



**Los Angeles City Ethics Commission**

April 19, 2013

The Honorable City Council  
c/o June Lagmay, City Clerk  
200 North Spring Street  
City Hall – 3rd Floor  
Los Angeles, CA 90012

**Re: Debarment Regulations**

***FOR COUNCIL CONSIDERATION***

Dear Councilmembers:

On April 11, 2013, the Ethics Commission unanimously adopted regulations regarding mitigating circumstances that may preclude contract debarment in the wake of a violation of the restrictions on bidder contributions and fundraising. The Ethics Commission urges you to approve the regulations, which amend the Los Angeles Administrative Code (LAAC) and are attached.

**Background**

In 2011, City voters amended the Los Angeles City Charter (Charter) to prohibit bidders, contractors, principles, and sub-contractors on certain City contracts from contributing to candidates for City office and from engaging in specified fundraising activities. Charter § 470(c)(12)(A), (B). Subsequently, in January 2012, implementing provisions for the new law were added to Campaign Finance Ordinance (CFO).

Both the Charter and the CFO specify that a person is subject to contract debarment, in addition to any other penalties that may apply, if the person is found to have violated the laws that restrict bidder and contractor contributions and fundraising. Charter § 470(c)(12)(I); Los Angeles Municipal Code (LAMC) § 49.5.35(C)(1). The CFO states that such a person “shall not be eligible to bid on or be considered for a [City] contract, extension, or amendment, unless the Ethics Commission, as a body, determines that mitigating circumstances exist....” LAMC § 49.7.35(C)(1).

The Charter and the CFO also authorize the Ethics Commission to adopt regulations regarding mitigating circumstances, including what constitutes mitigating circumstances and any other information determined to be necessary. Charter § 703; LAMC § 49.7.35(C)(3). We drafted regulations pursuant to that authority and solicited input from all City agencies, recent City bidders, and the public.

## Adopted Regulations

### 1. Mitigating Circumstances

The approved regulations take into account a broad range of situations and reflect three main underlying principles. First, debarment is not proper in every situation and should be reserved for more egregious violations. Second, the regulations should foster cooperation during the audit and investigative processes and enhance the Ethics Commission's ability to ensure that the campaign finance laws are observed. Finally, debarment should be a remedy for and deterrent against violations of City law and not an action that results in harm to the City or its residents.

With those principles in mind, the Ethics Commission determined that the following factors should be considered when assessing whether mitigating circumstances exist.

- a. *The nature and extent of the violation.* The Charter and the CFO do not distinguish between a knowing and willful violation of a repeat offender and the first-time transgression of a person who was not aware that certain conduct violated City law. Because of this, the regulations include mitigating circumstances such as the number of counts charged, the number of parties involved in the violation, and whether the violation was deliberate. *See proposed LAAC § 24.62(b)(1).*
- b. *The extent to which the respondent cooperated with the Ethics Commission.* Cooperation as a mitigating circumstance encourages parties to engage with Ethics Commission investigations and reduces the time and resources needed to resolve enforcement matters. Specifically, the regulations specify factors such as whether the respondent self-reported to the Ethics Commission, offered a full admission, timely cooperated with an audit or investigation, and promptly paid any fines. *See proposed LAAC § 24.62(b)(2).*
- c. *The extent to which debarment would harm the City or its residents.* There may be instances where debarment would do more harm than good. For example, if debarment would lead to a delay in the completion of a multi-agency project, resulting in the loss of Federal or state funding, debarment could harm the City and its residents more than is warranted by the violation. For this reason, the regulations include factors that address the effect that debarment would have on City services, finances, projects, and contracts, as well as the City's ability to fulfill legal mandates. *See proposed LAAC § 24.62(b)(3).*
- d. *The respondent's enforcement history with the Ethics Commission.* *See proposed LAAC § 24.62(b)(4).*
- e. *Factors unique to the respondent and factors that implicate the overall interests of justice.* *See proposed LAAC §§ 24.62(b)(5)-(6).*

## 2. Procedural Requirements

State and federal law recognize that a party who has been dealing with the government on an ongoing basis has a liberty interest in being considered for a contract. *Marvin Lieblein, Inc. v. Shewry* (2006) 137 Cal.App.4th 700, 720. While a government contractor cannot be debarred without procedural safeguards, the party is not entitled to extensive trial-like procedures. *Southern Cal. Underground Contractors, Inc. v. City of San Diego* (2003) 108 Cal.App.4th 533, 542.

The regulations comply with these requirements by protecting due process in several ways. For example, the determination regarding mitigating circumstances must be made at a public meeting, and the Ethics Commission must notify the respondent and all City agencies when a determination is going to be made. See proposed LAAC §§ 24.63(a), (b). In addition, action on a pending bid that involves the respondent must be suspended from the time notice is given until the time the members of the Ethics Commission make a determination regarding mitigating circumstances. See proposed LAAC § 24.63 (g)

The regulations also require a written staff recommendation regarding whether mitigating circumstances exist. See proposed LAAC § 24.63(c). In addition, the respondent must be given the opportunity to respond to the staff recommendation, either verbally or in writing, and to be represented by counsel when a determination regarding whether mitigating circumstances exist is considered. See proposed LAAC § 24.63(d). Finally, the regulations require the Ethics Commission to issue notice of its determination within 10 days by providing it to all City agencies and posting it on the Ethics Commission's web site. See proposed LAAC § 24.63(f).

## Approval Process

The Charter establishes specific procedures for regulations that are adopted by the Ethics Commission. The regulations are subject to City Council approval but cannot be modified. Charter § 703(a). In addition, the City Council is required to hold a public hearing and either approve or disapprove the regulations within 60 days after the Ethics Commission has adopted them. Charter § 703(b). For these regulations, that deadline is June 10, 2013.

If the City Council does not take action within that time frame, the regulations are submitted to the Mayor for approval or veto. *Id.* If both the City Council and the Mayor fail to act, the regulations have the force of law. *Id.*

## Conclusion

The Ethics Commission has adopted debarment regulations pursuant to Charter § 703 and LAMC § 49.7.35(C)(3), and we urge you to approve the regulations by adding the attached provisions to the LAAC.

We will be available during meetings at which these recommendations are discussed, and we would be happy to answer questions at any time. Please feel free to contact me or Director of Policy Mike Altschule with questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Holt". The signature is fluid and cursive, with a large initial "H" and a long, sweeping underline.

Heather Holt  
Executive Director

*Attachment:  
Debarment Regulations*

## **DEBARMENT REGULATIONS**

*Adopted by the Ethics Commission 4/11/13*

### **Los Angeles Administrative Code, Division 24 GOVERNMENTAL ETHICS**

#### **CHAPTER 6. DEBARMENT**

##### **SEC. 24.61**

##### **Violations Requiring Debarment**

Charter section 470(c)(12) and Municipal Code sections 49.7.35 and 49.7.36 limit campaign contributions and fundraising by specific persons associated with certain City bids and contracts. A person found to have violated one or more of those provisions may not bid on or be considered for any City contract, extension, or amendment unless the members of the Ethics Commission determine that mitigating circumstances exist. Debarment lasts one year for the first violation, two years for a second violation, three years for a third violation, and four years for all subsequent violations.

##### **SEC. 24.62**

##### **Mitigating Circumstances**

- a. The members of the Ethics Commission must determine whether mitigating circumstances exist whenever a violation of Charter section 470(c)(12) or Municipal Code sections 49.7.35 or 49.7.36 is found to have occurred.
- b. The Ethics Commission will consider the following when determining whether mitigating circumstances exist.
  1. The nature and extent of the violation, which may include factors such as the following:
    - A. The number of counts;
    - B. Whether the violation was egregious;
    - C. Whether the awarding authority notified the respondent of the legal requirements;
    - D. Whether the violation was deliberate or coordinated; or
    - E. Whether the respondent attempted to cure the violation.
  2. The extent to which the respondent cooperated with the Ethics Commission, which may include factors such as the following:
    - A. Whether the respondent self-reported the violation to the Ethics Commission;
    - B. Whether the respondent offered a full admission;

- C. The timeliness and extent of the respondent's cooperation with the audit or investigation of the violation that triggers debarment;
  - D. The timeliness and extent of the respondent's cooperation with the audit or investigation of any other violation; or
  - E. The prompt payment of fines recommended by staff or issued by the Commission.
3. The extent to which debarment will affect the City or those receiving City services, which may include factors such as the following:
    - A. The effect of debarment on City services;
    - B. The effect of debarment on the City's finances;
    - C. The effect of debarment on City projects and contracts; or
    - D. The effect of debarment on the City's ability to fulfill any legal mandates.
  4. The respondent's enforcement history with the Ethics Commission for the same or different types of violations.
  5. Circumstances unique to the respondent or the contract.
  6. The overall interests of justice.

**SEC. 24.63**  
**Procedural Requirements**

- a. The determination regarding whether mitigating circumstances exist is final and must be made at a public meeting.
- b. The Ethics Commission staff must notify all City agencies, departments, boards, and offices before a determination regarding mitigating circumstances is going to be made.
- c. The staff must make written recommendations to the members of the Ethics Commission regarding whether mitigating circumstances exist and provide a copy of the recommendations to the respondent at least 21 days before the determination is going to be made.
- d. The respondent may appear at the public meeting with or without counsel, and may respond both verbally and in writing to the staff recommendations. Failure to appear shall be deemed acceptance of the Commission's determination and shall exhaust any further administrative remedies.
- e. The staff must issue notice of the determination regarding mitigating circumstances within 10 business days after the determination is made. The debarment notice must be provided to all City agencies, departments, boards, and offices and must be posted on the Ethics Commission's web site.

- f. If the members of the Ethics Commission determine that mitigating circumstances do not exist, an awarding authority that has an existing contract with the respondent must make a written determination regarding whether it is in the City's best interests to terminate that contract. The determination must be made within 60 days of receiving the debarment notice.
  
- g. Once notice in 24.63(b) is made, no action on any bid involving the respondent may be taken until the members of the Ethics Commission make a determination. If the members of the Ethics Commission determine that mitigating circumstances do not exist, the respondent's status as a bidder is terminated as of the date the staff provides debarment notice to the awarding authority.
  
- h. If the respondent is a City contractor, subcontractor, or underwriter, that status is not altered and work and payments under an affected City contract must continue until all of the following have occurred:
  - 1. The members of the Ethics Commission have determined that mitigating circumstances do not exist;
  - 2. The staff has issued the debarment notice; and
  - 3. The awarding authority has made a written determination under Municipal Code section 49.7.35(C) that it is in the City's best interests to terminate the contract.
  
- i. The respondent may waive any of the respondent's procedural rights.