

**AVIATION AUTHORITY
POLICY**

400: FISCAL MATTERS

Effective: 06/02/16

PROCUREMENT

Revised: 11/29/17

**P414: SUSPENSION/DEBARMENT OF
CONTRACTORS**

PURPOSE: To establish a policy by which a Contractor (as defined below) may be suspended or debarred from doing business with the Authority.

GENERAL: The Authority will strive to only solicit offers from, award contracts to, and consent to subcontract with responsible Contractors. To effectuate this, the Authority may suspend or debar a Contractor from entering into new contracts or subcontracts with the Authority.

LEGAL CONSIDERATION: Section 4(2) of the Hillsborough County Aviation Authority Act (Act) states that the Authority has exclusive jurisdiction, control, supervision and management over all publicly owned or operated airports in Hillsborough County. Section 2(8)(a) of the Act declares that the proper operation of the publicly owned or operated airports in Hillsborough County is essential to the welfare of the people of the Tampa Bay area and the State of Florida. Section 6(2)(mm) of the Act states that the Authority may fix and enforce penalties for the violation of rules, regulations or policies adopted in accordance with the Act.

POLICY:

A. Definitions

1. **Affiliate.** A business, organization, person, or individual connected to another by the fact that one controls or has the power to control the other or by the fact that a third party controls or has the power to control both. The Authority, in its sole and absolute discretion, will determine whether an entity is an Affiliate by considering such factors as common ownership, common management, shared or overlapping facilities, equipment, and/or employees, identity of interests among family members and/or that the entity is managed or organized by owners, operators, management, and/or immediate family of an entity that previously contracted with the Authority.
2. **Contractor.** A business, organization, person, individual or other legal entity that directly or indirectly (i.e., through an Affiliate) submits a bid/proposal/response or is awarded a contract, purchase order or subcontract to supply goods or services, to perform construction, or to perform a concession for the Authority.

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3. Debarment. An exclusion from contracting and subcontracting with the Authority for a specified period of time.
4. Responsible. Capable as determined in the sole discretion of the Authority to meet the minimum standards of business competence, reputation and financial ability to be awarded a contract, purchase order or subcontract by the Authority.
5. Suspension. An exclusion from contracting or subcontracting with the Authority prior to the initiation and during the pendency of the Debarment process.

B. Nature of Suspension/Debarment

The purpose of Suspension/Debarment is to protect the integrity of the Authority's procurement process. The Authority seeks to do business only with Responsible Contractors who can be trusted business partners. The nature of Suspension/Debarment is to make ineligible for business opportunities those Contractors that:

1. Lack business integrity or honesty;
2. Are not Responsible to satisfactorily perform contract work; and/or
3. Evidence any other cause of such serious and compelling nature, as determined by the Authority in its absolute and sole discretion, as to affect whether the Contractor is Responsible.

C. Delegation of authority to make Suspension/Debarment determinations

The Authority's Vice President of Procurement has the authority to determine whether to place a Contractor under Suspension if there is probable cause for debarment pending completion of Debarment proceedings. The Suspension shall not be for a period exceeding 3 months.

D. Debarment

The Authority may debar a Contractor for up to five (5) years for any of the causes listed

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below. The existence of any of the causes listed below for Debarment does not necessarily require that a Contractor be debarred. The decision to begin Debarment proceedings is within the discretion of the Vice President of Procurement. The Vice President of Procurement may, but is not required to, take into account relevant mitigating factors including, but not limited to, contrary evidence provided by the Contractor.

1. Causes for Debarment

- a. conviction of a criminal offense for fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, making a false statement, tax evasion, receiving stolen property or any other offence indicating a lack of business integrity or business honesty which currently, seriously and directly affects the responsibility of the Contractor by any federal, state or local court of competent jurisdiction;
- b. entry of a civil judgment for fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, making a false statement, tax evasion, receiving stolen property or any other cause of action indicating a lack of business integrity or business honesty which currently, seriously and directly affects the responsibility of the Contractor by any federal, state or local court of competent jurisdiction;
- c. conviction of a criminal offense under a Federal antitrust statute arising out of the submission of bids or proposals;
- d. inclusion on the General Services Administration “Excluded Parties List System” (“EPLS”);
- e. debarment or suspension by any federal, state or local government entity;
or
- f. a record of serious violation(s) of the terms of an Authority contract or subcontract including, but not limited to, violating any contract provisions relating to the Authority’s Code of Ethics; willful failure to perform in

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accordance with specifications or time limits provided in a contract or subcontract; willful failure to pay monies owed under an Authority concessions contract; or failure to perform or unsatisfactory performance in accordance with the terms of one or more Authority contracts or subcontracts, including any applicable D/W/MBE and ACDBE provisions, following notice and opportunity to cure the contractual violation.

2. Procedures for Debarment

a. Notification to Contractor:

Upon receiving information from Authority staff that there may be cause for Debarment of a Contractor, the Vice President of Procurement may initiate Debarment proceedings by mailing to the Contractor, via certified mail, return receipt requested, to the Contractor's last known address, a written Notice of Proposed Debarment ("NPD"). The NPD will state that:

- i. Debarment of the Contractor is being considered;
- ii. the reasons for the proposed Debarment;
- iii. the maximum period of Debarment;
- iv. the proposed effective date of the Debarment;
- v. the Contractor is entitled to a hearing; and
- vi. the Contractor may request a hearing on the proposed Debarment within fifteen (15) calendar days of the date of receipt of the NPD.

b. Request for Hearing by Contractor:

If a hearing is requested, the Contractor must, no later than fifteen (15) calendar days following the date of receipt of the NPD, submit in writing to the Authority a request for hearing in opposition to the proposed

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Debarment.

- i. The request for hearing must include the following:
 1. The name postal and email addresses, facsimile and telephone numbers of the Contractor;
 2. A concise statement indicating the grounds and evidence, including rules, regulations, statutes and constitutional provisions, the factual and legal information and arguments refuting the proposed Debarment, or the factual and legal information and arguments mitigating the proposed Debarment, upon which the request for hearing is based, with the inclusion of all supporting documentation;
 3. A statement of the specific ruling or relief requested; and
 4. Signature of the Contractor or an authorized agent of the Contractor.
- ii. The request for hearing must be delivered by certified or registered mail, return receipt required, email, or hand delivered to the Vice President of Procurement or designee.
- iii. The request for hearing will be date and time stamped upon receipt and, if hand-delivered, a receipt will be issued to the Contractor stating the date and time the request for hearing was received.
- iv. Once filed and received by the Authority, the request for hearing may not be supplemented. However, the Authority has the right to seek clarification and additional information as needed.
- v. The Contractor may be represented by legal counsel at its own expense.

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c. Proceedings before the Hearing Officer

- i. The Procurement Department will coordinate, schedule and advertise the hearing before the Hearing Officer. The Procurement Department will mail notice of the hearing before the Hearing Officer to all parties of record no less than twenty (20) calendar days before the date of the hearing before the Hearing Officer. This notice will include the time, date and location of such hearing. The Authority shall post the notice of the hearing date, time and location on the Authority website and advertise such notice in a local newspaper. The hearing will be open to the public.
- ii. The Hearing Officer shall conduct a de novo review limited to the records that were produced and submitted to the Vice President of Procurement. New information will not be introduced. The burden of proof shall rest with the Contractor. The standard of proof shall be whether the decision by the Vice President of Procurement was clearly erroneous, arbitrary or capricious, fraudulent, or otherwise without basis in fact or law. Any decision of the Hearing Officer will be based on substantial competent evidence. The hearing shall begin with a statement by the Hearing Officer of the rules and procedures for the hearing, followed by a general statement of the facts by the Authority Vice President of Procurement or designee. Representatives of the Contractor, limited to its owners, officers, employees and/or legal counsel, will then present the Contractor's case. Following that will be a statement and presentation of information from the Vice President of Procurement or designee and Authority legal counsel, as needed. Party presentations shall be limited to one (1) hour per party. All examinations and cross-examinations shall be conducted by the Hearing Officer. All parties shall be provided a fair and impartial hearing. Strict rules of evidence shall not apply. Hearsay evidence may be admissible and used to supplement or explain other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible

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over objections in a civil action.

- iii. Decision and Notice of Decision. The Hearing Officer shall, within ten (10) calendar days of the hearing, make a written decision on the hearing, which decision shall contain findings of fact, conclusions of law, and will affirm or deny the decision by the Vice President of Procurement. The decision shall be sent by the Hearing Officer to all parties by registered mail and shall set forth the reasons for the decision.

E. Suspension

The Vice President of Procurement may, in the best interests of the Authority and upon finding that there is probable cause for debarment, immediately suspend a Contractor upon receiving information from Authority staff that there may be cause for Debarment of a Contractor in accordance with subparagraph (D)(1) above. Such Suspension will exclude the Contractor from contracting or subcontracting with the Authority prior to the initiation and during the pendency of Debarment proceedings and will continue until the completion of Debarment proceedings, unless the Vice President of Procurement determines that a lesser period is appropriate under the circumstances. In no case shall the Suspension exceed 3 months. The existence of a cause for Debarment does not necessarily require that the Contractor be suspended. The Vice President of Procurement will consider the seriousness of the Contractor's acts or omissions when determining whether Suspension is warranted.

1. Procedures for Suspension

The Vice President of Procurement will mail to the Contractor, via certified mail, return receipt requested, to the Contractor's last known address, a written Notice of Suspension ("NS"). The NS will state that:

- a. the Contractor has been suspended;
- b. the reasons for the Suspension;

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- c. the effective date of the Suspension; and
- d. that the Suspension will exclude the Contractor from contracting or subcontracting with the Authority prior to the initiation and during the pendency of any Debarment proceedings and will continue until the completion of such Debarment proceedings or such lesser period of time as determined by the Vice President of Procurement.

The NS will also advise the Contractor that it may, within fifteen (15) days of the date of receipt of the NS, submit in writing to the Vice President of Procurement, any information in opposition to the Suspension. The Vice President of Procurement will consider the information submitted by the Contractor and decide, in the Vice President of Procurement's sole and absolute discretion, whether to revoke the Suspension or to continue the Suspension pending completion of the Debarment proceedings. The Vice President of Procurement will provide written notice to the Contractor of such determination regarding the Suspension.

F. Consequences of Suspension/Debarment

Contractors that have been suspended/debarred by the Authority are excluded from being awarded Authority purchase orders, contracts or subcontracts. Procurement Agents and/or other Authority staff will not solicit proposals, bids, responses or quotations from, award contracts or subcontracts to, or, when a contract provides for such consent, consent to subcontracts with suspended/debarred Contractors.

G. Lists of Parties Suspended/Debarred

The Procurement Department will maintain a list of suspended/debarred Contractors and their current period of Suspension/Debarment.

H. Final Decisions

Decisions of the Hearing Officer will be ratified by the Board at the next available Board meeting and are final and subject to appeal by appropriate court action under Rule

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9.100(c) of the Florida Rules of Appellate Procedure, or in some instances by proceedings before federal administrative agencies, in accordance with applicable law. No new facts or issues will be considered by the reviewing court or agency. By participating in the debarment hearing process, the Contractor and any intervening parties acknowledge that any appeal to any court must be filed no later than 30 calendar days following the latter of the written decision of the Hearing Officer or ratification by the Board.