

RESOLUTION 2014-89

A RESOLUTION ADOPTING A CITY OF FRANKLIN PROCEDURE PERTAINING TO DEBARMENT AND SUSPENSION

WHEREAS, the City of Franklin often conducts a competitive process for the procurement of goods and services with an anticipated cost of \$25,000 or more; and

WHEREAS, the process of evaluating submittals in response to a solicitation for bids, a request for proposals or a request for qualifications is time consuming and not productive in the case of not currently responsible vendors and contractors; and

WHEREAS, the Board of Mayor and Aldermen wish to create and utilize a system of debarment and suspension for the City of Franklin in order to protect the public interest by conducting business only with currently responsible vendors and contractors; and

WHEREAS, the Board of Mayor and Aldermen has now passed Ordinance No. 2014-38 of the City of Franklin, an ordinance amending the Franklin Municipal Code by adding a new Chapter 10 to Title 5 to implement a debarment and suspension system; and

WHEREAS, Ordinance No. 2014-38 of the City of Franklin calls for a City of Franklin Procedure Pertaining to Debarment and Suspension to be adopted by resolution.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FRANKLIN, TENNESSEE, AS FOLLOWS:

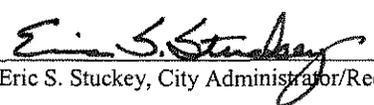
Section 1. The City of Franklin Procedure Pertaining to Debarment and Suspension, attached as Exhibit A hereto, is adopted.

Section 2. Changes or revisions to the procedure hereby adopted shall be made only by resolution of the Board of Mayor and Aldermen of the City of Franklin.

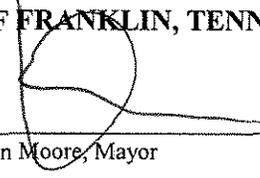
Section 3. The effective date of the policy hereby adopted shall be immediate upon passage and adoption of this resolution, the public welfare and the welfare of the City requiring it.

Adopted this 10th day of February, 2015.

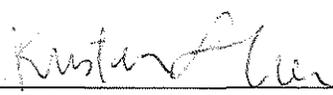
ATTEST:

BY: 
Eric S. Stuckey, City Administrator/Recorder

CITY OF FRANKLIN, TENNESSEE

BY: 
Dr. Ken Moore, Mayor

APPROVED AS TO FORM:

BY: 
Kristen L. Corn, Staff Attorney

1. Application.

This Procedure applies to all debarments or suspensions of persons from consideration for award of City contracts.

2. Initiation of Suspension.

After consultation with the director of any affected end-user department(s) of the City and, where practicable, the contractor or prospective contractor who is to be suspended, and upon issuance of a notice of suspension, including a copy of a written determination by the Debarring or Suspending Official that probable cause exists for debarment as set forth in Section 5-1005 (Authority to Debar or Suspend) of the Franklin Municipal Code, a contractor or prospective contractor shall be suspended. (An affected end-user department of the City is a City department that has used or could use the supplies, services, or construction offered or supplied by the contractor or prospective contractor. If more than one affected end-user department of the City is involved, then the Debarring or Suspending Official may designate one or more representatives of all the affected end-user departments of the City to be consulted in respect to the suspension.) The notice of suspension, including a copy of such determination, shall be sent by the Debarring or Suspending Official by whatever means of the choosing of the Debarring or Suspending Official to the suspended contractor or prospective contractor as soon as practicable after issuance of the written determination. Such notice shall:

- (a) state that the suspension is for the period it takes to complete an investigation into possible debarment including any appeals of a debarment decision but not for a period in excess of three (3) months;
- (b) state that bids or proposals will not be solicited from the suspended person, and, if they are received, they will not be considered during the period of suspension; and
- (c) state that if an administrative review of the suspension has not already been requested, then the suspended person may request such a review in accordance with Section 5 (Request for Administrative Review) of this Procedure.

3. Effect of Suspension.

A contractor or prospective contractor is suspended upon issuance of the notice of suspension. The suspension shall remain in effect during any administrative review or appeal. The suspension may be terminated by the Debarring or Suspending Official who issued the notice of suspension, by a court, or by the Debarment or Suspension Administrative Review Panel, but otherwise shall terminate only when either the suspension has expired or a debarment decision has taken effect.

4. Initiation of Debarment.

After consultation with the director of any affected end-user department(s) of the City, the City Attorney, and, where practicable, the contractor or prospective contractor who is to be debarred, the Debarring or Suspending Official may issue, by certified mail, return receipt requested, to the contractor or prospective contractor a written notice of proposed debarment. This notice shall:

- (a) state that debarment is being considered;
- (b) set forth the reasons for the proposed debarment, including a determination by the Debarring or Suspending Official that probable cause exists for debarment as set forth in Section 5-1005 (Authority to Debar or Suspend) of the Franklin Municipal Code;
- (c) state that if an administrative review of the proposed debarment has not already been requested, then the contractor or prospective contractor may request such a review in accordance with Section 5 (Request for Administrative Review) of this Procedure; and
- (d) state that the contractor or prospective contractor may be represented by counsel.

A copy of such notice shall be provided to the City Attorney and the director of any affected end-user department(s) of the City. (An affected end-user department(s) of the City is a City department that has used or could use the supplies, services, or construction offered or supplied by the contractor or prospective contractor. If more than one affected end-user department of the City is involved, then the Debarring or Suspending Official may designate one or more representatives of all the affected end-user departments of the City to be consulted in respect to the proposed debarment.)

5. Request for Administrative Review.

A contractor or prospective contractor that has been notified of a suspension or proposed debarment may request in writing that an administrative review be conducted. Such request must be received by the Debarring or Suspending Official deciding the suspension or proposing the debarment within ten (10) City business days of the Debarring or Suspending Official issuing the notice of suspension or notice of proposed debarment. If no request is received within such period, then a final determination may be made as set forth in Section 9 (Determination of Debarment or Suspension Administrative Review Panel; Final Decision) of this Procedure after consulting with the Debarring or Suspending Official and the director of any affected end-user department(s) of the City.

6. Debarment or Suspension Administrative Review Panel.

If an administrative review is requested, then the Debarment or Suspension Administrative Review Panel shall be convened to conduct the administrative review hearing and to make a final decision. The Purchasing Manager or successor position of the City shall send a written notice of the time and place of the administrative review hearing. Such notice shall be sent by certified mail, return receipt requested, and shall state the nature and purpose of the proceedings. Copies of the administrative review hearing notice shall be sent to the Debarment or Suspension Administrative

Review Panel, the City Attorney and the director of any affected end-user department(s) of the City.

7. Authority of Debarment or Suspension Administrative Review Panel.

The Debarment or Suspension Administrative Review Panel, in the conduct of the administrative review hearing, is authorized but not required to:

- (a) hold informal conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding either by consent of the parties or upon such panel's own initiative;
- (b) require parties to state their positions with respect to the various issues in the proceeding;
- (c) require parties to produce for examination those relevant witnesses and documents under their control;
- (d) rule on motions and other procedural items on matters pending before such panel;
- (e) regulate the course of the hearing and conduct of participants therein;
- (f) receive, rule on, exclude, or limit evidence, and limit lines of questioning or testimony which are irrelevant, immaterial, or unduly repetitious;
- (g) fix time limits for submission of written documents in matters before such panel;
- (h) impose appropriate sanctions against any party or person failing to obey an order under these procedures, which sanctions may include:
 - (i) refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;
 - (ii) excluding all testimony of an unresponsive or evasive witness; and
 - (iii) expelling any party or person from further participation in the hearing; and
- (i) take official notice of any material fact not appearing in evidence in the record, if such fact is among the traditional matters of judicial notice.

8. Administrative Review Hearings Procedures.

(a) Administrative review hearings shall be as informal as may be reasonable and appropriate under the circumstances and in accordance with applicable due process requirements. The weight to be attached to evidence presented in any particular form will be within the discretion of the Debarment or Suspension Administrative Review Panel. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the administrative review hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Debarment or Suspension Administrative Review Panel may require evidence in addition to that offered by the parties.

(b) An administrative review hearing may be recorded but need not be transcribed except at the request and expense of the contractor or prospective contractor. A record of those present, identification of any written evidence presented, and copies of all written statements and a summary of the hearing shall be sufficient record.

(c) Opening statements may be made unless a party waives this right.

9. Determination of Debarment or Suspension Administrative Review Panel; Final Decision.

The Debarment or Suspension Administrative Review Panel shall issue a written determination. Copies of such determination shall be sent to the Debarring or Suspending Official, the contractor or prospective contractor, the City Attorney, and the director of any affected end-user department(s) of the City. The contractor or prospective contractor shall have ten (10) days from issuance of the Debarment or Suspension Administrative Review Panel's determination to file comments about the determination. The Debarment or Suspension Administrative Review Panel may request oral argument. After consultation with the Debarring or Suspending Official and the director of any affected end-user department(s) of the City, the Debarment or Suspension Administrative Review Panel shall issue a final decision. Both the Debarment or Suspension Administrative Review Panel's determination and its final decision shall recite the evidence relied upon. When debarment is recommended or ordered, the length of the debarment, the reasons for such action, and to what extent affiliates are affected, all shall be set forth. In addition, the final decision shall inform the debarred person of its rights to judicial review under Section 5-1011 (Jurisdiction and Venue) of the Franklin Municipal Code.

10. Effect of Debarment.

A debarment decision will take effect upon issuance. After the debarment decision takes effect, the contractor shall remain debarred until a court, Debarment or Suspension Administrative Review Panel, or the Debarring or Suspending Official that issued the decision, orders otherwise or until the debarment period specified in the decision expires.

11. Maintenance of List of Debarred and Suspended Persons.

The Purchasing Manager or successor position of the City shall maintain and update as necessary a list of debarred and suspended persons. Such list shall be available to the public upon request.