

**POLICY AND PROCEDURE:
Debarment and Suspension of Contractors and Vendors**

I. Purpose; Scope and Administration.

A. The purpose of the Policy and Procedure is to ensure that The Pittsburgh Water and Sewer Authority's (the "Authority") contractors and vendors (collectively, "Contractors") are capable of performing in accordance with Authority requirements and are otherwise responsible Contractors, and that the contracting process is free of fraud, waste and abuse. The Authority seeks to achieve this purpose by identifying and sanctioning, through Suspension and Debarment, those Contractors that have rendered deficient performance and/or have engaged in other activities that show them to be not Responsible and adversely affect their fitness to contract with the Authority.

B. This Policy and Procedure applies to contracting activities by the Authority, and to all types of Authority Contracts, including, without limitation, service, supply, vehicle, information technology and equipment contracts, construction contracts and professional services contracts. The Procurement Department shall administer this Policy and Procedure, and the representatives of the Authority, as detailed in this Policy and Procedure, shall make the determinations, decisions and carry out the actions of the Authority.

C. The provisions of this Policy and Procedure shall be severable and, if any provision or its application is held to be invalid or unenforceable, the remaining provisions shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law. The headings in this Policy and Procedure do not in any way define, limit, describe or amplify the provisions hereof, or their scope or intent and are not part of the Policy and Procedure. Whenever the context requires, words used in the singular shall be construed to mean or include the plural and vice versa.

II. Definitions.

A. "Affiliate(s)" means any business entity or individual that directly or indirectly either controls or can control another entity or individual.

B. "Bid Solicitation" means a public invitation to submit competitive bids for a specific Authority Contract(s) that is or are issued by the Authority.

C. "Bid" means a Contractor's response submitted to the Authority pursuant to a Bid Solicitation.

D. "Contractor Suspension/Debarment File" means a centralized file identifying Contractors who have been Suspended, Debarred or declared Ineligible.

- E. “Authority” means The Pittsburgh Water and Sewer Authority.
- F. “Authority Contract(s)” means any contract awarded by the Authority and/or funded, in whole or in part, by Authority funds, including, but not limited to, contracts awarded by the Authority.
- G. “Contractor” means any person or entity (including officers, directors, partners, principals, employees, agents, Subcontractor, holders of five (5) percent or more of the Contractor’s stock, and persons acting on the Contractor’s behalf, and assignees and successors in interest to the Contractor) that directly or indirectly (e.g., through an Affiliate) has entered into an Authority Contract or seeks to enter into an Authority Contract. Such term shall also include all vendors of goods and services to the Authority.
- H. “Conviction” means a conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a conviction entered upon a plea of nolo contendere (no contest).
- I. “Debar” or “Debarment” means action taken to prohibit a Contractor from entering into Authority Contracts, seeking to enter into Authority Contracts, performing as a Subcontractor on Authority Contracts and/or imposing other sanctions during the Debarment Period.
- J. “Debarment Period” means the period of Debarment.
- K. “Disqualification” means action taken to prohibit a Contractor from submitting a Bid or Proposal pursuant to a specific Bid Solicitation or Request For Proposals issued by the Authority or to prohibit award of an Authority Contract.
- L. “Disposition Agreement” means a written agreement between the Contractor and the Authority that is entered into prior to the hearing panel issuing its determination of Debarment which disposes of the grounds for an intended Debarment.
- M. “Ineligible” or “Ineligibility” means to be prohibited from award of an Authority Contract, or from performing as a Subcontractor under an Authority Contract pursuant to statute, ordinance, regulation or any other appropriate regulatory authority, including, but not limited to, the Prevailing Wage Act and implementing regulations, anti-discrimination laws, the Equal Employment Opportunity Act, the Steel Products Procurement Act or the AntiBid-Rigging Act.
- O. “Legal Proceedings” means any civil or criminal proceeding brought by any federal, state or local agency. The term includes appeals from such proceedings.
- P. “Procurement Department” means the Authority Procurement Department.
- Q. “Request For Proposals” or “RFP” means an invitation to submit proposals to furnish goods and/or services to the Authority, as specified in the RFP.

R. “Proposal” means a Contractor’s response so submitted to the Authority.

S. “Responsibility” or “Responsible” means the capacity to perform an Authority Contract in accordance with its terms and requirements. Indicia of Responsibility include financial and other demonstrated capability to perform an Authority Contract, honesty, integrity, reputation, experience, resources and such other factors as may be determined by law.

T. “Subcontractor” means a person or entity who/that has contracted, at any tier, with a Contractor for the performance of all or a part of the work under an Authority Contract. Subcontractors include, without limitation, suppliers, persons and entities contracting with a Subcontractor to perform work under an Authority Contract.

U. “Suspend” or “Suspension” means action taken to temporarily prohibit a Contractor from entering into an Authority Contract, seeking to enter into an Authority Contract, performing as a Subcontractor on an Authority Contract and/or imposing other sanctions during the Suspension Period pending completion of an investigation of the Contractor’s Responsibility to determine whether the Contractor shall be Debarred and/or shall be the subject of Legal Proceedings.

X. “Suspension Period” means the period of Suspension specified in its notice of intent to Suspend as provided therein.

Y. “Tax Delinquent” means a Contractor that is not current, as determined by the applicable taxing authority, in the payment of any federal, state, or local taxes, or in the filing of any returns or reports required for such taxes; or that has against it unsatisfied liens, judgments, fees or other debts arising from non-payment of taxes, as determined by the applicable taxing authority. A Contractor shall not, however, be considered a Tax Delinquent for any such taxes or tax period for which the Contractor has filed a timely appeal or has entered into a written settlement agreement or payment plan that is satisfactory to the local, state, or federal jurisdiction imposing the taxes and has provided documentation of such settlement agreement or payment plan.

III. Suspension and Debarment.

A. Where there are sufficient grounds as set forth in Section IV, the Authority may either Suspend a Contractor in accordance with Section V or propose Debarment of the Contractor in accordance with Section VI.

B. Debarment shall result in imposition of one or more of the sanctions provided in Section VIII, which include, but are not limited to, prohibiting a Contractor from entering into an Authority Contract, seeking to enter into an Authority Contract and/or performing as a Subcontractor on an Authority Contract. The Debarment Period shall not exceed three (3) years, including the period of any Suspension of the Contractor based on the same acts that resulted in the Debarment.

C. Suspension shall not be in lieu of Debarment, but shall serve as the period for investigating the Contractor's Responsibility to determine whether the Contractor shall be Debarred and/or shall be the subject of Legal Proceedings. The Suspension Period shall be for a period of up to six (6) months, as determined by the Authority, or in the instance of an indictment the Suspension Period may continue for the period of the indictment. The Suspension Period shall remain in effect until the Authority either removes the Suspension, by written notice to the Contractor, or issues a written notice of proposed Debarment, or the six (6) months maximum Suspension Period expires, or in the instance of an indictment the Suspension Period may continue for the period of the indictment, whichever is earlier. During the Suspension Period, and throughout any subsequent Debarment proceedings, the Contractor shall be subject to one or more of the sanctions provided in Section VIII, which include, but are not limited to, prohibiting a Contractor from entering into an Authority Contract, seeking to enter into an Authority Contract and/or performing as a Subcontractor on an Authority Contract.

IV. Grounds for Suspension or Debarment.

A. The grounds for Suspension and for Debarment shall be the same. A determination that grounds for Suspension or Debarment exist shall permit, but shall not require, the Suspension or Debarment of the Contractor. The following acts or omissions may, in the discretion of the Authority, be considered in Suspending or Debarring the Contractor:

1. Indictment or Conviction under state or federal statutes for any of the following, except that indictment alone may be a cause for Suspension or Debarment only for such time as the indictment continues: (a) a criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; (b) fraud, embezzlement, theft, bribery, extortion, forgery, falsification or destruction of records, or receiving stolen property; (c) a criminal violation of a state or federal antitrust statute; (d) violation of Racketeer Influence and Corrupt Organization Act, 18 U.S.C. Section 1961 et seq, or the Mail Fraud Act, 18 U.S.C. Section 1341 et seq, for acts in connection with the submission of bids or proposals for a public or private contract; (e) conspiracy to commit any act or omission that would constitute grounds for Conviction or liability under any statute described herein; or (f) an offense indicating a lack of integrity or honesty which seriously and directly or indirectly affects Responsibility as an Authority Contractor;
2. Judgment of civil liability under state or federal antitrust statutes for acts or omissions in connection with the submission of bids or proposals for a public or private contract;
3. Arrears on any debt or obligation under any Authority Contract, default as surety or otherwise upon any obligation to the Authority, or status as a Tax Delinquent;

4. Violation of Authority Contract provisions, including, but not limited to, the following: (a) failure without good cause, in the sole judgment of the Authority, to perform in accordance with the specifications or within the time limit provided in the Authority Contract; (b) unsatisfactory performance, in the sole judgment of the Authority, in connection with the terms of one or more Authority Contract(s); or (c) notice of default and/or termination for default under any Authority Contract;
5. Disqualification, Suspension or Debarment by the Authority or another governmental entity or public authority;
6. Making or causing to be made any false, deceptive or fraudulent statement(s) in connection with any Authority Contract or other government or public contract, Bid, Proposal, prequalification questionnaire, application for work, or document or other information submitted in support of any of the foregoing, or knowledge of, approval of, or acquiescence in any such conduct or statements (the Contractor's acceptance of the benefits derived from the conduct shall be deemed evidence of such knowledge, approval, or acquiescence);
7. Use of Subcontractors that have been Suspended or Debarred under Authority Contracts or contracts of another governmental entity or public authority;
8. Refusal to cooperate with reasonable requests of Authority inspectors and representatives relating to compliance with an Authority Contract, including, without limitation, the conformance of work performed to Authority Contract provisions, plans or specifications, or refusal to cooperate with Authority representatives in any investigation ordered by the Authority pursuant to a Suspension or Debarment of the Contractor under this Policy and Procedure;
9. Improper conduct, including, but not limited to, intentional or negligent billing irregularities; submitting false or frivolous or exaggerated claims; the falsification of documents or records; the willful destruction of documents or records the Contractor had an obligation to maintain; bribery, use of false or deceptive statements to obtain some benefit; causing competition to be restrained or limited; misrepresentation; falsely claiming to be a disadvantaged minority, woman, or disabled business; and other dishonesty incident to obtaining, prequalifying for, or performing any Authority or other contract; adjudication by a court or administrative entity of competent jurisdiction that the Contractor has violated a local, state, or federal law regulating hours of labor, minimum wage standards, prevailing wage standards, child labor, or discrimination in employment or wages; or violation of any local, state, or federal law, including, without limitation: the minority, woman, veteran and disabled

owned disadvantaged businesses participation program administered by the Authority's Supplier Diversity Program, environmental law, the Pennsylvania Workmen's Compensation Act, or any other law that directly or indirectly affects performance of an Authority Contract;

10. Three (3) or more instances, within a period of eighteen (18) months, where the Contractor has been declared Ineligible for an Authority Contract;
11. Three (3) or more instances where the Contractor's Bid was rejected by the Authority;
12. Acts or omissions of the Contractor which evade or seek to evade, defeat or seek to defeat the purpose of this Policy and Procedure;
13. Violation of any section of the Civil Rights Act of 1968, the Pennsylvania Human Relations Act, the City of Pittsburgh Human Relations Ordinance, any civil rights or non-discrimination law, executive order, plan, rule or regulation;
14. Failure to comply fully with Section V.E; and/or
15. Any other cause that materially affects the capability of the Contractor to perform Authority Contract requirements.

B. The fraudulent, criminal or other improper conduct of any officer, director, shareholder, partner, employee or other individual or entity associated with a Contractor may be imputed to the Contractor and may be grounds for Suspension or Debarment of the Contractor when the conduct occurred in connection with the individual's/entity's performance of duties for or on behalf of the Contractor, or with the Contractor's knowledge, approval or acquiescence. The Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

C. The fraudulent, criminal or other improper conduct of a Contractor may be imputed to any officer, director, shareholder, partner, employee or other individual associated with the Contractor who participated in, knew of, or had reason to know of the Contractor's conduct, and such conduct imputed to the individual may be grounds for the Suspension or Debarment of a Contractor with which the individual is associated.

D. The fraudulent, criminal or other improper conduct of one Contractor/business partner participating in a joint venture, partnership or similar arrangement may be imputed to the other participating Contractor(s)/business partner(s) if the conduct occurred for or on behalf of the joint venture or other similar arrangement, or with the knowledge, approval or acquiescence of the other participating Contractors. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

V. Suspension Procedures.

Where there are sufficient grounds as set forth in Section IV, the Authority may suspend a Contractor pending completion of investigation of the Contractor's Responsibility to determine whether the Contractor shall be Debarred and/or the subject of Legal Proceedings.

A. The Procurement Department shall initiate suspension proceedings by issuing a written notice of intent to Suspend notifying the Contractor and any specifically named affiliate, officer, employee, or other individual or entity associated with the Contractor of the intent to Suspend, the effective date and the period of the intended Suspension, the grounds for the intended Suspension, the specific sanctions, as set forth in Section VIII, to be imposed during the intended Suspension, and the Contractor's right to oppose the intended Suspension and to a meeting with representatives of the Procurement Department, as set forth in Section V. B.

B. Within ten (10) business days after the date of the notice of intent to Suspend, the Contractor may submit information in writing to the Procurement Department opposing the intended Suspension. The Procurement Department will review timely submitted information and notify the Contractor, in writing, whether the Notice of Intent to Suspend is withdrawn, based on the information submitted, or remains in effect. Within forty-eight (48) hours following receipt of notice that the notice of intent to Suspend remains in effect, the Contractor may request, in writing, a meeting with representatives of the Procurement Department, at which meeting the Contractor may present information opposing the intended Suspension verbally and in writing. Such meeting shall be held within thirty (30) calendar days after timely receipt of the Contractor's written request. If the Contractor fails to submit such written information or fails to submit its written request for a meeting with representatives of the Procurement Department within the period specified herein, then the Contractor's right to submit such information and/or to such meeting shall be waived and the Suspension shall take effect.

C. Upon review of the information submitted by the Contractor and following the meeting provided in Section V.B., the Executive Director or a representative designated by the Authority Executive Director shall make a written determination and provide the Contractor with a copy of the determination. If the determination is to Suspend the Contractor, the determination will state the grounds for the Suspension, the Suspension Period, the effective date of the Suspension, and the specific sanctions, as set forth in Section VIII, imposed upon the Contractor during the Suspension Period.

D. Suspension shall be for a period of six (6) months or less and shall be effective as of the date specified in the written determination provided in Section V.C. The Suspension Period shall remain in effect until the Authority either removes the Suspension, by written notice to the Contractor, or issues a written notice of proposed Debarment, or the six (6) months maximum Suspension Period expires, whichever is earlier.

E. During the Suspension Period, the Contractor shall make available all relevant documents, records, and information to the Procurement Department. Failure to comply fully with this requirement shall be sufficient grounds for initiating Debarment proceedings in accordance with Section VI.

VI. Debarment Procedures.

Where there are sufficient grounds for Debarment as set forth in Section IV, the Procurement Department may propose Debarment of the Contractor in accordance with this Section VI.

A. The Procurement Department shall initiate debarment proceedings by issuing a written notice of intent to Debar notifying the Contractor and any specifically named Affiliate, officer, employee, or other individual or entity associated with the Contractor of the intent to Debar, the grounds for the intended Debarment, the Contractor's right to oppose the intended Debarment and the Contractor's right to a hearing, as set forth in Section V.B.

B. If the Contractor submits to the Procurement Department its written notice of opposition to the intended Debarment within five (5) business days of the date of the notice of intent to Debar, a hearing shall be conducted pursuant to the Local Agency Law, 2 Pa. C.S. Sections 105, 551-555, and 751-754, at which the Contractor shall have the opportunity to present information in opposition to the intended Debarment. The hearing shall be before a panel of three representatives designated by the Authority Executive Director. The panel shall hear and receive information presented by the Contractor and by the Authority and shall make findings of fact in support of the determination provided in Section VI.C. If the Contractor fails to submit its written notice of opposition within the period specified herein, then the Contractor's right to such hearing shall be waived.

C. Following the hearing provided in Section VI.B. and in consideration of the findings of fact made by the hearing panel and such other factors addressed in the hearing and/or the Procurement Department's investigation of the Contractor's Responsibility as the hearing panel deems to be material, the hearing panel shall make a written determination and provide the Contractor with a copy of the determination. If the determination is to Debar the Contractor, the determination will state the grounds for the Debarment, including the findings of fact on which the determination is based; the Debarment Period; the effective date of the Debarment; and the specific sanctions, as set forth in Section VIII, imposed upon the Contractor during the Debarment Period.

D. Debarment shall be for a period of three (3) years or less, as determined by the hearing panel, and shall be effective as of the date specified in the panel's written determination provided in Section VI.C.

VII. Disposition Agreement.

At any time before a written determination is provided, as detailed in Sections V.C and VI.C of this Policy and Procedure, a Contractor may enter into a Disposition Agreement relating to the intended Suspension and/or Debarment of the Contractor. No Disposition Agreement shall be effective unless it is in writing and signed by both the Contractor and the Authority Executive Director.

VIII. Sanctions.

A. Suspension or Debarment of a Contractor pursuant to this Policy and Procedure may result in prohibition of the Contractor from participating in any one or more of the following: (1) award of an Authority Contract; (2) seeking to perform as a Contractor or subcontractor for Authority contracts, or performing as a Contractor or Subcontractor for existing Authority Contract(s); (3) pre-qualifying or attempting to pre-qualify for Authority Contracts; (4) performing or renewing, modifying, or amending any existing Authority Contract; and/or (5) submitting Bids or Proposals for Authority Contracts in response to any Bid Solicitation or RFP or other solicitation document or process of the Authority.

B. The sanctions listed in Section VIII.A and B may be imposed with respect to Bid Solicitations, RFPs and contracts for or by the Authority; and/or with respect to Bids, RFPs and Authority Contracts for a single type of goods or services, for all types of goods and services, or for any combination of types of goods and/or services.

C. In Suspending or Debarring a Contractor, conditions may be imposed, as deemed appropriate by the Authority, on the Contractor's performance of existing Authority Contracts that remain in effect, and on activities relating to Authority contracting subsequent to the expiration of any Suspension Period or Debarment Period; including, without limitation, monitoring the Contractor's submission of Bids and Proposals, inspecting its performance under existing or future Authority Contracts, and requiring an audit of invoices and payments relating to future Authority Contracts.

D. The hearing panel provided in Section VI. may, at its discretion, reduce the Debarment Period or extent of Debarment, upon the Contractor's written request, supported by documentation, for the following reasons: (1) Newly discovered material evidence; (2) Reversal of a Conviction or civil judgment upon which the Debarment was based; (3) Bona fide change in ownership or management; and/or (4) Elimination of other causes for which the Debarment was imposed.

E. The Authority may exercise any or all of the rights and remedies set forth herein, each of which may be pursued separately or in conjunction with such other remedies as the Authority in its sole discretion may determine. The rights and remedies of the Authority as described herein are not exclusive and are in addition to any other rights or remedies available to the Authority herein, at law or in equity.

IX. Contractor Suspension/Debarment File and Contractor File.

The Procurement Department shall maintain a Contractor Suspension/Debarment File, identifying Contractors who are currently Suspended, Debarred, and/or declared Ineligible by the Authority. The Contractor Suspension/Debarment File shall include the following information: (1) the name of the Contractor and its principals; (2) the effective date, duration, and termination date of the Debarment Period, Suspension Period or declaration of Ineligibility; and (3) a

statement of the sanctions imposed under the Suspension or Debarment, as set forth in Section VIII.

POLICY REVISION HISTORY:

| Last Updated Date: (MM/DD/YYYY) | Editor: | Location of change(s), what was changed, and why: |
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