



District Suspension & Debarment Policy

BART Board of Directors

December 5, 2024



Background

- This new Suspension & Debarment Policy was developed by a working group representing the General Counsel's Office, Procurement, Internal Audit, and the Office of Civil Rights.
 - All Executive Offices and Board Appointed Officers, General Manager's Office, Office of Inspector General, and BART Police Department were invited to review and comment on the Policy.
- Establishment of this Suspension & Debarment Policy is a result of a recommendation by the Office of Inspector General (OIG) with full concurrence by the General Manager.
- Currently, the District suspends contractors, as necessary, for various reasons including when under investigation by the OIG or management, or when there are contract issues.
- This Policy formalizes the Suspension rules and regulations and establishes rules and regulations for Debarment.

Suspension & Debarment Policy Summary

- Suspension is for lesser contractor violations and Debarment is applied to more egregious events.
- Both Suspension and Debarment are intended to be applied judiciously and will only be applied in serious cases of contractor misconduct.
- Contractors will be required to state whether they are under Suspension or Debarment by another public entity, including the federal government, when bidding on District work.
- Both Suspension and Debarment can be applied to individuals or firms.
- This Policy applies to current activities and activities that occurred before this Policy was adopted by the BART Board of Directors.
- Upon adoption by the BART Board of Directors, BART standard contract language and the Contractor Code of Conduct will be updated to reflect this policy.

Debarment

- Debarment is more serious than Suspension.
- Debarment period is commensurate with the seriousness of the Contractor's conduct, up to three years or longer (including permanent) if circumstances warrant.
- Contractors are not allowed to bid on, be awarded, or perform work as a prime or subcontractor for the District while under Debarment.
 - BART Procurement staff will check the federal, BART, and other Debarment databases during bidding and prior to awarding a contract (Procurement currently checks the federal database).
- This Policy follows and expands upon the federal Debarment criteria.
- The Debarring Official is the General Manager who may create a three-person Executive Review Panel or appoint a hearing officer, who may be a retired judge, to preside over Debarment cases.

Debarment Procedure

- Potential fraud pertaining to a contractor will be forwarded to the OIG for investigation in alignment with the District's Whistleblower Policy.
- Contractors are entitled to a hearing before the three-member Executive Review Panel or hearing officer, who may be a retired judge, as applicable.
- Contractors can appeal the Debarment decision made by the Debarring Official who makes all final decisions regarding Debarment.
- Information about Debarred contractors will be provided, as necessary, to the federal government for inclusion in its debarment database.
- Contractors under Debarment will be placed on a list that will be posted on bart.gov.

Actions Other Than Debarment

As an alternative to Debarment, one or more of the following actions may be taken:

- Voluntary Exclusion from contracts.
- Warning Letter.
- Settlement, which may also include Voluntary Exclusion and Warning Letter.

Suspension

- Suspension has no defined criteria and federal regulations only provide potential causes for Suspension, which leave Suspension decisions up to the public agency.
- Under this Policy, Suspension decisions by the District will continue to be made on a case-by-case basis.
- Suspension is temporary and will be applied while a contractor is under investigation or review, a Debarment is under consideration, or for other issues related to the District's contract provisions.
- Contractors are not allowed to perform or be awarded work while under Suspension.
- Contractors cannot file delay or other claims with the District because of Suspension.
- The Suspending Official is the Director of Procurement who may create a three-person Executive Review Panel or appoint a hearing officer, who may be a retired judge, to review Suspension cases.

Suspension Procedure

- Contractors are entitled to a hearing with the Suspending Official, three-person Executive Review Panel or hearing officer, who may be a retired judge, as applicable.
- Suspensions are meant to be temporary pending completion of the District's investigation and any ensuing proceedings, unless sooner terminated by the Suspending Official.
 - Suspension will terminate if the District does not initiate Debarment proceedings within 12 months after the date of the Suspension.
 - Once Debarment proceedings have been initiated, the Suspension may continue indefinitely pending resolution of the Debarment proceeding.

Suspension & Debarment Effects on Contracts

- The District may suspend the performance of contracts or subcontracts in existence at the time the contractor was debarred, suspended or proposed for Suspension or Debarment unless the General Manager or his or her designee, directs otherwise.
- A decision to terminate a contract should be made only after review by BART contracting and technical personnel and after obtaining legal advice from the Office of the General Counsel to ensure the propriety of the proposed action.
- The District shall not award options to contracts or in any way extend the duration of current contracts, or consent to additional subcontracts, with contractors proposed for Suspension or Debarment.

Other Agency Debarment Periods

Agency	Debarment Period
City and County of San Francisco	up to 5 years
Valley Transportation Authority (VTA)	up to 5 years
SoCal Metropolitan Water District	up to 10 years
LA Metro	up to 5 years
Los Angeles County	up to five years, with potential for permanent
City of Los Angeles	1 yr for 1st violation, 2 yrs for 2nd, 3 yrs for 3rd, 4 yrs for all subsequent
WMATA (Washington D.C.)	3 years can be extended (no limit stated)
Alameda County	1-5 years, with potential for permanent
State of California	1-3 years

November 18, 2024 Audit Committee

- The Suspension & Debarment Policy was presented to the Audit Committee on November 18.
- Committee voted unanimously to recommend that the full BOD adopt the Policy.

Recommendation

- The Board adopts the District Suspension and Debarment Policy.