

FILE NO. 031503

ORDINANCE NO. 8-04

1 [New administrative debarment procedure.]

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3 **Ordinance adding a new Chapter 28 to the San Francisco Administrative Code to**
4 **establish a City-wide administrative debarment procedure; amending Chapter 6 of the**
5 **Administrative Code to reflect the adoption of the new Chapter 28.**

6 Note: Additions are single-underline italics Times New Roman; deletions
7 are ~~strikethrough italics Times New Roman~~.
8 Board amendment additions are double underlined.
9 Board amendment deletions are ~~strikethrough-normal~~.

10 Be it ordained by the People of the City and County of San Francisco:

11 Section 1. The San Francisco Administrative Code is hereby amended by adding
12 Chapter 28, to read as follows:

13 SEC. 28.0. FINDINGS.

14 The Board of Supervisors finds that contracting with the City and County of San Francisco is an
15 important municipal affair, and that the award of contracts to contractors who fail to deal with the City
16 and County in good faith compromises the integrity of the contracting process and results in the
17 improper expenditure of public funds. The Board of Supervisors recognizes that the City and County
18 must afford contractors due process in any determination that precludes any individual or business
19 entity from participating in the contracting process. This Chapter does not apply to a determination of
20 nonresponsibility for a single contract or identifiable group of contracts, but for the broader
21 determination of irresponsibility of a contractor for the general purpose of contracting with the City
22 and County of San Francisco for a specified period. The Board of Supervisors therefore adopts this
23 Chapter 28 to prescribe standard procedures for the prosecution, determination and implementation of
24 administrative debarments.

1 SEC. 28.1. DEFINITIONS.

2 The following definitions apply for only the purposes of this Chapter 28:

3 (A) Affiliate. Any individual person or business entity related to a contractor where such
4 individual or business entity, directly or indirectly, controls or has the power to control the other, or
5 where a third person controls or has the power to control both. Indicia of control include, but are not
6 limited to: interlocking management or ownership; identity of interests among family members; shared
7 facilities and equipment; common use of employees or a business entity organized or following the
8 suspension, debarment, bankruptcy, dissolution or reorganization of a person which has the same or
9 similar management; and/or ownership or principal employee as the contractor.

10 (B) Charging Official. Any City department head or the President of any Board or Commission
11 authorized to award or execute a contract under the San Francisco Charter or the Administrative
12 Code, the Mayor, the Controller, the City Administrator, the Director of Administrative Services or the
13 City Attorney. All charging officials are authorized to act on behalf of the City and County in
14 prosecuting any administrative debarment proceeding and in issuing an Order of Debarment under this
15 Chapter.

16 (C) Contractor. Any individual person or business entity who submits a qualification statement,
17 proposal, bid or quote or who contracts directly or indirectly with the City and County of San
18 Francisco for the purpose of providing any goods or services to or for the City and County of San
19 Francisco including without limitation any contractor, subcontractor, consultant, subconsultant or
20 supplier at any tier. The term "contractor" shall include any responsible managing corporate officer
21 who has personal involvement and/or responsibility in obtaining a contract with the City and County of
22 San Francisco or in supervising and/or performing the work prescribed by the contract.

23 (D) Debarment. The administrative determination against a potential bidder, or contractor
24 declaring such potential bidder or contractor irresponsible and disqualified from participating in the
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1 competitive process for contracts with the City and County of San Francisco or from entering into
2 contracts, with the City and County of San Francisco for a period specified in the debarment order.

3 SEC. 28.2. DEBARMENT AUTHORITY.

4 Notwithstanding any other provision of the Administrative Code, any charging official shall
5 have authority to issue Orders of Debarment against any contractor in accordance with the procedures
6 set forth in this Chapter.

7 SEC. 28.3. GROUNDS FOR DEBARMENT.

8 A charging official shall issue an Order of Debarment for any contractor whom the hearing
9 officer, based on evidence presented, finds to have engaged in any willful misconduct with respect to
10 any City bid, request for qualifications, request for proposals, purchase order and/or contract. Such
11 willful misconduct may include, but need not be limited to the following: (a) submission of false
12 information in response to an advertisement or invitation for bids or quotes, a request for qualifications
13 or a request for proposals; (b) failure to comply with the terms of a contract or with provisions of this
14 Administrative Code; (c) a pattern and practice of disregarding or repudiating terms or conditions of
15 City contracts, including without limitation repeated unexcused delays and poor performance; (d)
16 failure to abide by any rules and/or regulations adopted pursuant to the San Francisco Municipal
17 Codes; (e) submission of false claims as defined in this Administrative Code, Chapter 6, Article V; (f) a
18 verdict, judgment, settlement, stipulation or plea agreement establishing the contractor's violation of
19 any civil or criminal law against any government entity relevant to the contractor's ability or capacity
20 honestly to perform under or comply with the terms and conditions of a City contract; and/or (g)
21 collusion in obtaining award of any City contract, or payment or approval thereunder.

22 SEC. 28.4. INITIATING THE PROCEEDINGS: COUNTS AND ALLEGATIONS.

23 Any charging official may initiate an administrative debarment proceeding by issuing Counts
24 and Allegations. A charging official may issue Counts and Allegations against any contractor relating
25 to any matter consistent with the foregoing grounds for debarment. A charging official may issue

1 Counts and Allegations regardless whether such charging official awarded, was responsible for or was
2 involved in any way with the underlying contract or circumstances leading to the Counts and
3 Allegations.

4 The charging official shall append to the Counts and Allegations a photocopy of this Chapter 28
5 of the Administrative Code. Failure to append this Chapter 28, however, shall not affect the force or
6 validity of the Counts and Allegations.

7 SEC. 28.5. SERVICE OF THE COUNTS AND ALLEGATIONS.

8 The charging official shall serve the Counts and Allegations on each named individual person
9 or business entity in a manner ensuring confirmation of delivery. For example, service may be
10 achieved by United States Postal Service certified mail, return receipt requested or with other delivery
11 confirmation, hand delivery (messenger service) or other commercial delivery service that provides
12 written confirmation of delivery.

13 The charging official shall also serve the Counts and Allegations on the Controller and the City
14 Attorney.

15 SEC. 28.6. REQUEST FOR A HEARING.

16 Within 15 days after receipt of the Counts and Allegations, the contractor may submit a written
17 request for an administrative hearing. The contractor may make such request through counsel or other
18 authorized representative. Any such request shall be filed with the Controller and copied to the
19 charging official.

20 SEC. 28.7. FAILURE TO RESPOND TO THE COUNTS AND ALLEGATIONS.

21 Failure of the contractor to submit to the City a written request to be heard within the time
22 required by this Chapter, or failure of the contractor or the contractor's representative to appear for a
23 requested hearing that has been duly noticed, shall be deemed admission by the contractor to the
24 Counts and Allegations. In accordance with the procedures set forth below, the charging official shall
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1 present evidence in support of the debarment to the appointed hearing officer and the hearing officer
2 shall make a determination on such evidence.

3 SEC. 28.8. APPOINTMENT OF THE HEARING OFFICER.

4 A charging official shall request either the Controller or the Director of Administrative Services
5 to appoint a hearing officer for any debarment proceeding. If either the Controller or the Director of
6 Administrative Services is the charging official then he or she shall request the other to appoint the
7 hearing officer. Within 15 days of the request, the Controller or the Director of Administrative
8 Services shall appoint a hearing officer and notify the contractor and the charging official of the
9 appointment. The notice of appointment shall include the name of the hearing officer. The contractor
10 or the charging official may object to the appointed hearing officer within five business days of the
11 notification. If the Controller or the Director of Administrative Services, at his/her sole discretion,
12 appoints a new hearing officer, then he/she shall notify the contractor and the charging official as soon
13 as practicable but not more than 15 days after receipt of the objection.

14 SEC. 28.9. PRE-HEARING PROCEDURE.

15 Within 15 calendar days of his/her appointment, the hearing officer shall notify each contractor
16 named in the Counts and Allegations and the charging department of the scheduled hearing date. The
17 hearing date shall be set at the hearing officer's sole discretion, except the hearing must commence
18 within 120 days of the date the charging official served the Counts and Allegations. The hearing
19 officer may extend the 120-day period only upon good cause shown; proceeding as expeditiously as
20 possible is in the public's best interests.

21 Discovery pursuant to the California Code of Civil Procedure is not applicable to this
22 administrative debarment procedure.

23 The hearing officer may, in his/her sole discretion, direct any named contractor and the
24 charging official to submit in advance of the hearing, statements, legal analyses, lists of witnesses,
25 exhibits, documents or any other information the hearing officer deems pertinent to the determination

1 of willful misconduct. The hearing officer may request the respective parties to submit rebuttals to such
2 information. The hearing officer may limit the length, scope or content of any such statement, analysis,
3 list, rebuttal, document, or other requested information. The hearing officer shall set firm due dates for
4 all written presentations.

5 If the hearing officer determines, with the written agreement of each named contractor and the
6 charging official, that the hearing shall be by written presentation, all final writings shall be due no
7 later than 120 days of the date the charging official served the Counts and Allegations.

8 SEC. 28.10. HEARINGS AND DETERMINATIONS.

9 Hearings may occur in person or in writing, as set forth in the foregoing section 28.09. If the
10 hearing is to occur in person, the hearing officer shall specify the time and place for the charging
11 official to present the case and for the contractor to rebut the charges. The hearing officer may, in
12 his/her sole discretion, allow offers of proof, set time limitations and limit the scope of evidence
13 presented based on relevancy. Each side shall be entitled to call witnesses, and the hearing officer may
14 allow cross-examination of witnesses. The hearing officer may ask questions of any party for the
15 purpose of reaching a determination.

16 The hearing officer shall consider the evidence submitted by the charging department and the
17 contractor. Within 15 days of the hearing, or of the date final written presentations are due, the
18 hearing officer shall issue his/her Findings and Recommendation. The hearing officer shall serve the
19 Findings and Recommendation on the charging official, the named contractor(s), and/or their
20 respective counsels or authorized representatives, and shall submit the same to the Controller.

21 If the hearing officer finds that the named contractor has committed willful misconduct as
22 described in the foregoing section 28.3 and recommends a term of debarment, the charging official
23 shall issue an Order of Debarment consistent with the hearing officer's recommendation. The charging
24 official shall serve the Order on each named contractor, his/her/their counsel or authorized
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1 representative, if any, the City Attorney, and the Controller. An Order of Debarment under this
2 Chapter shall be the final administrative determination by the City in the matter.

3 SEC. 28.12. TERM AND EFFECT OF ADMINISTRATIVE DEBARMENT; VIOLATION OF
4 ORDER.

5 An Order of Debarment shall provide for a term of debarment not to exceed five years from the
6 date of the Order. The Order shall prohibit any named contractor and the contractor's affiliates from
7 participating in any contract at any tier, directly or indirectly, with or for the City and County; any
8 contractor and the contractor's affiliates named in an Order of Debarment shall be deemed
9 irresponsible and disqualified for the purposes of all City and County contracts. Upon such Order, any
10 department head, board or commission may cancel any existing contract with a debarred contractor or
11 direct the cancellation of an existing subcontract to which a debarred contractor is a party. In the
12 event of such cancellation, no recovery shall be had on that contract by the debarred party other than
13 for work satisfactorily completed as of the date of cancellation.

14 Administrative Debarment shall neither exclude nor preclude any other administrative or legal
15 action taken by the City and County.

16 Violation of an Order of Debarment, such as by submission of a proposal, bid or sub-bid during
17 the debarment period, may be considered a false claim as provided in this Administrative Code and the
18 California Government Code.

19 SEC. 28.13. PUBLICATION AND REPORTS OF DEBARMENT.

20 Any Order of Debarment issued under this Chapter shall be a public record. The Controller
21 shall maintain and publish on the City's Internet website a current list of contractors subject to Orders
22 of Debarment and the expiration dates for the respective debarment terms. The Controller shall submit
23 a semi-annual report to the Clerk of the Board of Supervisors that includes (a) the contractors then
24 subject to Orders of Debarment and the expiration dates for the respective debarment terms; (b) the
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1 status of any pending debarment matters; and (c) any Orders of Debarment received by the Controller
2 since the date of the last report.

3 Section 2. The San Francisco Administrative Code is hereby amended by amending
4 sections 6.80 and 6.82 as follows:

5 **SEC. 6.80. VIOLATIONS AND FALSE CLAIMS; DEBARMENT AND MONETARY**
6 **PENALTIES.**

7 Any contractor, subcontractor, supplier, consultant or subconsultant^s who fails to
8 comply with the terms of its contract with the City and County; or who violates any provision of
9 Administrative Code Chapter 6; or who fails to abide by any rules and/or regulations adopted
10 pursuant to Administrative Code Chapter 6; or who submits false claims; or who has violated
11 against any government entity a civil or criminal law relevant to its ability to perform under or
12 comply with the terms and conditions of ~~its~~^a contract with the City and County, may be
13 declared an irresponsible bidder or an unqualified consultant and debarred according to the
14 procedures set forth ~~below~~^{in Chapter 28 of this Administrative Code}. Additionally, any contractor,
15 subcontractor, supplier, consultant or subconsultant who submits a false claim to the City and
16 County may also be subject to monetary penalties, investigation and prosecution as described
17 below.

18 In the event that such a violation of this Chapter, including the submission of one or
19 more false claims, comes to the attention of a board or commission or department head
20 responsible for public work, the department head must investigate the matter. The
21 department head must report the findings of any such investigation by letter to the Board of
22 Supervisors within 30 days of the completion of the investigation. The investigation letter to
23 the Board of Supervisors must state the name of the contractor, subcontractor, supplier,
24 consultant or subconsultant; the nature of the violation; the results of the investigation; and the
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1 department head's plan for addressing the violation, if any. A hearing shall also be called in
2 the Audit Committee of the Board of Supervisors to report on this investigation.

3 **SEC. 6.82. PROCEDURES FOR ADMINISTRATIVE DEBARMENT.**


4 Notwithstanding and not exclusive or preclusive of any pending or contemplated legal
5 action, ~~the Mayor, board or commission or department head responsible for the public work may bring~~
6 ~~charges against a any contractor, subcontractor, supplier, consultant or subconsultant directly or~~
7 ~~indirectly subject to the provisions of this Chapter may be determined irresponsible and disqualified~~
8 ~~from contracting with the City and County of San Francisco in accordance with the provisions of~~
9 ~~Chapter 28 of this Administrative Code, for violation of a contract, for violation of Chapter 6, for~~
10 ~~violating against any government entity a civil or criminal law relevant to its ability to perform work~~
11 ~~for the City and County, for submitting a false claim or for engaging in collusion. The department~~
12 ~~head, upon approval of the Mayor or the board or commission concerned, as appropriate to the~~
13 ~~department, shall give written notice to the contractor, subcontractor, supplier, consultant or~~
14 ~~subconsultant of the charges and of all evidence supporting such charges. The contractor,~~
15 ~~subcontractor, supplier, consultant or subconsultant, and/or his or her attorney or other authorized~~
16 ~~representative shall be entitled to offer rebuttal evidence and any other evidence in support of his or~~
17 ~~her position. The department head or the board or commission, as appropriate to the department, shall~~
18 ~~conduct a hearing where the charges and all evidence shall be presented. In the alternative, such~~
19 ~~department head, board or commission may appoint a hearing officer to conduct such a hearing and~~
20 ~~make written findings of fact to be submitted to the department head, board or commission. For~~
21 ~~departments under the Mayor, the department head shall then render a final written decision. For~~
22 ~~departments under boards or commissions, the commission president or his or her designee shall~~
23 ~~render a written decision which shall become final upon adoption by resolution of the board or~~
24 ~~commission concerned.~~

1 ~~Any final written decision by a department head, board or commission that includes a~~
2 ~~determination of nonresponsibility or disqualification shall provide for a term of debarment. A~~
3 ~~contractor, subcontractor, supplier, consultant or subconsultant (or any other entity with substantially~~
4 ~~the same officers, directors, owners or principals) may be debarred for a period of up to five years.~~
5 ~~During such debarment period, the contractor, subcontractor, supplier, consultant or subconsultant~~
6 ~~shall not be permitted to act as a contractor or consultant at any tier, directly or indirectly, for any~~
7 ~~public work or improvement for the City and County.~~

8 ~~Upon a written determination of nonresponsibility or disqualification, any department head,~~
9 ~~board or commission may cancel any contract with the nonresponsible or disqualified contractor or~~
10 ~~consultant or direct the cancellation of the subcontract or subconsultancy. In the event of such~~
11 ~~cancellation, no recovery shall be had on that contract by the contractor, subcontractor, consultant or~~
12 ~~subconsultant.~~

13 ~~Following any decision finding a contractor, subcontractor, supplier, consultant or~~
14 ~~subconsultant nonresponsible, the department head, board or commission who made the finding of~~
15 ~~nonresponsibility retains authority to modify the decision.~~

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18 APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

19 By: 
20 SHERYL L. BREGMAN
21 Deputy City Attorney



City and County of San Francisco

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Tails

Ordinance

File Number: 031503

Date Passed:

Ordinance adding a new Chapter 28 to the San Francisco Administrative Code to establish a City-wide administrative debarment procedure; amending Chapter 6 of the Administrative Code to reflect the adoption of the new Chapter 28.

December 16, 2003 Board of Supervisors — PASSED ON FIRST READING

Ayes: 10 - Ammiano, Daly, Dufty, Gonzalez, Hall, Ma, Maxwell, McGoldrick,
Peskin, Sandoval

Excused: 1 - Newsom

January 6, 2004 Board of Supervisors — FINALLY PASSED

Ayes: 10 - Ammiano, Dufty, Gonzalez, Hall, Ma, Maxwell, McGoldrick, Newsom,
Peskin, Sandoval


Excused: 1 - Daly

File No. 031503

I hereby certify that the foregoing Ordinance
was **FINALLY PASSED** on **January 6, 2004**
by the Board of Supervisors of the City and
County of San Francisco.

JAN 16 2004

Date Approved



Gloria L. Young
Clerk of the Board

