

# **South Carolina Ports Authority Debarment Policy**

## Procurement.

### A. Policy.

In order to preserve the integrity of the public contracting process and to ensure the safe and efficient development of the State's ports, the Authority hereby declares:

1. The Authority's policies and procedures for procurement, including bidding and contractor qualification, and for transacting business with the Authority exist to ensure the quality of public works.
2. The opportunity to bid on contracts, to be selected as a contractor or vendor, and to participate in the provision of services and/or supplies to the Authority is a privilege, not a right.
3. The privilege of transacting business with the Authority shall be denied to certain persons engaging in certain misconduct.

### B. Definitions.

1. Affiliate – Any business entity having direct or indirect control over, or which is controlled directly or indirectly by, any person who has been disqualified, suspended, or otherwise precluded from transacting business with the Authority.
2. Business Entity – A corporation, limited liability company, partnership, limited partnership, sole proprietorship, or similar formation or structure.
3. Disqualification – The exclusion of a person from participating as a contractor, subcontractor, supplier, or in any other role under any contract with the Authority.
4. Person – Any individual or business entity.
5. Suspension – The immediate exclusion of a person from participating in any contracts with the Authority for a temporary period of 30 days or more as determined by the Authority in its sole discretion.

### C. Publication of list of persons or entities disqualified or suspended.

The Director of Procurement will cause a list of persons disqualified or suspended from selection as contractors or vendors by operation of this Policy to be published on the Procurement Section of the Authority's website and in such other locations as deemed appropriate. Notwithstanding the preceding sentence, the failure to include a person in the published list does not preclude application of this Policy to disqualify or suspend that person from selection as a contractor or vendor.

D. Disqualification.

Any person who violates any of the standards set forth below may be subject to disqualification.

1. False and misleading information.

Providing false or misleading information to the Authority with regard to bids; contracts; purchase orders; opportunities to quote, bid, or submit proposals; solicitations; and any other arrangements for providing materials and services to the Authority.

2. Criminal conviction.

Conviction of any crime reflecting a lack of business integrity or business honesty, including but not limited to, crimes involving fraud, deceit, embezzlement, theft, forgery, bribery, falsification or destruction of records, bid rigging, price fixing, making a false statement, receiving stolen property, antitrust violations, false claims, obstruction of justice, violation of ethical standards, or conspiracy to commit any of the above.

3. Civil judgment or final administrative decision.

Civil judgment or a final administrative decision by any governmental agency for any acts or omissions reflecting a lack of business integrity or business honesty, including but not limited to, crimes involving fraud, deceit, embezzlement, theft, forgery, bribery, falsification or destruction of records, bid rigging, price fixing, making a false statement, receiving stolen property, antitrust violations, false claims, obstruction of justice, violation of ethical standards, or conspiracy to commit any of the above.

4. Acts reflecting lack of business integrity or business honesty.

Any acts or omissions reflecting a lack of business integrity or business honesty, including but not limited to, crimes involving fraud, deceit, embezzlement, theft, forgery, bribery, falsification or destruction of records, bid rigging, price fixing, making a false statement, receiving stolen property, antitrust violations, false claims, obstruction of justice, violation of ethical standards, or conspiracy to commit any of the above.

5. Contract violations.

Violation of any provision of a contract with the Authority relating to the quality of the work product (such as negligent design or construction), or of any statute, regulation or policy relating to such contract, while serving as a contractor, subcontractor, or supplier.

6. Unsatisfactory performance.

Failure to perform or incompetent performance of one or more contracts with the Authority as a contractor, subcontractor, or supplier.

7. Other causes.

Any other cause the Authority determines to be so serious and compelling as to affect responsibility as a contractor, subcontractor or supplier, including, but not limited to 1) debarment, disqualification, or suspension by another governmental entity or 2) the commission of any act subject to the debarment provisions of S.C. Code Ann. § 11-35-4220.

E. Suspension. Any person falling within the following provisions will be subject to immediate suspension.

1. Investigation for violation of Authority policy.

Any person violating or suspected of violating any of the standards set forth at Section (D), above, or of any policies or procedures of the Authority, shall be suspended pending the conclusion of the Authority's investigation of the suspected violation.

2. Adverse legal proceedings.

Any person involved as an adverse party in any litigation or legal proceedings with the Authority in which the quality of the work performed is an issue shall be suspended pending final judgment from a court of competent jurisdiction. Suspension shall be effective as of the date the litigation is filed. This provision shall apply if the person is an adverse party in any manner, including as a plaintiff, defendant, third-party plaintiff, or third-party defendant.

3. Emergency action.

A finding by the Authority that emergency suspension of any person is required to protect the public health, safety or welfare.

F. Sanctions.

The Authority shall have broad equitable powers in imposing civil sanctions under this Policy. Civil sanctions shall be remedial in nature and may include, but are not limited to: permanent disqualification, disqualification for a specific period of time, and/or conditional reinstatement.

G. Procedures.

1. Upon a determination by the Director of Procurement that a person has violated or is suspected of violating any of the standards set forth in Sections(D) or(E) above, the Director of Procurement shall notify the person of the disqualification or suspension by mail. Notice shall include a short and plain statement of the grounds for disqualification or suspension, the period of suspension, if any, and shall reference the particular statutes, regulations, policies, rules, or contract provisions involved. A copy of this policy shall be included with such notice.
2. The determination of the Director of Procurement shall be final and conclusive without further notice unless the person files with the Director of Procurement and within ten calendar days of the date the notice is mailed via certified mail a written request for administrative review of the determination. The request for administrative review must set forth in detail the reasons for contesting the determination and must identify any documentation or evidence supporting the request.
3. If the person requests administrative review of the determination, a review panel consisting of the Chief Executive Officer or a designee, the Chief Financial Officer or a designee, and a neutral arbitrator selected by the Authority from a list of qualified arbitrators maintained by the Authority and who shall serve as the presiding officer of the review panel, shall convene a hearing after notice of not less than thirty days to review the determination. At the hearing, the person and the Director of Procurement or his designee shall be afforded the opportunity to present evidence and argument on all issues involved and determined as permitted by the review panel.
4. Within fourteen calendar days of the hearing, the review panel shall issue a decision and determine whether the disqualification or suspension should be imposed or modified. The review panel shall notify the person of the decision by (i) certified mail or (ii) electronic mail with the person's consent.
5. The decision of the review panel shall be final and conclusive without further notice unless the person files with the review panel and within ten calendar days of the date the decision is mailed via certified mail a written request for final review by the Authority's Board of Directors.
6. If the person requests final review of the review panel's decision, the Board of Directors or a review panel appointed by the Chairman may review the record of the hearing and issue a final decision upholding, reversing, or modifying the review panel's decision within 14 days of the request for final review, or decline to conduct such review, in which case the review panel's decision shall be the final decision of the Board. The Board of Directors shall notify the person of the decision by (i) certified mail or (ii) electronic mail with the person's consent, which decision shall be final.

H. Effect of Disqualification and Suspension.

1. Any person disqualified or suspended pursuant to this Policy shall be disqualified from serving as a contractor, subcontractor, or supplier or performing any other service or role under any contract with the Authority during the period of suspension or disqualification.
2. A violation of the terms of any suspension or disqualification shall be grounds for further sanction.
3. In the event a person which is a business entity is disqualified or suspended under this Policy, such disqualification or suspension shall be applicable to any principal or affiliate of the business entity and all divisions or other organizational elements of the business entity.
4. The Authority may, in its sole discretion, allow any person disqualified or suspended under this Policy to complete its obligation under the contract when completion is in the public interest, subject to such additional terms and conditions as the Authority may deem necessary.

I. Reinstatement.

Any person disqualified or suspended pursuant to this Policy may apply for reinstatement upon completion of the period of disqualification or suspension and satisfaction of any conditions imposed. In the event the Authority denies an application for reinstatement, the person may not apply for reinstatement until one year following the date of the denial.