

BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA
PROCEDURES FOR DEBARMENT
OF DESIGN PROFESSIONALS, CONSULTANTS, AND CONTRACTORS

This Debarment Procedure is adopted pursuant to Board of Regents Policy 9.4.8 which provides that a design professional, consultant, or contractor may be debarred from performing on a public works project in any capacity for the Board of Regents for up to five years. The procedures to be utilized for suspension and debarment of design professionals, consultants, and contractors, are as follows:

(A) **Application**. This procedure applies to debarment of persons, firms, partnerships, joint ventures or corporations from the consideration of or benefit from an award of contract by the Board of Regents of the University System of Georgia (USG) or the award of a subcontract by a contractor, design professional, or consultant under contract with USG. It applies to all architects, engineers, design professionals, consultants, contractors, construction managers, program managers, service providers, suppliers, subcontractors and vendors, including their owners, principals and officers, both individually and in connection with their firms, (hereinafter collectively referred to as "Contractors") doing business, directly or indirectly (as a subcontractor) with USG.

(B) **Causes for Debarment**. The causes for debarment include the following:

(1) Conviction or entry of a plea of guilty, *nolo contendere*, or first offender treatment, for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract, or for conspiracy, contract or combination in restraint of trade or of free and open competition in any transaction with the State of Georgia, the United States, or any state or federal agency or instrumentality or political subdivision thereof;

(2) Conviction or entry of a plea of guilty, *nolo contendere*, or first offender treatment, under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly effects responsibility as a Contractor;

(3) Conviction or entry of a plea of guilty, *nolo contendere*, or first offender treatment, under State or Federal antitrust statues arising out of the submission of bids or proposals;

(4) Violation of contract provisions, as set forth below, of a character which is regarded to be so serious as to justify debarment action:

(a) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(b) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the Contractor shall not be considered to be a basis for debarment;

(5) Any other cause so serious and compelling as to affect the Contractor's reliability or responsibility to satisfactorily perform a contract, including, but not limited to, debarment by another governmental entity; and

(6) Any violation of the conflict of interest provisions of Official Code of Georgia Annotated Sections 45-10-20 through 45-10-28.

(C) Initiation of Debarment Action.

(1) *Initiation.* Debarment is initiated by a written request to the USG Director of Contracts and Services. The request shall plainly state the facts supporting the debarment request and shall include supporting information as necessary.

(2) *Requestors.* The following individuals are authorized to make a request for debarment of a Contractor:

(a) Any program manager, project manager, or project director of a construction project for USG, any unit of USG, Georgia State Financing and Investment Commission (GSFIC), Georgia Department of Administrative Services (DOAS), or the Georgia Building Authority (GBA).

(b) The president, vice president, director, legal advisor or other duly authorized officer of any unit of USG.

(c) A program manager or construction manager under contract with USG, any unit of USG, or GSFIC, but only for Contractors within the scope of the applicable project(s) under the contract.

(D) Initial Decision.

(1) *Initial Decision.* The USG Chief Facilities Officer (CFO), or his or her designee, shall conduct a review of the debarment request. The CFO may request additional information from the requestor and may consult with procurement and facilities officers regarding the request. The CFO shall make the initial determination as to whether reasonable cause exists to support the debarment.

(2) *Suspension.* If the CFO finds that reasonable cause exists, a Contractor shall be suspended from any pending solicitations and award of any contracts with USG or award of any subcontract under a USG contract. The suspension shall continue for the period it takes to the Chancellor to issue a decision pursuant to the process outlined below, which period shall not exceed ninety (90) from the notice of suspension issuance date and shall also continue during any appeal of the Chancellor's decision. The suspension may be remitted or modified by the CFO or Chancellor prior to a decision of debarment.

(3) *Notice of Suspension and Initiation of Debarment.* A notice of suspension and initiation of debarment shall be sent to the suspended Contractor by certified mail to the Contractor and shall provide the following information:

(a) Notice that debarment is being considered and the reasons for the action.

(b) Notice that the matter will be submitted to a Review Panel in accordance with this procedure along with a copy of this Debarment Procedure.

(c) State that, if the Contractor so requests, a hearing will be held, provided such request is received by the Director of Contracts and Services, within ten (10) days after the Contractor receives notice of the proposed debarment action.

(d) State that, at Contractor's sole discretion and expense, Contractor may be represented by counsel.

(e) Notice that the Contractor is suspended from submitting bids or proposals on any USG project and is further prohibited from award of any contract or subcontract on any USG project based upon the CFO's determination that reasonable cause for debarment exists.

(2) *Effect of Notice.* A Contractor is suspended upon the date of the issuance of the notice of suspension.

(E) **Review Panel.** The CFO shall appoint a "Review Panel" consisting of the CFO, or his or her designee, and two other persons. The Review Panel shall review the case file in order to make recommendations on the debarment action to the Chancellor. The burden of proof is by a preponderance of the evidence. The Review Panel can consider evidence in any form, including, but not limited to, affidavits, live testimony, and project correspondence and documents. The weight to be attached to evidence presented in any particular form will be within the discretion of the Review Panel.

(1) *Request for Hearing.* A Contractor that has been notified of a proposed debarment action may request that a hearing be held. Such request must be in writing and received by the Director of Contracts and Services within ten (10) days of receipt of notice of the proposed action under Section D above. If no request is received within the ten-day period, a formal recommendation to the Chancellor may be made as set forth hereinafter.

(2) *Notice of Hearing.* Upon a timely receipt of a Contractor's request for a hearing, the Review Panel shall set a date for the hearing. The Review Panel shall provide notice of the hearing date which shall be at least ten days after the date the notice is mailed to the Contractor. Notice of the hearing date shall be provided by certified U.S. mail.

(3) *Hearing Procedures.* Hearings shall be as informal as may be reasonable and appropriate under the circumstances. The Review Panel has the authority to regulate the course of the hearing and the conduct of the participants and may exclude, or limit evidence, and limit lines of questioning or testimony which are irrelevant, immaterial, or unduly repetitious. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if that witness were present. The hearing may be recorded but need not be transcribed except at the request and expense of the Contractor. A record of those present, identification of any written evidence, copies of all written statements, and a summary of the hearing shall be a sufficient record.

(4) *Determination and Recommendation of the Review Panel.* After reviewing the file and conducting a hearing, if requested, the Review Panel shall prepare a written determination of facts and a recommendation as to debarment to the Chancellor. A copy of the written determination shall also be sent to the Contractor.

(F) **Final Decision and Appeal.** Upon receipt of the Review Panel’s recommendation, the Chancellor or his or her designee, shall have thirty (30) days to either accept, deny, or modify the recommendation. The Chancellor shall provide notice of the decision to Contractor via certified mail. If the Chancellor accepts a recommendation of debarment, the Contractor shall have ten (10) days from receipt of the Chancellor’s written notice of debarment in which to file an appeal with the Vice Chancellor of Legal Affairs. If no appeal is filed within the allotted time, the Chancellor’s written notice of debarment shall be considered the final decision. If an appeal is timely filed, the Chancellor or his or her designee, may thereafter, in his or her sole discretion, proceed as follows:

(1) Set the date, time and place for an appeal hearing before the Chancellor or his or her designee or refer the appeal to the Office of State Administrative Hearings (“OSAH”) as a contested case pursuant to O.C.G.A. §50-13-41(a)(1). The case file for an OSAH proceeding may be referred to the Attorney General for legal representation of USG. OSAH will set the date, time and place of hearing as prescribed by OSAH Rules.

(2) All appeal hearings, whether before the Chancellor or his or her designee or the OSAH, shall be conducted as a contested case pursuant to the Administrative Procedure Act, including but not limited to O.C.G.A. §§50-13-13 and 50- 13-15.

(3) The decision of an administrative law judge made after a hearing before OSAH shall be the Initial Agency Decision as set forth in O.C.G.A. §50-13-41(d) and shall be subject to review by the Chancellor or his or her designee, as set forth in O.C.G.A. §50-13-41(e). Whether the hearing is before the Chancellor or his or her designee or whether the Initial Agency Decision of the administrative law judge is reviewed by the Chancellor or his or her designee, the Chancellor’s decision thereupon shall be the final Agency Decision. Upon issuance, the final Agency Decision shall be the final agency decision in the matter and shall be subject to judicial review as set forth in O.C.G.A. § 50-13-19.

(G) **Effect of Debarment Decision.** A debarment decision shall take effect upon the issuance date of the Chancellor’s notice of debarment and shall continue as prescribed therein unless remitted or modified by the Chancellor or a court of law through judicial review of the final Agency Decision. Contracts will not be executed and bids or proposals will not be solicited from the debarred person or firm, and, if they are received, they will not be executed or considered during the period of debarment. After the debarment decision takes effect the Contractor shall remain debarred until the debarment period specified in the decision (not to exceed five (5) years) expires.

(H) **Requests for Reinstatement.** Upon the completion of one-half of any debarment period, and sufficient good cause, a Contractor may request in writing, providing documentation of the good cause and grounds therefor, that the Chancellor remit the balance or any portion of the debarment and reinstate the eligibility of the debarred Contractor to contract with USG. The Chancellor or his or her designee, in his or her sole and complete discretion, may either grant, grant in part, or deny any such request for reinstatement. After any such request, another request may not be made until after one year of the date of the decision on the earlier request for reconsideration.