

Ordinance

Board of

Ramsey County Commissioners

Presented By: Commissioner McDonough Date: December 3, 2013 No. 2013-330

Attention: County Attorney
Finance
Procurement Office

Page 1 of 12

=====
An ordinance establishing the process by which Covered
Persons as that term is defined herein may be debarred or
suspended from contracting with Ramsey County.

The Board of Commissioners of the County of Ramsey does ordain:

SECTION 1 – TITLE; PURPOSE; AND AUTHORITY.

A. Title. This Ordinance shall be known and may be cited as the “Ramsey County Contract Compliance and Debarment Ordinance.”

B. Purpose. The Ramsey County Board of Commissioners determines and declares that:

- 1) Whereas, the citizens of Ramsey County deserve a public contracting and procurement process for the purchase of goods, supplies, services and other works that reflects the highest ideals and values of contractual compliance, fair dealing, ethical practices and good faith; and
- 2) Whereas, the preservation of the integrity of the public contracting and procurement process of Ramsey County is vital to the efficient and effective operations of county government; and
- 3) Whereas, the procedures of Ramsey County for solicitation and awarding County contracts exist to encourage the public benefits of free and open competition and to secure the quality and integrity of public goods, supplies, services and other works; and
- 4) Whereas, the opportunity to be awarded contracts with Ramsey County to supply goods, services or other works is a privilege, not a right; and
- 5) Whereas, the privilege of contracting with Ramsey County to supply the County and its citizens with goods, services or other works should be denied to persons who have violated the provisions of this Ordinance.



Ordinance

Board of

Ramsey County Commissioners

Presented By: Commissioner McDonough Date: December 3, 2013 No. 2013-330

Attention: County Attorney
Finance
Procurement Office

Page 2 of 12

=====
C. Authority. This Ordinance is enacted pursuant to the powers granted to Ramsey County under Minnesota Statutes, Sections 375.51, 471.345, Subdivision 6, the Home Rule Charter for Ramsey County, and other applicable state laws as they may be amended from time to time.

SECTION 2 - DEFINITIONS.

A. Definitions.

- 1) *Affiliate* means a predecessor or successor of a Covered Person by merger, reorganization, sale or otherwise, who directly or indirectly through an officer, executive manager, key employee or director controls or has the power to control the Covered Person. Evidence of control includes, but is not limited to, interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees; or a business entity organized following the Suspension or Debarment of a Covered Person which has the same or similar management, ownership or principal employees as the Suspended or Debarred Covered Person.
- 2) *County* means collectively Ramsey County, a home rule charter county and political subdivision of the State of Minnesota together with its Regional Railroad Authority and its Housing and Redevelopment Authority, both of which are political subdivisions of the State of Minnesota.
- 3) *County Manager* means the appointed Manager of the County or her/his designee.
- 4) *Covered Person* means contractors, subcontractors, vendors, suppliers, agents, or other persons regardless of the form of business entity used by the Covered Person, including but not limited to individuals, sole proprietorships, independent contractors, Affiliates, Participants and Principals.
- 5) *Covered Transactions* means any contract in which the County is a party for the performance, sale or supply of construction, repair, supplies, equipment, materials, and professional, client and/or labor services. A Covered



Ordinance

Board of

Ramsey County Commissioners

Presented By: Commissioner McDonough Date: December 3, 2013 No. 2013-330

Attention: County Attorney
Finance
Procurement Office

Page 3 of 12

=====
Transaction shall also mean the performance, sale or supply of construction, repair, supplies, equipment, materials, and professional, client and/or labor services procured by the County made between a Covered Person and a subcontractor even if the subcontractor has no direct agreement with the County. Covered Transactions shall further include those transactions specifically designated by agencies of federal, state and local governments when such agencies laws and regulations governing Debarment and Suspension are not handled through a County procurement program but which are financed or economically supported in whole or in part by County funds.

- 6) *Debarment* shall mean an action taken by the County in accordance with this Ordinance to exclude a Covered Person from participating in Covered Transactions. A Covered Person so excluded is "Debarred."
- 7) *Debarment Proceeding* shall mean an action taken by the County that could lead to Debarment, whether or not Debarment is the sanction imposed by the County.
- 8) *Hearing Examiner* shall mean an individual or panel of individuals appointed by the County Manager to preside as the fact finder at a hearing requested by a Covered Person to challenge a proposed Debarment. The Hearing Examiner appointed by the County Manager shall only include employees of the County or other state or local government entities.
- 9) *Notice* shall mean a written communication served in person or sent by both first-class mail and certified mail return receipt requested to the last-known address of the Covered Person, its identified counsel if known to the County, its agent for service of process, or any partner, officer, director, owner or joint venturer of the Covered Person. Notice shall be considered to have been received by the Covered Person five (5) calendar days after the date it was mailed, regardless of whether the Notice is returned as undeliverable.



Ordinance

Board of

Ramsey County Commissioners

Presented By: Commissioner McDonough Date: December 3, 2013 No. 2013-330

Attention: County Attorney
Finance
Procurement Office

Page 4 of 12

- =====
- 10) *Participant* means any Covered Person who submits a proposal for, enters into, or reasonably may be expected to enter into a Covered Transaction. This term also includes any person who acts on behalf of or is authorized to commit a Participant in a Covered Transaction as an agent or representative of another Participant.
 - 11) *Preponderance of Evidence* means proof by information or testimony that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.
 - 12) *Principal* means an officer, director, owner, partner or key employee retained or employed by a Covered Person with primary management or supervisory responsibilities. Principal also includes a person who has a critical influence on or substantive control over a Covered Transaction on behalf of a Covered Person regardless of whether the Principal is retained or employed by the Covered Person.
 - 13) *Procurement Manager* means that person employed by the County and designated by the County Manager to supervise County procurement programs and policies.
 - 14) *Proposal* means a solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a Covered Person seeking to participate or to receive a benefit directly or indirectly, in or under a Covered Transaction.
 - 15) *Respondent* means a Covered Person against whom a Debarment or Suspension action has been initiated.
 - 16) *Suspension* means an action taken in accordance with this Ordinance that immediately excludes a Covered Person from participating in Covered Transactions for a temporary period, pending completion of an investigation and such legal or Debarment proceedings as may ensue. A Covered Person so excluded is "Suspended."



Ordinance

Board of

Ramsey County Commissioners

Presented By: Commissioner McDonough Date: December 3, 2013 No. 2013-330

Attention: County Attorney
Finance
Procurement Office

Page 5 of 12

=====

SECTION 3 - APPLICABILITY.

This Ordinance applies to all Covered Persons who have participated, are currently participating or may reasonably be expected to participate in Covered Transactions.

SECTION 4 – DEBARMENT AND SUSPENSION.

A. Effect of Debarment or Suspension.

- 1) Covered Persons who are Debarred or Suspended shall be excluded from Covered Transactions for the period of their Debarment or Suspension. Accordingly, no employee or agent of the County shall enter into Covered Transactions with a Debarred or Suspended Covered Person during such period, except as permitted pursuant to Paragraph 2) of this Section 4.
- 2) Notwithstanding the Debarment or Suspension of any Covered Person, the County may continue with those Covered Transactions with the Covered Person that were in existence at the time the Covered Person was Debarred or Suspended provided such Covered Transactions were completely unrelated to the act or omission giving rise to the Debarment or Suspension. A decision made by the County to continue with a Covered Transaction pursuant to this Paragraph 2) must be made only upon a determination that the best interests of the County will be served by the decision.
- 3) The County shall not enter into, renew or extend Covered Transactions with any Covered Person who is Debarred or Suspended during the term of the Debarment or Suspension.
- 4) Except as otherwise provided in Paragraph 2) of this Section 4, no Covered Person who has been Debarred or Suspended in accordance with this Ordinance may receive the benefits from any contract where the County is a funding source for the contract so long as the period of Debarment or Suspension is in effect. The County shall include language in solicitations and resulting contracts to reflect this provision.
- 5) No Covered Person shall be awarded any contract with the County if, after being Debarred or Suspended and within six (6) months thereafter, it



Ordinance

Board of

Ramsey County Commissioners

Presented By: Commissioner McDonough Date: December 3, 2013 No. 2013-330

Attention: County Attorney
Finance
Procurement Office

Page 6 of 12

=====
reconstitutes itself in such a way as to avoid the effect of Debarment or Suspension. Such a determination will be made by the County Manager applying the standards set forth concerning evidence of control as set forth in the definition of an "Affiliate" as defined in Section 2, A.1) of this Ordinance.

B. Causes for Debarment and Suspension.

- 1) Debarment may be imposed upon any Covered Person in accordance with the provisions of this Ordinance for the actions or inaction of the Covered Person in connection with a Covered Transaction. Debarment may also be imposed upon a Covered Person regardless of whether they are in a direct contractual relationship with the County. Suspension may be sought for any of the causes identified in Section 4 B. 2) of this Ordinance when prompt action is necessary to protect the public interest.
- 2) Debarment may be imposed upon any Covered Person for:
 - a. A conviction, civil judgment or adverse ruling decreed or made by a judicial or administrative tribunal with jurisdiction recognized under federal, state or local laws for: the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public or private agreement or transaction; violation of federal or state antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging; embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; violations of federal, state or local labor laws; violation of Minnesota consumer protection statutes, or any other civil or criminal violation indicating a lack of business integrity or business honesty, including loss or lack of required licensure, that seriously and directly affects the capacity of a Covered Person to perform a Covered Transaction in conformance with the purposes described in Section 1 of this Ordinance.
 - b. Material violation of the terms of a Covered Transaction, public agreement or other transaction, such as a willful failure to perform in accordance with the terms of one or more public agreements or transactions; a history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or a willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.
 - c. A Debarment by any federal, state, or local government agency.



Ordinance

Board of

Ramsey County Commissioners

Presented By: Commissioner McDonough Date: December 3, 2013 No. 2013-330

Attention: County Attorney
Finance
Procurement Office

Page 7 of 12

- =====
- d. Knowingly doing business with a Debarred or Suspended Person in connection with a Covered Transaction, except as permitted in Section 4 A. 2) of this Ordinance.
 - e. The violation of a material provision of a voluntary exclusion from contracting agreement or of any settlement agreement of a Debarment or Suspension action.
 - f. Violation of any federal, state or local law or ordinance regulating hours of labor and wages including but not limited to minimum wage standards and any other prevailing wage standards, living wage standards, the Federal Davis Bacon Act, Minnesota Statute § 116J (relating to business subsidies), discrimination in wages standards, or child labor standards.
 - g. Violation of any federal, state or local laws, ordinances, rules, regulations or agreements regarding discrimination in employment, civil rights, affirmative action, equal employment opportunity, conflict of interest, or nondiscrimination.
 - h. The violation of a labor peace agreement or project labor agreement.
 - i. Any serious or compelling causes that are related to a Covered Persons' fitness to enter into or successfully perform a Covered Transaction.
- 3) Suspension may be imposed upon any Covered Person against whom a Debarment Proceeding has been commenced provided the Notice of the Debarment Proceeding describes the reason for the Suspension.

C. Debarment proceeding process.

- 1) *Notice and hearing requirements.* In any case where the County intends to consider a Debarment, the Respondent shall be given written notice and an opportunity to be heard as provided herein.
- 2) *Notice.* If the Procurement Manager determines that cause exists to commence a Debarment under this Ordinance she/he may file a complaint with the County Attorney's Office. On behalf of the County, the County Attorney's Office shall issue a written Notice of the proposed proceedings to the Respondent. The Notice shall advise the Respondent of the following:
 - a. That a Debarment Proceeding is being considered;
 - b. The reasons or causes for proposed action in terms sufficient to put the Respondent on reasonable notice of the conduct or transaction(s) upon which it is based;
 - c. The proposed sanction to be sought against the Respondent;
 - d. That the Respondent is entitled to a hearing before a recommendation of Debarment is made by the Hearing Examiner;



Ordinance

Board of

Ramsey County Commissioners

Presented By: Commissioner McDonough Date: December 3, 2013 No. 2013-330

Attention: County Attorney
Finance
Procurement Office

Page 8 of 12

=====

- e. That the Respondent can choose to admit or deny the allegations contained in the Notice giving rise to the Debarment Proceeding.
- (i) If the Respondent wishes to admit the allegations but contest the proposed sanction, he/she may submit information to mitigate the penalty to the County Attorney's Office within thirty (30) calendar days following receipt of the Notice and the County Attorney's Office shall respond within thirty (30) calendar days following receipt of such response as to whether the information has changed the proposed sanction.
 - (ii) If the Respondent wishes to deny the allegations giving rise to the Debarment Proceeding, then the Respondent must request a hearing before a Hearing Examiner.
 - (iii) If no hearing is requested by the Respondent in writing within thirty (30) calendar days of receipt of the Notice of Debarment Proceeding the allegations contained in the Notice shall be deemed to have been admitted by the Respondent and the proposed penalty deemed to have been accepted by the Respondent.

- 3) Upon receipt of a written request from the Respondent, the County Attorney's Office shall arrange a hearing before a Hearing Examiner. At the hearing, the Respondent shall be provided an opportunity to present evidence and argument as well as meet adverse testimony or evidence by reasonable cross-examination and rebuttal evidence. The Hearing Examiner may in his/her discretion permit other interested persons the opportunity to present testimony or evidence or otherwise participate in such hearing.

D. Hearing before Hearing Examiner.

- 1) *Duties.* The Hearing Examiner shall hear all evidence as may be presented on behalf of the County and the Respondent, and shall present to the County Manager and Respondent written findings of fact and conclusions of law together with a recommendation regarding the appropriate sanction.
- 2) *Legal Representation.* The Respondent may be self-represented or choose to be represented by another.
- 3) *Record; Evidence.* The Hearing Examiner shall receive and keep audio record of such proceedings, including testimony and exhibits, and shall receive and give weight to evidence, including hearsay evidence, which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.



Ordinance

Board of

Ramsey County Commissioners

Presented By: Commissioner McDonough Date: December 3, 2013 No. 2013-330

Attention: County Attorney
Finance
Procurement Office

Page 9 of 12

- =====
- 4) *Burden of Proof.* The County must prove the cause for a Debarment by a Preponderance of the Evidence. If the action is based upon a criminal conviction or a civil judgment arising out of Respondent's business affairs or a Debarment by a federal or state agency or another local unit of government, the standard shall be deemed to have been met through introduction of evidence of the conviction, judgment or Debarment. The Respondent has the burden of proof for establishing mitigating circumstances.
 - 5) *Appeal.* If Debarred, a Respondent may file an appeal in writing with the Clerk of the County challenging the findings of fact and conclusions of law recommended by the Hearing Examiner within thirty (30) calendar days following Notice of a decision to debar. If such an appeal is timely received by the County Clerk, the County Manager shall within sixty (60) calendar days following receipt of the appeal and pursuant to Section 4. E of this Ordinance, decide whether the actions taken were made in accordance with this Ordinance and were fair and in the best interests of the County and its citizens.

E. Final Determination by County Manager.

- 1) *Review.* Upon receipt of an appeal filed by a Respondent pursuant to Section 4.D. 5) of this Ordinance, the County Manager shall consider the complaint of the Procurement Manager, the evidence contained in the record, the Hearing Examiner's recommended findings of fact and conclusions. The County Manager shall not consider any factual testimony not previously submitted to and considered by the Hearing Examiner. The County Manager may accept, reject or modify the findings, conclusions and recommendations of the Hearing Examiner.
- 2) *Order.* Where the County Manager orders Debarment with respect to a Respondent, the County Manager shall issue an order which shall contain her/his findings and determination. The order may adopt all or part of the findings, conclusions and recommendations of the Hearing Examiner, and incorporate the same in her/his order. The order must include findings and conclusions to support modification or rejection of any of the findings and recommendation made by the Hearing Examiner.



Ordinance

Board of

Ramsey County Commissioners

Presented By: Commissioner McDonough Date: December 3, 2013 No. 2013-330

Attention: County Attorney
Finance
Procurement Office

Page 10 of 12

- =====
- 3) *Imposition of Costs.* The County Manager may impose upon any Respondent some or all of the costs of a contested hearing before an Hearing Examiner. The costs of a contested hearing include, but are not limited to, the costs of the Hearing Examiner, stenographic and recording costs, copying costs, County staff and attorney time for which adequate records have been kept, rental of rooms and equipment necessary for the hearing and the cost of expert witnesses. The County Manager may impose all or part of such costs in any given case if the position, claim or defense of the Respondent was frivolous, arbitrary or capricious, made in bad faith or made for the purpose of delay or harassment.
 - 4) Any decision from the County Manager made pursuant to this Ordinance shall be final, subject only to judicial review by a court of competent jurisdiction.

F. Determination and Length of Debarment and Suspension.

- 1) *Debarment.* Debarment shall be for a period commensurate with the seriousness of the cause(s). A Debarment shall not exceed three (3) years and shall become effective on the date of the mailing of the order for Debarment. If a Suspension precedes a Debarment, the Suspension period shall be considered in determining the Debarment period. The recommended sanctions for a Respondent under this Ordinance shall be based upon appropriate aggravating and mitigating circumstances such as:
 - a. The potential for harm or imminent threat to public health;
 - b. The extent of deviation from contractual or regulatory requirements;
 - c. The degree of willfulness or negligence on the part of the Respondent;
 - d. The Respondent's history of noncompliance or compliance in performing the Covered Transaction;
 - e. Whether the Respondent has been debarred in another jurisdiction;
 - f. The demonstration of good faith efforts by the Respondent to correct the violation[s] alleged in the Debarment Proceeding;
- 2) *Suspension.* All Suspensions shall be for a temporary period pending the completion of an investigation and such legal or Debarment proceedings as may ensue. A Suspension shall not exceed the time periods described in this Ordinance by which an order of Debarment by the County Manager is deemed final. A Suspension shall become effective immediately upon issuance of the Notice specified in Section 4. C. of this Ordinance.



Ordinance

Board of

Ramsey County Commissioners

Presented By: Commissioner McDonough Date: December 3, 2013 No. 2013-330

Attention: County Attorney
Finance
Procurement Office

Page 11 of 12

=====

G. Debarment Records.

All documents and other data assembled pursuant to this chapter shall be handled and retained by the County Clerk in accordance with applicable local and state data retention policies, with a copy to be provided to the Procurement Manager by the County Clerk.

H. List of Records of Debarred Contractors.

The Procurement Manager shall exercise her/his best efforts to compile, maintain and publish a current consolidated list of all Debarred and Suspended Covered Persons to ensure that the County does not solicit or accept bids from, negotiate with, award contracts to, and approve or allow subcontracts with such Covered Persons.

I. Business Licensing.

Whenever a Covered Person is Debarred, the Procurement Manager shall provide all affected County departments with a current list of the Debarred Covered Persons. All County departments that issue County business licenses shall review the current Debarment list when received and compare it with their list of current business licenses. When a Covered Person that is on the Debarment list also holds a business license of a County department, that department shall request the County Clerk to transmit a copy of the written Debarment order for that Debarred Covered Person along with copies of the Debarment Proceeding record to the appropriate County department responsible for enforcement of the license. Within ten (10) working days of receipt of the order and related materials, the appropriate County department responsible for enforcement of the license shall determine whether to commence an adverse license hearing. Any such adverse hearing initiated shall be handled in accordance with applicable law, ordinances and rules.

J. Additional Penalties.

Nothing in this Ordinance shall preclude the enforcement of provisions hereof in any court of competent jurisdiction by any appropriate form of civil action, including seeking to enjoin any continued violation and seeking to compel obedience by issuing an order to correct violations.



Ordinance

Board of

Ramsey County Commissioners

Presented By: Commissioner McDonough Date: December 3, 2013 No. 2013-330

Attention: County Attorney
Finance
Procurement Office

Page 12 of 12

=====

SECTION 5 - SEVERABILITY.

If any section or any portion of this Ordinance shall be declared unconstitutional, invalid or inoperative, in whole or in part, by any court of competent jurisdiction, the remaining sections and all portions thereof not declared unconstitutional, invalid or inoperative shall remain in full force and effect, and no such determination shall invalidate the remaining sections or portions of sections of this chapter.

This Ordinance shall take effect and be in force ninety (90) calendar days following its passage, approval and publication.

Ramsey County Board of Commissioners

	YEA	NAY	OTHER
Toni Carter	X		
Blake Huffman	X		
Jim McDonough	X		
Mary Jo McGuire	X		
Victoria Reinhardt	X		
Janice Rettman	X		
Rafael Ortega	X		

Rafael Ortega, Chair

By: 
Bonnie C. Jackelen
Chief Clerk - County Board