

ORDINANCE NO. 24-05

AN ORDINANCE OF THE COUNTY OF SISKIYOU

ADDING TITLE 2 "ADMINISTRATION", CHAPTER 40 "CONTRACTOR DEBARMENT", SECTIONS 2-40.01 THROUGH 2-40.34 TO THE SISKIYOU COUNTY CODE REGARDING THE COUNTY'S ADMINISTRATIVE CONTRACTOR DEBARMENT PROCEEDINGS

THE BOARD OF SUPERVISORS OF THE COUNTY OF SISKIYOU ORDAINS AS FOLLOWS:

SECTION I: Sections 2-40.01 through 2-40.34 of Title 2 "Administration", Chapter 40 "Contractor Debarment" of the Siskiyou County Code are hereby added to read as follows:

Sec. 2-40.01 "Contractor Debarment"

- (a) Title 2 "Administration", Chapter 40 "Contractor Debarment", Sections 2-40.01 through 2-40.34 of the Siskiyou County Code sets forth the procedures for debarring Contractors.
- (b) Debarring a Contractor results in the Contractor being prohibited from doing business with the County for a period not to exceed five (5) years.
- (c) This Chapter does not preclude the County from rejecting a Contractor for not being responsible based on the requirements of a specific procurement outside of the debarment process set forth in this Chapter.

Sec. 2-40.02 - Rationale.

- (a) Contracting with the County is an important municipal affair. The County's contracting process is for the benefit of the public, not Contractors.
- (b) Awarding a Contract to a Contractor that engages in conduct that is a basis for debarment under this Chapter compromises the integrity of the County's contracting process. Debarment protects the integrity of the County's contracting process and helps ensure the proper expenditure of public funds.

Sec. 2-40.03 - Due Process.

This Chapter sets forth the due process required before the County can preclude the Contractor from participating in the County's contracting process.

Sec. 2-40.04 - Definitions.

The definitions in this Section shall govern the application and interpretation of this Chapter.

- (a) "Affiliate" means:
 - (i) Any Person that, directly or indirectly, controls the Contractor or has the power to control the Contractor;
 - (ii) Any Person that the Contractor, directly or indirectly, controls or has the power to control; or
 - (iii) Any Person that is, directly or indirectly, controlled by or can be controlled by another Person that also, directly, or indirectly, controls the Contractor.

- (iv) For purposes of this definition, indicia of control include, without limitation, the following: (1) Interlocking management or ownership; (2) Identity of interests among family members; (3) Shared facilities and equipment; (4) Common use of employees.
 - (v) For any business entity formed after the issuance of a notice of proposed Debarment, indicia of control also includes, without limitation, the new entity having the same or similar management, ownership or principal employees as the Contractor.
- (b) "Contract" means either of the following:
- (i) Any County contract for goods, services, construction, labor, supplies, materials or some other benefit to the County, or for a grant or the use of public funds. It includes, without limitation, grant agreements, purchase orders, consultant agreements, solution agreements, services agreements, maintenance agreements, construction agreements, service orders, work orders, and task orders.
 - (ii) Any subcontract entered into in furtherance of a contract described in subsection (b) of this Section.
- (c) "Contractor" means any Person that responds to, or reasonably could be expected to respond to, the County's procurement of a Contract, or that enters into a Contract. The definition of "Contractor" includes a subcontractor.
- (d) "Day" means a calendar day unless otherwise specified.
- (e) "Debarment" is the County's administrative determination that a Contractor is disqualified for a specified length of time from participating in the procurement of a Contract, entering a Contract, or otherwise doing business with the County.
- (f) "Debarring Official" means a County official authorized to initiate and pursue an administrative Debarment proceeding on the County's behalf. Each of the following County officials is a Debarring Official:
- (i) The County Administrator as to all Contracts;
 - (ii) A County department head as to Contracts the department head is authorized to award or execute, or is responsible for administering and managing; and
 - (iii) A County Counsel appointee as to Contracts the appointee is authorized to award or execute, or is responsible for administering and managing.

Sec. 2-40.05 – Causes for Debarment.

The Debarring Official can debar a Contractor for any of the following causes.

- (a) The Contractor submitted to the County false, untrue or misleading information in any context, including, without limitation, the procurement or performance of a Contract. This cause includes, without limitation, each of the following:
 - (i) The submission of false, untrue or misleading information based on the Contractor acting in deliberate ignorance, or in reckless disregard, of the truthfulness of the information;
 - (ii) The submission of false, untrue or misleading information that the Contractor represents as accurate information without having taken reasonable steps of determine the accuracy of the information; or
 - (iii) The failure to disclose and correct an inadvertent submission of false, untrue or misleading information after discovering the information is false, untrue or misleading.

- (b) The Contractor submitted a false claim as defined in any applicable federal, state, or local false claims law.
- (c) The Contractor committed an act indicating a lack of business integrity or honesty, including, without limitation, fraud, bribery, collusion, bid rigging, price fixing, perjury, lying, embezzlement, theft, forgery, or falsification or destruction of records or evidence.
- (d) The Contractor failed to comply with, or disregarded, the terms and conditions of a Contract.
- (e) The Contractor's performance on a Contract was substandard, including, without limitation, substandard quality of work, repeated unexcused delays, or repeated failure to cooperate with the County department administering the Contract.
- (f) The Contractor violated federal, state, County of Siskiyou, or local law, administrative regulation, order, or official policy applicable to the performance of the Contract or the procurement of the Contract. This includes, without limitation, each of the following: (1) Noncompliance with requirements that protect the integrity of the procurement process; (2) Noncompliance with labor or safety requirements such as prevailing wage, living wage, wage theft prevention, occupational safety and health, and nondiscrimination requirements; (3) Noncompliance with requirements for the handling, transfer, storage or disposal of hazardous materials or hazardous waste; or (4) Noncompliance with applicable conflict of interest requirements.
- (g) The Contractor engaged in conduct resulting in debarment by any other federal, state or local agency.
- (h) The Contractor knowingly used a debarred person or entity to perform any part of a Contract.
- (i) The Contractor breached its duty of good faith and fair dealing to the County, including, without limitation, the filing of nonmeritorious claims or lawsuits against any public agency or agencies.
- (j) The Contractor lacks financial responsibility.
- (k) Any conviction, verdict, judgment, settlement, stipulation, or plea agreement based on any of the above-referenced causes for Debarment.
- (l) Any other cause of such a serious or compelling nature that it demonstrates the Contractor's present lack of responsibility.

Sec. 2-40.06 - Length of Debarment.

The Debarring Official can debar a Contractor for a period of up to five (5) years from the effective date of the Debarment.

Sec. 2-40.07 - Considerations.

In deciding if Debarment is warranted, and if so, the length of the Debarment, the Debarring Official will consider factors such as the following.

- (a) The severity of the harm resulting from the activity in question.
- (b) The degree to which the activity in question involves willful, intentional or reckless conduct by the Contractor. Willful, intentional, or reckless conduct is a strong indicator that Debarment is warranted.
- (c) The Contractor's history or pattern of engaging in the conduct or similar conduct. A history or pattern or repeatedly engaging in the conduct is a strong indicator that Debarment is warranted.
- (d) Whether the Contractor had effective standards of conduct and internal control systems in place at the time of the activity in question.

- (e) Whether the Contractor brought the activity in question to the attention of the County in a timely manner.
- (f) Whether the Contractor independently investigated the activity in question and, if so, made the result of the investigation available to the County.
- (g) Whether the Contractor cooperated during any investigation and any court or administrative action.
- (h) Whether the Contractor has paid or has agreed to pay any criminal, civil, and administrative liability resulting from the activity in question (including any investigative or administrative costs incurred by the County), and has made or agreed to make full restitution.
- (i) Whether the Contractor has taken appropriate disciplinary action against the individuals responsible for the activity in question.
- (j) Whether the Contractor has implemented or agreed to implement remedial measures that will avoid the activity in question from occurring again.
- (k) Whether the Contractor's management recognizes and understands the seriousness of any misconduct giving rise to the activity in question and has implemented programs to prevent its recurrence.

Sec. 2-40.08 - Notice of Proposed Debarment.

- (a) A Debarring Official initiates an administrative Debarment by issuing a written notice of proposed Debarment to a Contractor. The Debarring Official must name and issue the notice of proposed Debarment to any known Affiliates that will be subject to the Debarment.
- (b) A Debarring Official can issue a notice of proposed Debarment regardless of whether such Official awarded, executed, or was responsible for administering and managing, the underlying Contract leading to the notice of proposed Debarment.

Sec. 2-40.09 - Contents of Notice.

The notice of proposed Debarment must include the following:

- (a) A statement that the Debarring Official is proposing to debar the Contractor in accordance with this Chapter.
- (b) The length of the proposed Debarment, not to exceed five (5) years.
- (c) The reasons for the proposed Debarment stated in sufficient detail to put the Contractor on notice of the activity upon which the Debarment is based.
- (d) The cause for Debarment as set forth in Section 2-40.05.
- (e) The evidence relied on by the Debarring Officer.
- (f) The consequences of the Debarment.
- (g) A description of the procedures for contesting the notice, including a statement that the proposed Debarment is automatically effective unless the Contractor requests a meeting with the Debarring Official on or before fifteen (15) Days of the date of the notice.
- (h) A statement referencing that Debarment is in accordance with the procedures set forth in this Chapter.

Sec. 2-40.10 - Service of Notice.

The Debarring Official must serve the notice of proposed Debarment on the Contractor and any named Affiliates by hand delivery, by United States Postal Service certified mail return receipt requested or with other delivery confirmation, or by other commercial delivery service that provides written confirmation of delivery.

Sec. 2-40.11 - Request to Meet Informally with the Debarment Official.

- (a) The Contractor must make a timely, written request to meet with the Debarring Official if the Contractor wants to contest the notice of proposed Debarment.
- (b) The Contractor must serve the request on the Debarring Official on or before fifteen (15) Days of receiving the notice of proposed Debarment.

Sec. 2-40.12 - Failure to Request Informal Meeting with the Debarment Official.

The Contractor is deemed to have consented to Debarment and is automatically debarred in accordance with the notice of Debarment if the Contractor:

- (a) Fails to request a meeting with the Debarring Official in accordance with Section 2-40.11; or
- (b) Fails to appear at a requested meeting that the Debarring Official properly noticed.

Sec. 2-40.13 - Scheduling Informal Meeting with the Debarment Official.

- (a) The Debarring Official must schedule a meeting with the Contractor within a reasonable time after the Contractor's timely request for such meeting.
- (b) The Debarring Official must give the Contractor written notice of the date, time and location of the meeting. The Debarring Official may conduct the meeting remotely.

Sec. 2-40.14 – Informal Meeting with the Debarment Official.

- (a) The meeting between the Contractor and the Debarring Official is intended to be an informal discussion of the notice of proposed Debarment.
- (b) The Contractor can present to the Debarring Official any facts, arguments, documents and written evidence in opposition, or mitigation, to the notice of proposed Debarment.
- (c) No oral testimony by a third person will be presented at the meeting by the Debarring Official or the Contractor.
- (d) The meeting does not need to be recorded.

Sec. 2-40.15 - Post-Meeting Notice.

- (a) Within a reasonable time after the meeting, the Debarring Official will issue a written notice to the Contractor stating one of the following: (1) The original notice of proposed Debarment stands without change; (2) The original notice of proposed Debarment is amended and setting forth the amendments to the notice of proposed Debarment; or (3) The notice of proposed Debarment is dropped or suspended and stating any agreed upon terms and conditions for such action.
- (b) The Debarring Official's written notice must state how the Contractor can request an administrative hearing if the Contractor is dissatisfied with the notice.

- (c) The Debarring Official must serve the written notice required by this Section on the Contractor by hand delivery, by United States Postal Service certified mail return receipt requested or with other delivery confirmation, or by other commercial delivery service that provides written confirmation of delivery.

Sec. 2-40.16 - Compromise Agreements.

- (a) Any decision by the Debarring Official to drop or suspend a notice of proposed Debarment based on a compromise with the Contractor must be implemented by a written agreement between the County and Contractor setting forth the terms and conditions of such compromise.
- (b) No compromise is effective until the County and Contractor have executed such an agreement.

Sec. 2-40.17 - Request for Administrative Hearing.

- (a) The Contractor must make a timely, written request for an administrative hearing if the Contractor wants to contest the notice issued by the Debarring Official in accordance with Section 2-40.15.
- (b) The Contractor must serve the request for an administrative hearing on the County Clerk, with a copy to the Debarring Official, on or before fifteen (15) Days of receiving the notice issued in accordance with Section 2-40.15.

Sec. 2-40.18 - Failure to Request Hearing.

The Contractor is deemed to have consented to Debarment and is automatically debarred in accordance with the notice of proposed Debarment (as it may have been amended by the notice issued in accordance with Sec. 2-40.15, if the Contractor:

- (a) Fails to request a hearing in accordance with Sec. 2-40.17; or
- (b) Fails to appear at a requested hearing that has been duly noticed.

Sec. 2-40.19 - Appointment of Hearing Officer.

- (a) After receiving the Contractor's request for a hearing, the Debarring Official must request the County Administrator to appoint a hearing officer. If the County Administrator is the Debarring Official, the County Administrator will request an appointee of the Board of Supervisors to appoint a hearing officer.
- (b) The selected hearing officer must meet the following requirements: (1) The individual was not involved in awarding, executing, administering or managing any Contract that is the basis of the Debarment proceeding. (2) The individual was not involved in the investigation or decision leading to the notice of proposed Debarment.
- (c) The individual appointed as the hearing officer has the authority to make an independent decision based on the facts, evidence and arguments presented by the Debarring Official and the Contractor.

Sec. 2-40.20 - Notice of Appointment.

- (a) The Contractor and the Debarring Official will be given written notice of the person appointed as the hearing officer.

- (b) The Contractor or the Debarring Official can object, in writing, to the appointed hearing officer within five (5) business days of the notification. The writing must include the reason(s) for the objection.
- (c) If an objection is made to the appointed hearing officer, the County representative who appointed the hearing officer will do one of the following: (1) Reject the objection and provide the reasons for this decision; or (2) Provide the Contractor and the Debarring Official with written notice of the appointment of a new hearing officer.

Sec. 2-40.21 - Pre-Hearing Procedure.

- (a) The hearing officer will notify the Contractor and Debarring Official of the scheduled hearing date, time and place.
 - (1) The hearing officer has sole discretion over setting the hearing date, provided that the date must be within ninety (90) Days of the Debarring Official's notice provided in accordance with Sec. 2-40.15.
 - (2) The hearing officer can extend the deadline for holding a hearing only upon good cause shown.
- (b) Discovery pursuant to the California Code of Civil Procedure and the formal rules of evidence are not applicable to this administrative procedure.
- (c) The hearing officer has the sole discretionary authority to direct the Contractor and the Debarring Official to submit in advance of the hearing statements, legal analyses, lists of witnesses, exhibits, documents or any other information the hearing officer deems pertinent.
 - (1) The hearing officer may request the respective parties to submit rebuttals to such information.
 - (2) The hearing officer may limit the length, scope, or content of any such statement, analysis, list, rebuttal, document, or other requested information.
 - (3) The hearing officer will set firm due dates for the submission of all written information.

Sec. 2-40.22 - Hearing.

- (a) The hearing officer may conduct the hearing in person or on an electronic meeting platform if the officer deems that to be necessary.
- (b) The Debarring Official will present evidence and argument in support of the Debarment. The Contractor can present evidence and argument in defense and/or in mitigation of the Debarment.
- (c) Each side is entitled to call witnesses, and the hearing officer can allow cross-examination of witnesses.
- (d) The hearing officer may ask questions of any party and of any witness.
- (e) The hearing officer has the sole discretion to allow offers of proof, set time limits on arguments and rebuttal arguments, limit the number of witnesses based on relevancy, limit the testimony of witnesses as to substance and time, and otherwise limit the scope of evidence presented based on relevancy.

Sec. 2-40.23 - Written Presentation Only.

- (a) Notwithstanding anything to the contrary in Sections 2-40.21 and 2-40.22, the hearing officer may conduct the hearing by written presentation only if: (1) The Contractor and Debarring

Official agree in writing the hearing will be solely by written presentation; or (2) The Debarment is based on a final conviction, civil judgment or administrative decision, or on material facts over which no genuine dispute exists.

- (b) If the hearing is by written presentation only, the hearing officer must require the Contractor and Debarring Official to submit all documents no later than ninety (90) Days after the Debarring Official's notice provided in accordance with Sec. 2-40.15.

Sec. 2-40.24 - Hearing Officer's Decision.

- (a) After considering all the arguments, facts and evidence, the hearing officer will issue a written decision. The decision will include findings and references to evidence supporting the hearing officer's conclusions. The decision must be supported by a preponderance of the evidence presented.
- (b) If the decision is to impose Debarment, the decision must include an order of Debarment setting forth the effective date and term of the Debarment (not to exceed five (5) years), and any special conditions applying to the Debarment.
- (c) The hearing officer's decision is the final administrative determination by the County in the matter.

Sec. 2-40.25 - Service of Decision.

The hearing officer must serve the hearing officer's decision on the Contractor and the Debarring Official by hand delivery, by United States Postal Service certified mail return receipt requested or with other delivery confirmation, or by other commercial delivery service that provides written confirmation of delivery.

Sec. 2-40.26 - Other Administrative Proceedings.

Debarment neither excludes nor precludes the County from pursuing any other administrative or legal action against the Contractor.

Sec. 2-40.27 - Effect of Debarment.

- (a) Debarment prohibits the Contractor and Affiliates named in the Debarment proceedings from doing business with the County, including, without limitation, participating in any Contract at any tier, directly or indirectly. A debarred Contractor and Affiliates named in the Debarment are deemed irresponsible and disqualified for the purposes of all Contracts.
- (b) The County will reject any bid, proposal, quote, statement of qualification, or other response to a County procurement submitted by, on behalf of or including the debarred Contractor and Affiliates named in the Debarment proceedings.

Sec. 2-40.28 - Coverage.

- (a) Debarment of a Contractor constitutes Debarment of the principal(s) of the debarred Contractor.
- (b) Debarment of a Contractor constitutes Debarment of all the Contractor's divisions unless the Debarment is expressly limited by its terms to one or more specifically identified individuals or divisions.

- (c) An Affiliate existing before the issuance of the notice of proposed Debarment is debarred if the Affiliate was specifically named and given notice of the Debarment and had the opportunity to be heard in the Debarment proceedings.
- (d) The Debarment applies to any Affiliate formed after the issuance of the notice of proposed Debarment regardless of whether the Affiliate is named or given notice of the Debarment proceedings.

Sec. 2-40.29 - Existing Contracts.

- (a) The Debarment of a Contractor is grounds for the County to: (1) Terminate an existing Contract with the debarred Contractor; (2) Direct the termination of an existing subcontract to which the debarred Contractor is a party; or (3) Not renew or extend the term of any contract or grant.
- (b) In the event of termination under this Sec. 2-40.29, the debarred Contractor's recovery is limited to reasonable compensation for work satisfactorily completed as of the date of termination.

Sec. 2-40.30 - Request to Modify Debarment.

- (a) During the period of Debarment, a debarred Contractor can make a written request to the County Administrator to modify the Debarment for any reason that eliminates the need for the Debarment or demonstrates that a shorter Debarment period will adequately protect the public interest. Such reasons include, without limitation, the following: (1) Newly discovered material evidence; (2) Reversal of the conviction, civil judgment, or administrative decision 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.
- (b) The request by the debarred Contractor must be in writing and accompanied by supporting documentation.
- (c) The County Administrator's decision regarding such a request is final.

Sec. 2-40.31- Conflict with Other Procedures.

To the extent a source of funding requires its own debarment procedures, those procedures apply.

Sec. 2-40.32 - Other Agency Debarment.

The County will not contract with or allow performance of contracts or subcontracts by any Contractor who has been debarred by a federal or state agency providing funds for the contract.

Sec. 2-40.33 - Doing Business with A Debarred Contractor.

- (a) A Person seeking a Contract or entering a Contract is prohibited from knowingly using a debarred Contractor.
- (b) Violation of this Section may, as determined in the sole discretion of the County Administrator, result in rejection of the bid or proposal, nonpayment by the County for work performed by the debarred Contractor, annulment of Contract award or termination of Contract, issuance of a stop work order, initiation of Debarment proceedings, or any other remedy provided by law.

Sec. 2-40.34 - List of Debarred Contractors.

- (a) The County Administrator will forward a copy of all Debarment decisions to the County Clerk, who will maintain a public list of all Contractors debarred by the County.

(b) The County Clerk will make the list available for inspection and copying by any person during reasonable hours and upon reasonable notice.

SECTION III: Constitutionality: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

SECTION IV: This ordinance shall become effective 30 days after its passage and shall, within 15 days of adoption, be published once in a newspaper of general circulation, printed and published in the County of Siskiyou.

PASSED AND ADOPTED this 7th day of May, 2024 at a regular meeting of the Board of Supervisors by the following vote:

AYES: Supervisors Haupt, Valenzuela, Criss, Ogren and Kobseff

NOES: None

ABSENT: None

ABSTAIN: None

Signature on File

MICHAEL N. KOBSEFF, CHAIR

Board of Supervisors

County of Siskiyou

State of California

ATTEST:

LAURA BYNUM, CLERK,

Board of Supervisors

By _____
Signature on File

Deputy