

TITLE II - ADMINISTRATION

DIVISION 14

CONTRACTOR NON-RESPONSIBILITY AND CONTRACTOR DISBARMENT

Chapter 1 - Determinations of Contractor Non-Responsibility
and Contractor Disbarment

- § 2141-1. Findings and Declaration.
- § 2141-2. Definitions.
- § 2141-3. Determination of Contractor Non-Responsibility.
- § 2141-4. Debarment of Contractors.
- § 2141-5. Preemption.
- § 2141-6. Severability.

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**DETERMINATIONS OF CONTRACTOR NON-RESPONSIBILITY
AND CONTRACTOR DISBARMENT**

2141-1. FINDINGS AND DECLARATIONS.

The Humboldt County Board of Supervisors finds that, in order to promote integrity in the County's contracting processes and to protect the public interest, the County's policy shall be to conduct business only with responsible contractors. (Ord. 2291, § 1, 01/07/2003)

Determinations of contractor non-responsibility and contractor debarment shall be made in accordance with the procedures set forth in the ordinance codified in this chapter and procedures issued by the County Administrative Office. (Ord. 2291, § 1, 01/07/2003)

2141-2. DEFINITIONS.

For purposes of this chapter, the following definitions apply:

- A. "Contractor" means a person, partnership, corporation or other entity who has contracted with, or is seeking to contract with, the County to provide goods to, or perform services for or on behalf of, the County. A contractor includes a contractor, subcontractor, vendor, or any person or entity who or which owns an interest of 10 percent or more in a contractor, subcontractor or vendor. (Ord. 2291, § 1, 01/07/2003)
- B. "Contract" means any agreement to provide goods to, or perform services for or on behalf of, the County. (Ord. 2291, § 1, 01/07/2003)
- C. "Debarment" means an action taken by the County which results in a contractor being prohibited from bidding upon, being awarded, and/or performing work on a contract with the County for a period of up to three years. A contractor who has been determined by the County to be subject to such a prohibition is "debarred." (Ord. 2291, § 1, 01/07/2003)
- D. "Department head" means either the head of a department responsible for administering a particular contract or project for the County, or the designee of same. (Ord. 2291, § 1, 01/07/2003)
- E. "County" means the County of Humboldt, any public entities for which the Board of Supervisors is the governing body, nonprofit corporations created by the County and any joint powers authorities that have adopted County contracting procedures.
- F. "Contractor Hearing Board" means the persons authorized by the Board of Supervisors to preside over contractor debarment hearings and make recommendations on debarment to the Board of Supervisors. The CHB shall

consist of the Administrative Services Director, the Auditor Controller and an appointed deputy of the County Administrative Office. (Ord. 2291, § 1, 01/07/2003)

G. Standard Solicitation Language:

1. Determination of Bidder (Proposer) Responsibility (Use "bidder" or "proposer" as appropriate to the type of solicitation. Use "contractor," "consultant," vendor," etc., as appropriate to the type of contract.) (Ord. 2291, § 1, 01/07/2003)
 - A. A responsible bidder is a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is the County's policy to conduct business only with responsible contractors. (Ord. 2291, § 1, 01/07/2003)
 - B. Bidders are hereby notified that, in accordance with Chapter 1 of the County Code, the County may determine whether the bidder is responsible based on a review of the bidder's performance on any contracts, including but not limited to County contracts. Particular attention will be given to violations of labor laws related to employee compensation and benefits, and evidence of false claims made by the bidder against public entities. This will include subcontractors and their employees as well. (Ord. 2291, § 1, 01/07/2003)
 - C. The County may declare a bidder to be non-responsible for the purpose of this contract, if the Board of Supervisors, in its discretion, finds that the bidder has done any of the following: (1) committed any act or omission which negatively reflects on the bidder's quality, fitness or capacity to perform this contract with the County or a contract with any other public entity, or engaged in a pattern or practice which negatively reflects on same; (2) committed an act or omission which indicates a lack of business integrity or business honesty; or (3) made or submitted a false claim against the County or any other public entity. (Ord. 2291, § 1, 01/07/2003)
 - D. If there is evidence that the [apparent low bidder/highest ranked proposed] may not be responsible, the department shall notify the bidder in writing of the evidence relating to the bidder's responsibility, and its intention to recommend to the Board of Supervisors that the bidder be found not responsible. The department shall provide the bidder and/or the bidder's representative with an opportunity to present evidence as to why the bidder should be found to be responsible and to rebut evidence which is the basis for the department's recommendation. If the bidder fails to avail itself of the opportunity to rebut the department's evidence, the bidder may be deemed to have waived all rights of appeal. (Ord. 2291, § 1, 01/07/2003)

- E. If the bidder presents evidence in rebuttal to the department, the department shall evaluate the merits of such evidence, and based on that evaluation, make a recommendation to the Board of Supervisors. The final decision concerning the responsibility of the bidder shall reside with the Board of Supervisors. (Ord. 2291, § 1, 01/07/2003)
- F. These terms shall also apply to proposed [subcontracts/subconsultants] of bidders on County contracts. (Ord. 2291, § 1, 01/07/2003)

2. Bidder Debarment

- A. The bidder is hereby notified that, in accordance with Chapter 1 of the County Code, the County may debar the bidder from bidding on other County contracts for a specified period of time, not to exceed three (3) years, and the County may terminate any or all of the bidder's existing contracts with the County, if the Board of Supervisors finds, in its discretion, that the bidder has done any of the following: (1) violated any term of a contract with the County; (2) committed any act or omission which negatively reflects on the bidder's quality, fitness, or capacity to perform a contract with the County or any other public entity, or engaged in a pattern or practice which negatively reflects on same; (3) committed an act or offense which indicates a lack of business integrity or business honesty; or (4) made or submitted a false claim against the County or any other public entity. (Ord. 2291, § 1, 01/07/2003)
- B. If there is evidence that the [apparent low bidder/highest-ranked proposer] may be subject to debarment, the department shall notify the bidder in writing of the evidence which is the basis for the proposed debarment, and shall advise the bidder of the scheduled date for a debarment hearing before the Contractor Hearing Board (CHB). (Ord. 2291, § 1, 01/07/2003)
- C. The CHB shall conduct a hearing where evidence on the proposed debarment is presented. The bidder and/or the bidder's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the CHB shall prepare a proposed decision, which shall contain a recommendation regarding whether the bidder should be debarred, and, if so, the appropriate length of time of the debarment. If the bidder fails to avail itself of the opportunity to submit evidence to the CHB, the bidder may be deemed to have waived all rights of appeal. (Ord. 2291, § 1, 01/07/2003)
- D. A record of the hearing, the proposed decision and any other recommendation of the CHB shall be presented to the Board of Supervisors, by the department head. The Board of Supervisors

shall have the right to modify, deny or adopt the proposed decision and recommendation of the hearing board. (Ord. 2291, § 1, 01/07/2003)

E. These terms shall also apply to proposed [subcontractors/subconsultants] of bidder's on County contracts. (Ord. 2291, § 1, 01/07/2003)

H. Standard Contract Language:

1. Contractor Responsibility and Debarment (Use "contractor," "Consultant," "vendor," etc., as appropriate to the type of contract.) (Ord. 2291, § 1, 01/07/2003)

A. A responsible contractor is a contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is the County's policy to conduct business only with responsible contractors. (Ord. 2291, § 1, 01/07/2003)

B. The contractor is hereby notified that, in accordance with Chapter 1 of the County Code, if the County acquires information concerning the performance of the contractor on this or other contract which indicates that the contractor is not responsible, the County may, in addition to other remedies provided in the contract, debar the contractor from bidding on County contracts for a specified period of time, not to exceed three (3) years, and terminate any or all existing contracts the contractor may have with the County. (Ord. 2291, § 1, 01/07/2003)

C. The County may debar a contractor if the Board of Supervisors finds, in its discretion, that the contractor has done any of the following: (1) violated any term of a contract with the County; (2) committed any act or omission which negatively reflects on the contractor's quality, fitness, or capacity to perform a contract with the County or any other public entity, or engaged in a pattern or practice which negatively reflects on same; (3) committed an act or offense which indicates a lack of business integrity or business honesty; or (4) made or submitted a false claim against the County or any other public entity. (Ord. 2291, § 1, 01/07/2003)

D. If there is evidence that the contractor may be subject to debarment, the department will notify the contractor in writing of the evidence which is the basis for the proposed debarment and will advise the contractor of the scheduled date for a debarment hearing before the CHB. (Ord. 2291, § 1, 01/07/2003)

E. The CHB will conduct a hearing where evidence on the proposed debarment is presented. The contractor and/or the contractor's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the CHB shall prepare a proposed decision, which shall contain a

recommendation regarding whether the contractor should be debarred, and, if so, the appropriate length of time of the debarment. If the contractor falls to avail itself of the opportunity to submit evidence to the CHB, the contractor may be deemed to have waived all rights of appeal. (Ord. 2291, § 1, 01/07/2003)

- F. A record of the hearing, the proposed decision and any other recommendation of the CHB shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny or adopt the proposed decision and recommendation of the hearing board. (Ord. 2291, § 1, 01/07/2003)
- G. These terms shall also apply to [subcontractors/ subconsultants] of County contractors. (Ord. 2291, § 1, 01/07/2003)

2141-3. DETERMINATION OF CONTRACTOR NON-RESPONSIBILITY.

- A. Prior to a contract being awarded by the County, the County may determine that a party submitting a bid or proposal is non-responsible for purposes of that contract. In the event that the County determines that a bidder/proposer is non-responsible for a particular contract, said bidder/proposer shall be ineligible for the award of that contract. (Ord. 2291, § 1, 01/07/2003)
- B. The County may declare a contractor to be non-responsible for purposes of a particular contract if the County, in its discretion, finds that the contractor has done any of the following: (1) committed any act or omission which negatively reflects on the contractor's quality, fitness or capacity to perform a contract with the County or any other public entity, or engaged in a pattern or practice which negatively reflects on same; (2) committed an act or omission which indicates a lack of business integrity or business honesty; or (3) made or submitted a false claim against the County or any other public entity. (Ord. 2291, § 1, 01/07/2003)
- C. Before making a determination of non-responsibility pursuant to this chapter, the department head, with prior approval of the County Administrative Officer (CAO), shall give written notice to the contractor of the basis for the proposed non-responsibility determination, and shall advise the contractor that a non-responsibility hearing will be scheduled on a date certain. Within 30 days of the written notice to contractor, CHB with assistance from the department head, shall conduct a hearing where evidence on the proposed non-responsibility determination is presented. The contractor, or other authorized representative of the contractor, shall be afforded an opportunity to appear at the non-responsibility hearing and to submit documentary evidence, present witnesses and offer rebuttal evidence. After such hearing, the CHB shall have 10 business days to prepare a proposed decision, which shall contain a recommendation regarding whether the contractor should be found non-responsible with respect to the contract(s) at issue. A record of the hearing, the proposed decision, and any recommendation shall be presented, by the department head, to the Board of Supervisors at the next available Board meeting. The Board of Supervisors may, in its discretion, limit any

further hearing to the presentation of evidence not previously presented. The Board of Supervisors shall have the right to modify, deny or adopt the proposed decision and recommendation of the department head. A non-responsibility finding shall become final upon approval by the Board of Supervisors. (Ord. 2291, § 1, 01/07/2003)

- D. The decision by the County to find a contractor non-responsible for a particular contract is within the sole discretion of the County. The seriousness and extent of the contractor's acts, omissions, patterns or practices as well as any relevant mitigating factors may be considered by the County in determining whether a contractor should be deemed non-responsible. (Ord. 2291, § 1, 01/07/2003)

2141-4. DEBARMENT OF CONTRACTORS.

- A. The County may debar a contractor who has an existing contract with the County, has had a contract with the County, and/or a contractor who has submitted a bid or proposal for a new contract with the County. (Ord. 2291, § 1, 01/07/2003)
- B. The County may debar a contractor if the County finds, in its discretion, that the contractor has done any of the following: (1) violated any term of a contract with the County; (2) committed any act or offense which negatively reflects on the contractor's quality, fitness or capacity to perform a contract with the County or any other public entity, or engaged in a pattern or practice which negatively reflects on same; (3) committed an act or omission which indicates a lack of business integrity or business honesty; or (4) made or submitted a false claim against the County or any other public entity. (Ord. 2291, § 1, 01/07/2003)
- C. Before making a debarment determination pursuant to this chapter, the department head, with prior approval of the CAO, shall give written notice to the contractor of the basis for the proposed debarment, and shall advise the contractor that a debarment hearing will be scheduled on a date certain, consistent with Section 2.202.030 subsection C of this procedure. The CHB shall conduct a hearing where evidence on the proposed debarment is presented. The contractor, or other authorized representative, must be given an opportunity to appear at the debarment hearing and to submit documentary evidence, present witnesses, and offer rebuttal evidence at that hearing. After such hearing, the CHB shall have 10 business days to prepare its decision, which shall contain a proposed recommendation regarding whether the contractor should be debarred and, if so, the appropriate length of time for the debarment. A record of the hearing, the proposed decision and any recommendation shall be presented, by the department head, to the Board of Supervisors. The Board of Supervisors may, in its discretion, limit any further hearing to the presentation of evidence not previously presented. The Board of Supervisors shall have the right to modify, deny or adopt the proposed decision and recommendation of the CHB. A debarment finding shall become final upon the approval of the Board of Supervisors. (Ord. 2291, § 1, 01/07/2003)
- D. The decision by the County to debar a contractor is within the discretion of the County. The seriousness and extent of the contractor's acts,

omissions, patterns or practices, as well as any relevant mitigating factors may be considered by the County in making any debarment decision. Upon a debarment finding by the Board of Supervisors, the County shall have the right, in its discretion, to determine the length of time that the contractor may be prohibited from bidding upon and being awarded a new contract with the County, which period may not exceed three years. In addition, upon a debarment finding by the Board of Supervisors, the County may, in its discretion, terminate any or all existing contracts the contractor may have with the County. In the event that any existing contract is terminated by the County, the County shall maintain the right to pursue all other rights and remedies provided by the contract and/or applicable law. (Ord. 2291, § 1, 01/07/2003)

2141-5. PREEMPTION.

In the event any contract is subject to Federal and/or State laws that are inconsistent with the terms of the ordinance codified in this chapter, such laws shall control. (Ord. 2291, § 1, 01/07/2003)

2141-6. SEVERABILITY.

If any section, subsection, subpart or provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the provisions of this chapter and the application of such to other persons or circumstances shall not be affected thereby. (Ord. 2291, § 1, 01/07/2003)