



# EXECUTIVE DECISION DOCUMENT

<b>GENERAL MANAGER APPROVAL:</b>		DocuSigned by: <i>Michael Jones</i> 47000790F2D7463...	<b>GENERAL MANAGER ACTION REQ'D:</b>		
<b>DATE:</b> 11/21/2024		11/27/2024	<b>BOARD INITIATED ITEM:</b> No		
<b>Originator/Prepared by:</b> Dennis Markham <b>Dept:</b> Performance & Audit Admin	<b>General Counsel</b>	<b>Controller/Treasurer</b>	<b>District Secretary</b>	<b>BARC</b>	
DocuSigned by: <i>Monica Gonzalez</i> E0FF301694D945B...	DocuSigned by: <i>Amelia Sandoval</i> 2528C067C44147D...	DocuSigned by: <i>Shirley Gan</i> EE11C8CEEEA04FD...		DocuSigned by: <i>Pamela Herhold</i> 3BB24D65B8724F5...	
<b>Signature/Date:</b> 11/26/2024	11/26/2024 [ ]	11/26/2024 [ ]	[ ]	11/26/2024 [ ]	

## District Suspension and Debarment Policy

### PURPOSE:

To adopt a new District Suspension and Debarment Policy (“Policy”) that aligns BART with other government agencies and best practices.

### DISCUSSION:

Currently, the District does not have the ability to debar contractors from participating in contract activities with the District. The District Suspension and Debarment Policy establishes rules and regulations for imposition of a Suspension or Debarment to protect the public interest and the District’s interests, and not for the purpose of punishing a contractor or vendor.

Suspension involves the temporary suspension of a contractor or vendor, as defined in the Policy, from participation in District procurement activities for no greater than one (1) year pending investigation of any allegations of contractor or vendor activity involving behavior such as waste, fraud, abuse, or dishonesty. Debarment is applied to a contractor or vendor, when following investigation, information exists by a preponderance of the evidence, to support a cause to debar the contractor or vendor. The Debarment period is commensurate with the seriousness of the contractor’s conduct, up to three (3) years or longer (including permanent) based on the circumstances. Contractors or vendors are not allowed to perform or be awarded work while under a Suspension or Debarment.

This Policy implements a recommendation from the Office of Inspector General (OIG), that was fully accepted by the General Manager. The Policy applies to current activities and activities prior to adoption of the Policy. Contractors will be required to state if they are under Suspension or Debarment by another public entity when bidding on District work.



BART's standard contract language and the Contractor Code of Conduct will be updated to reflect the Policy.

The Policy designates the Director of Procurement as the Suspending Official and the General Manager as the Debarring Official. Both officials can create a three-person Executive Review Panel or appoint a hearing officer or retired judge to preside over cases. Contractors are entitled to a hearing before the panel, hearing officer, or retired judge.

A decision to terminate a contract as a result of the Suspension or Debarment process will be made after review by BART contracting and technical staff and after obtaining legal advice from the Office of the General Counsel.

Staff will provide this Policy and amended Contractor Code of Conduct to all current Contractors along with instructions for disclosing existing debarments from other public agencies.

**FISCAL IMPACT:**

None, but there could be potential impacts to projects if contracts are delayed or terminated as a result of this Policy.

**ALTERNATIVES:**

Do not adopt the Suspension and Debarment Policy, which will leave current practices in place and limit the District's ability to debar a contractor.

**RECOMMENDATION:**

Staff recommends adoption of the Suspension and Debarment Policy that provides clear guidelines to help establish and maintain high standards of professional and personal conduct for contractors who conduct business with the District. On November 18, 2024, the Audit Committee voted unanimously to recommend that the full board adopt the Policy.

**MOTION:**

The Board adopts the attached District Suspension and Debarment Policy.