
MEMPHIS-SHELBY COUNTY AIRPORT AUTHORITY

POLICY MANUAL

Subject: Debarment of Contractors



Part 700: Development

Policy No.: 704

Supersedes: NEW

Date: 08/01/16

Dated: N/A

1. Purpose of Policy

The purposes of this policy are:

- (1) to ensure that the Authority transacts business only with responsible contractors;
- (2) to protect the Authority from risks associated with awarding contracts to persons having exhibited an inability or unwillingness to satisfactorily perform contracts awarded to them by the Authority; and
- (3) to protect the Authority's interests and the integrity of the Authority's contracting process by establishing a procedure whereby persons determined to have displayed unsatisfactory performance and/or conduct can be debarred from doing business with the Authority.

2. Definitions

For purposes of this policy, the following terms shall have the stated meaning:

- (1) *Contractor* means a contractor who has a contract to conduct work at the Authority.
- (2) *Debarment* means an action taken by the Authority, in the interest of the public and/or Authority, to prohibit a contractor from participating in contracts with the Airport due to issues related to contract performance.

3. Initiating the Debarment Process

- a. A Director may initiate a request to determine if probable cause exists for debarment of a contractor, who the Director has contract management oversight of, by promptly submitting a detailed request in writing to the appropriate Vice President for review and approval. The request to initiate the debarment process shall name the contractor, describe the scope of work under the contract, and set

forth in reasonable detail the facts relied upon to establish that the contractor's performance and/or conduct is grounds for debarment.

- b. The action or inaction of any officer, director, shareholder, partner, employee, subcontractor or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual'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 action or inaction shall be evidence of such knowledge, approval or acquiescence.

4. Effect of Debarment

- a. Debarment shall be for a period not to exceed three (3) years.
- b. The Authority may continue contracts in existence at the time the contractor is debarred.
- c. The Authority may not enter into a new contract with the contractor until the debarment expires or the debarment is terminated on an earlier date in the sole discretion of the President.
- d. The Authority may not enter into a contract that includes a subcontractor who is on the active debarment list.

5. Grounds for Debarment

The Authority may debar a contractor for any of the following reasons:

- (1) Inability or willful failure to perform in accordance with the terms of a contract;
- (2) Unsatisfactory performance of, or unsatisfactory conduct in performing, a contract;
- (3) A history of failure to perform, or of unsatisfactory performance of, or unsatisfactory conduct in performing, one or more contracts; or
- (4) Any other cause so serious or of a compelling nature that it affects the present responsibility of the contractor.

6. Notice of Debarment Action

If a request for debarment is approved, the appropriate Vice President shall send a notice of proposed debarment to the contractor by certified mail, return receipt requested, advising the contractor:

- (1) That debarment is being considered;

- (2) Of the reason for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction upon which it is based;
- (3) That the contractor may, within seven (7) days after receipt of the notice, request a hearing by submitting information and argument in opposition to the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts;
- (4) That any bid by the contractor for work at the Airport will not be considered or accepted for the period beginning on the date the contractor receives notice of possible debarment and ending on the date (1) the hearing officer makes a final determination to dismiss the proposed debarment, (2) the President reviews an appeal of debarment and dismisses the debarment, or (3) the period of debarment expires, whichever is later;
- (5) Of the procedures contained in this policy;
- (6) Of the effect of the issuance of the notice of proposed debarment; and
- (7) Of the potential effect of an actual debarment.

7. Failure to Request Hearing on Debarment

If the contractor fails to deliver a written request for a hearing pursuant to the notice of proposed debarment, a final determination shall be made by the President. Any debarment order issued by the President shall take effect immediately and shall be final.

8. Hearing Officer

The President shall designate a hearing officer within five (5) days after receiving the contractor's information and argument in opposition to the proposed debarment. The hearing officer shall set a hearing date within fifteen (15) days of the date that the President makes such designation and send notice of same by certified mail, return receipt requested, to the contractor.

9. Hearing

- a. Hearings shall be as informal as may be reasonable and appropriate under the circumstances and in accordance with applicable due process requirements. In no event shall the hearing officer be required to adhere to formal rules of evidence or procedure, but shall consider the factors set forth in 48 CFR 9.406-1(a), if applicable. The hearing officer may define the scope of the hearing and limit presentation of the case as deemed appropriate under the circumstances. The

contractor shall be entitled to personally appear at the hearing, present evidence, and be represented by legal counsel.

- b. The weight to be attached to evidence presented in any particular form shall be within the discretion of the hearing officer. Stipulations of fact agreed upon by the hearing participants may be regarded and used as evidence at the hearing. The hearing participants may stipulate the testimony that would be given by a witness as if the witness were present. The hearing officer may require evidence in addition to that offered by the hearing participants.
- c. The hearing date may be continued in the hearing officer's discretion or upon request of the contractor for good cause shown.
- d. The hearing shall be recorded but need not be transcribed, except at the request of any party with the expense being borne equally by the parties making the request. The recording shall be maintained in electronic format until thirty (30) days after the proposed debarment is dismissed, the granted debarment expires, the conclusion of any litigation related to the proposed debarment, or the deadline for filing litigation related to same, whichever is later.
- e. The record of the hearing shall consist of a record of those present, identification of any written evidence presented, copies of all written statements, and the recording of the hearing.

10. Decision of Hearing Officer

The hearing officer shall make a final determination within ten (10) business days after the hearing whether to dismiss the proposed debarment or debar the contractor. In consultation with the General Counsel, the hearing officer shall issue a written decision that contains findings of fact and shall send same by certified mail, return receipt requested, to the contractor. If the hearing officer grants the debarment request, the period of debarment shall become effective on the date that the written decision is issued by the hearing officer.

11. Appeal

- a. A contractor may appeal any debarment finding in writing to the President within seven (7) days of receiving notice of the hearing officer's decision. The failure to file an appeal in accordance with this provision shall be an exhaustion of the contractor's administrative remedies and the hearing officer's decision shall be final. Any order of debarment shall remain in effect throughout the appeal's process.
- b. The appeal shall specify the nature of the error claimed, indicating the allegations on which the debarment was based, the ruling of the hearing officer, and a summary of the relevant facts to be considered on appeal with references to the

record, transcript or exhibits from the hearing. The review shall be limited to the record of the proceedings of the hearing officer.

- c. The President shall review the appeal and issue a final determination within ten (10) business days. The President shall dismiss the debarment, modify the debarment, or affirm the debarment. Notice of the President's final determination shall be sent to the contractor by certified mail, return receipt requested. If the President affirms the debarment, the determination shall be final and shall become effective upon receipt of the notice of final determination by the contractor.

12. Petition for Review of Debarment

- a. A contractor may file a written petition with the President to request review of a final determination if a change in material facts or circumstances occurs after the final determination is issued by the Hearing Officer or, in the event of an appeal, the President. The petition shall state in detail how the material facts or circumstances have changed and why the debarment period should be modified or terminated.
- b. The President shall issue a response to the petition within five (5) business days of receiving the petition. The petition may be disposed of by upholding the final determination, reducing the period of debarment, modifying other aspects of the debarment, or terminating the debarment in its entirety.

13. List of Debarred Contractors

The Development Division is responsible for maintaining an updated list of debarred contractors at all times and making the list available on the Authority's website. The list shall include, but not be limited to, the debarred contractor's name, dates of the period of debarment, and any subsequent modifications by the President or resulting from the appeal process.

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