determinations pertaining to the responsibility of a contractor, subcontractor or supplier on a contract-by-contract basis for any reason, including circumstances that constitute Cause under the Procedural Guidelines, or to reject any bid and all bids pursuant or any other provision of law or legally permissible reason.

Section 10.02. Service of Notice. Notice shall be by any means reasonably calculated to provide actual notice to the person who is subject to the notice and provide proof of service in the record. If notice is sent by certified mail, return receipt requested or similar means, the notice shall be presumed to have been received within three days.

Section 10.03. Effective Date. These Procedural Guidelines shall take effect _____, 2013 and shall apply to all conduct, whether occurring before or after the effective date of these Procedural Guidelines.