

RESOLUTION NO. 2003-130

A RESOLUTION OF THE COUNCIL OF THE CITY OF
FRESNO, CALIFORNIA, ESTABLISHING DEBARMENT
PROCEDURES AND REQUIREMENTS.

WHEREAS, Section 1208 of the Charter of the City of Fresno provides that the Council may by resolution establish procedures and requirements for the debarment of any bidder who has been determined by the Council to be nonresponsible; and

WHEREAS, Section 3-105.2 of the Fresno Municipal Code requires that such procedures shall include a right to appeal from a determination for debarment pursuant to Chapter 1, Article 5 of this Code; and

WHEREAS, the City of Fresno desires to establish such procedures and requirements to protect the City by ensuring full and open competition by granting awards to, or entering into contracts with, only responsible persons in the City's procurement of materials, supplies, equipment, services and public work of improvements.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

SECTION 1. Statement of Purpose. Debarment is a sanction to be imposed only in the public interest for the City's protection and not for purpose of punishment. For purposes of this resolution, "person" shall mean an individual, corporation, limited liability company, joint venture, partnership or other legal entity.

SECTION 2. Effect of Debarment. Notwithstanding any other provision of this resolution:

(a) City Manager Authority. The City Manager, or Administrative

Adopted _____
Approved _____
Effective _____
4-29-03

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Hearing Officer on appeal, may debar any person determined by Council to be a nonresponsible bidder (based upon any similar grounds for debarment herein contained) from bidding or proposing upon or being awarded any contract with the City or City of Fresno Redevelopment Agency, or from being a subcontractor or supplier at any tier upon such contract, in accordance with the procedures established by this resolution.

(b) Non-acceptance of Bids During Debarment Period. During the time period that the debarment pursuant to this resolution of any person is in effect, the City and City of Fresno Redevelopment Agency shall not accept bids or proposals from, enter into contracts with, or allow performance of subcontracts or supply contracts by, such person, in accordance with the procedures established by this resolution.

(c) Debarment List and Establishment of Policies Regarding Its Use. Debarred persons shall be placed on a list compiled and maintained by the City Manager or his/her designee who shall establish policies and procedures to provide for the effective use of the debarment list, to ensure that the City does not solicit offers from, award to or enter into any contract with, anyone on the list.

SECTION 3. Scope of Debarment.

(a) A debarment of a group, association, firm, corporation, partnership, company, or other entity under this resolution constitutes debarment of all of such entity's divisions and other organizational elements from all City and City of Fresno Redevelopment Agency contracts, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or

other organizational elements.

(b) The debarment of a person may include any existing affiliate of the person where the affiliate is specifically named and given notice of the proposed debarment and an opportunity to respond. The debarment shall automatically include any successor-in-interest or any affiliate of the debarred person formed after such debarment.

(c) Debarment of any person includes debarment of any business entity for which the debarred person acts as a principal during the debarment period, whether or not such business entity was in existence at the time of such debarment.

SECTION 4. Requirement to Submit Information. The City Manager or his/her designee may require any person bidding or submitting a proposal on a City contract to certify under penalty of perjury, as a part of any bid or proposal submitted, whether such person, including any principal, affiliate or predecessor-in-interest of such person:

(a) Is currently under debarment, or has been under debarment at any time during the preceding three years, by any federal, state or local agency; and

(b) Has, at any time during the preceding three years, been convicted, been subject to a civil judgment, or been subject to a penalty or sanction by any federal, state or local agency, for any act or omission described in Section 6.

SECTION 5. Period of Debarment.

(a) Initial Period. Debarment shall be for a period commensurate with the seriousness of the grounds, as determined by the City Manager, or Administrative Hearing Officer on appeal. An initial period of debarment shall not

be less than one year or more than three years.

(b) Extension Period. Prior to expiration of the time period of any debarment imposed under this resolution, the City Manager may review the record of the evidence presented during the debarment proceedings, as well as any additional facts or information relevant to a review of the debarment. The City Manager may extend the existing debarment, for successive additional periods of up to two years each, if the City Manager determines that such extension is necessary to protect the public interest. If the City Manager determines that debarment for an additional period is necessary, the City Manager shall follow the procedures established by Section 8 before imposing such extension.

(c) Automatic Termination of Debarment Period. Unless the City Manager has extended the debarment pursuant to subsection (b), the debarment shall automatically terminate upon expiration of the debarment period.

SECTION 6. Grounds for Debarment. Provided a person has been determined by Council to be a nonresponsible bidder; in accordance with the procedures established by this resolution, the City Manager, or Administrative Hearing Officer on appeal, may debar such person on any of the following grounds:

- (a) Commission by such person of any act of:
 - (1) Fraud, bribery, collusion, or conspiracy;
 - (2) Bid rigging, price fixing or any other act in violation of any federal, state or local law in connection with the bidding upon, award or performance of any public contract; or
 - (3) Embezzlement, theft, forgery, falsification or fabrication of

records, or perjury.

(b) Submission by such person of a bid, proposal or other document pertaining to or required by a City contract, or pertaining to or required by any provision of this resolution or the Fresno Municipal Code, which is known by such person to be false or contain false information.

(c) Such person knowingly doing business with a debarred third person in performance of any City contract awarded or entered into after debarment of said third person.

(d) More than one occurrence of substandard performance by such person on any City contract, including, but not limited to, (1) a material breach of the contract or agreement; (2) a failure to complete work required under the contract on time and/or within budget when such failure is attributable to such person's negligent or wrongful actions or inactions; (3) substandard quality of work; or (4) any negligent or wrongful failure to cooperate with the City such that timely, satisfactory completion of the work was jeopardized. The occurrences of substandard performance described herein may occur on the same contract or on different contracts.

(e) One or more violations by such person, during the performance of any City contract, of any labor or safety statutes, regulations or standards including, but not limited to, applicable local, state or federal statutes, regulations or standards governing prevailing wage, occupational safety and health, and nondiscrimination requirements.

(f) One or more violations by such person of any law or regulation governing the handling, transfer, storage or disposal of hazardous materials or hazardous waste.

(g) One or more violations by such person of any law or regulation governing the handling, transfer, storage or disposal of solid waste generated in connection with construction or demolition.

(h) A violation by such person of any law or regulation governing conflict of interest.

(i) Two or more occasions within a two year period of failure by such person to submit bond or insurance documents acceptable to the City in the time periods required.

SECTION 7. Existence of Grounds.

(a) Within Three Years Prior. Existence of grounds for debarment of a person as described in Section 6 may be determined to exist by the City Manager, or Administrative Hearing Officer on appeal, if, not more than three years prior to the date that a written notice of proposed debarment is provided to such person pursuant to Section 8:

(1) Such person has been convicted of a criminal charge for any act or omission described in Section 6, whether entered upon a verdict or a plea, including a plea of no contest;

(2) A final civil judgment arising out of any act or omission described in Section 6 has been entered against such person;

(3) A penalty or sanction, including but not limited to monetary

penalties and other sanctions, such as debarment, has been imposed on such person by a federal, state or local agency for any act or omission described in Section 6; or

(4) The City Manager, or Administrative Hearing Officer on appeal, determines that sufficient facts exist to show such person has committed one or more acts or omissions described in Section 6.

(b) Conduct Imputed. Conduct may be imputed to a person for whom debarment is being considered as follows:

(1) An act or omission, as described in Section 6, of any principal, may be imputed to the person when the conduct occurred in connection with such principal's performance of duties for or on behalf of the person, or with the person's knowledge, approval or acquiescence.

(2) An act or omission, as described in Section 6, of a person may be imputed to any principal who participated in, knew of, or had reason to know of the person's conduct.

(3) An act or omission, as described in Section 6, of one person in a joint venture or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture or similar arrangement or with the knowledge, approval or acquiescence of such participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

(c) Relevant Factors. In determining whether to debar a person, and the duration of any debarment, the City Manager, or Administrative Hearing

Officer on appeal, may consider, in addition to any other relevant factors, the following:

(1) The degree to which such person cooperated fully with local, state or federal authorities during any investigation and/or any administrative or judicial proceeding which forms the grounds for debarment.

(2) The degree to which such person has paid or has agreed to pay all criminal, civil, and administrative liability resulting from any of the acts or omissions set forth under Section 6, including any investigative or administrative costs incurred by any government agency, and has made or has agreed to make full restitution for any damages incurred as a result of any such acts or omissions.

(3) Whether such person had effective standards of conduct and internal control systems in place at the time of any of the acts or omissions set forth under Section 6 or had adopted such procedures prior to any investigation of such acts or omissions.

(4) Whether such person brought any of the acts or omissions set forth under Section 6 to the attention of the appropriate government agency or agencies in a timely manner.

(5) Whether such person has fully investigated the circumstances surrounding any of the acts or omissions set forth under Section 6 and, if so, has made the result of the investigation available to the City.

(6) Whether such person has taken appropriate disciplinary

action against the individuals responsible for any of the acts or omissions set forth under Section 6.

(7) Whether such person has implemented or agreed to implement remedial measures to prevent a recurrence of any of the acts or omissions set forth under Section 6, including but not limited to new or revised review and control procedures and ethics training programs, as well as any other measures identified by any government agency.

(8) Whether such person has had adequate time to eliminate the circumstances within their organization that led to any of the acts or omissions set forth under Section 6.

SECTION 8. Debarment Procedures.

(a) Notice of Proposed Debarment. Prior to debarring any person under this resolution, the City Manager or his/her designee shall mail by certified or registered mail, return receipt requested, or deliver by personal service a written notice of the proposed debarment to the person proposed to be debarred, hereinafter referred to as "respondent." Such notice shall contain the following:

- (1) Notice that a debarment is being considered;
- (2) The grounds for the proposed debarment, in terms sufficient to put the respondent on notice of the conduct or transactions upon which it is based;
- (3) The potential period of the debarment;
- (4) The City's procedures governing debarment; and
- (5) The address to which a request for a hearing and/or

information and argument in opposition to the proposed debarment should be delivered or mailed.

(b) Request for Hearing or Information. Within ten days after personal service or mailing of the notice of proposed debarment, the respondent or the respondent's representative may submit in writing a request for a hearing and/or information and argument in opposition to the proposed debarment. Such written request and/or information and argument shall also specify the address to which subsequent notices and other communications to the respondent should be mailed, if different from the address where notice was sent.

(c) Notice of Hearing. If the respondent requests a hearing in accordance with subsection (b), the City Manager shall, within thirty days after receipt of such request, schedule an informal hearing at which the respondent or the respondent's representative shall have a reasonable opportunity to provide information and argument, including the presentation and questioning of witnesses, to the City Manager. The City Manager shall mail the respondent, by certified or registered mail, return receipt requested, written notice of the time, date, and location of such hearing, which shall be held no sooner than ten days from the date of such notice of hearing.

(d) City Manager Decision. The City Manager's debarment decision shall be made within thirty days after expiration of the thirty day period specified in subsection (b), or within thirty days after a hearing is held, whichever is later. If the City Manager decides it is in the best interest of the City to debar the respondent, such decision shall be in writing, shall contain findings of fact and

shall specify the grounds for debarment based on the record of facts and information presented to the City Manager.

(e) Notice of Decision. A copy of the decision by the City Manager shall be mailed to the respondent by certified or registered mail, return receipt requested, no later than five days after the decision is made. If the City Manager decides to debar the respondent, the decision shall specify the period of debarment. Except in cases where the City Manager's debarment decision is appealed in accordance with Section 9, the period of debarment shall begin on the date the decision is mailed to the respondent. In cases where the City Manager's debarment decision is appealed in accordance with Section 9, the period of debarment shall begin on the date that the Administrative Hearing Officer makes a decision to uphold or modify the City Manager's debarment decision, in accordance with Section 9.

(f) Decision of City Manager Final. If the respondent fails to submit either a written request for a hearing or written information and argument in opposition to a proposed debarment within the thirty day period specified in subsection (b), or if respondent fails to appear at the hearing, the decision of the City Manager shall be final, and shall not be subject to appeal pursuant to Section 9.

(g) Reconsideration. The City Manager may reverse a decision to debar a person, or may reduce the scope or time period of debarment for any reason which obviates the need for the debarment or which indicates a shorter debarment period will adequately protect the public interest. Such reasons include, but are

not limited to, the following:

- (1) Newly discovered material evidence;
- (2) Reversal of the conviction, civil judgment or administrative penalty or sanction upon which the debarment was based;
- (3) Bona fide change in ownership or management; or
- (4) Elimination of other grounds for which the debarment was imposed.

(h) Initiation of Reconsideration. Such reversal or reduction in scope or time period of the debarment under subsection (g) may be initiated by the City Manager or by the debarred person upon a request submitted to the City Manager. Such debarred person's request shall be in writing and supported by documentation. The debarred person shall provide any additional documentation requested by the City Manager in order to review such request. The City Manager shall notify the debarred person of the decision made upon any such request submitted by a debarred person within thirty days after receipt of the request and/or any supporting documentation. A debarred person may not submit such a request until a minimum of twelve months have elapsed after the period of debarment begins, and no more than one such request may be submitted during each successive twelve month period thereafter.

SECTION 9. Appeal of a Debarment Decision. Any appeal of a decision of the City Manager regarding a debarment or the period or scope of debarment imposed shall be heard by the Administrative Hearing Officer in accordance with Chapter 1, Article 5 of the Fresno Municipal Code.

SECTION 10. If any section, subsection, subdivision, paragraph, sentence or phrase of this resolution is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this resolution. The Council hereby declares that it would have adopted this resolution, and each section, subsection, subdivision, paragraph, sentence and phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences or phrases had been declared invalid or unconstitutional.

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STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the 29th day of April, 2003.

AYES : Calhoun, Castillo, Dages, Duncan, Perea, Boyajian
NOES : Sterling
ABSENT : None
ABSTAIN : None

Mayor Approval: _____, 2003

Mayor Approval/No Return: _____, 2003

Mayor Veto: _____, 2003

Council Override Vote: _____, 2003

REBECCA E. KLISCH
City Clerk

BY: Rebecca E. Klisch
Deputy

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY: [Signature]
Deputy

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