Resolution No. 2025-05

Board of Directors, San Mateo County Transportation Authority
State of California

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Adopting a TA Debarment Policy

Whereas, in recent years, local governments across the Bay Area have adopted or revised their debarment policies in response to issues with contractors, including fraud and corruption convictions; and

Whereas, a 2020 federal corruption investigation, and a subsequent criminal conviction, revealed the City and County of San Francisco's former Public Works Director Mohammed Nuru and public contractor executives engaged in bribery related to public contracts; and

Whereas, one of the companies involved in the scandal, ProVen Management Inc., had several contracts with multiple Bay Area agencies, including the Peninsula Corridor Joint Powers Board (JPB); and

Whereas, the San Mateo County Transportation Authority (TA) takes public integrity, its trusted position as a steward of taxpayer moneys, and the use of public funds very seriously; and

Whereas, staff and legal counsel have prepared the attached Debarment Policy to ensure there are fair procedures and standards for review of contractor performance when debarment may be warranted, and have proposed adoption of the same Debarment Policy by the TA, the JPB and the San Mateo County Transit District for consistent administration across the agencies; and

Whereas, debarment is an administrative enforcement procedure that authorizes a government agency to ban contractors from applying for, receiving, or performing work under government contracts for a specified period of time; and

Whereas, suspension is a temporary exclusion of a contractor for applying for, receiving, or performing work under government contracts while debarment procedures are pending; and

Whereas, debarment and suspension are separate and distinct from the process of a responsibility hearing for a single contract or specifically identified group of contracts; and

Whereas, the proposed Debarment Policy, included as Attachment A, includes specific grounds for debarment, including: 1) criminal conviction, civil judgment, or admission of serious offenses related to business integrity and honesty; 2) serious violation of terms of government contracts; 3) any other serious or compelling cause reflecting an inability to perform honestly or comply with the terms of a contract; and 4) debarment by another government entity; and

Whereas, the proposed Debarment Policy includes due process procedures to ensure a fair review of contractors who are alleged to have engaged in misconduct that warrants debarment, such as notice to the contractor, a hearing before a hearing officer (with specified exceptions), an appeal process, and reconsideration for changed circumstances process; and

Whereas, the proposed Debarment Policy also would prohibit prime contractors from knowingly using a debarred contractor as a subcontractor**.**

Now, Therefore, Be It Resolved that the Board of Directors of the San Mateo County Transportation Authority hereby:

1. Adopts the proposed Debarment Policy as set forth in Attachment A; and
2. Authorizes the Executive Director or designee to take any actions necessary to implement the Debarment Policy.

Regularly passed and adopted this 6th day of March, 2025 by the following vote:

Ayes: Corzo, Fung, Medina, Nagales, Speier, Mates, Romero

Noes: None

Absent: None



_____
Chair, San Mateo County Transportation Authority

Attest:



_____
Authority Secretary

ATTACHMENT A

DEBARMENT POLICY

I. PURPOSE

The purpose of this Debarment Policy is to establish procedures and standards for review of Contractor performance and possible debarment and/or suspension from participation in San Mateo County Transit District, Peninsula Corridor Joint Powers Board, and San Mateo County Transportation Agency (singularly referred to as "Agency" and collectively referred to as "Agencies") procurements and contracts. This Policy is intended to ensure that the Agencies award contracts to responsive and responsible Contractors and preserve and protect the credibility and integrity of the Agencies' procurements and contracting practices.

This Policy does not apply to a determination of non-responsibility for a single contract or identifiable group of contracts, but rather to the broader determination of irresponsibility of a Contractor for the general purpose of contracting with the Agencies for a specified period. Accordingly, this Policy does not preclude the Agencies 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 Policy.

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

II. PERSONS AFFECTED

All the Agencies' employees involved in the procurement process, contractors responding to the Agencies' issued solicitations, and their subcontractors.

III. DEFINITIONS

A. "Adequate Evidence" means information sufficient to support the reasonable belief that a particular act or omission has occurred.

B. "Affiliate" means (a) the assignee, successor, subsidiary of, or parent company, of the Contractor; or (b) a controlling stockholder of a Contractor; or (c) a person who has the same or similar management of the debarred Contractor; or (d) a person who directly or indirectly controls, or has the power to control, Contractor, or is directly or indirectly controlled by Contractor. Indicia of control include interlocking management or ownership, identity of interests among relatives, shared facilities and equipment, and common use of employees; or (e) a business entity organized following the debarment, suspension, or proposed debarment of a Contractor which has the same or similar management, ownership or principal employees as the bidder or contractor that was debarred, suspended or proposed for debarment, or the debarred person or the business entity created after the debarment, suspension,

or proposed debarment operates in a manner designed to evade the application of this Policy or to defeat the purpose of this Policy.

C. **"Contract"** means (a) any written agreement between the Agency and a Contractor for public works, equipment, goods, supplies, services, franchise, or consultant services, or (b) any subcontract entered into in furtherance of a contract for such goods and services.

D. **"Contractor**" means any individual or any legal entity, including its officers and directors, that submits bids or proposals for, or may reasonably be expected to submit bids or proposals for, or be awarded, an Agency contract. The term Contractor includes a prime contractor/consultant, a subcontractor/subconsultant included in a bid or proposal for an Agency contract, vendor, franchisee, consultant, or any of their respective officers, directors, shareholders, partners, managers, employees, or other individuals acting as an agent or representative of the contractor/consultant, subcontractor/subconsultant, franchisee, consultant, or vendor.

E. **"Debar or Debarment"** means an action taken by the Agency to exclude a Contractor or Affiliate from any of the following: bidding or proposing on an Agency contract; being awarded an Agency contract; or performing work on an Agency contract for a defined period of time. A Contractor or Affiliate so excluded is "debarred."

F. "**Debarring Official"** means any official authorized to initiate and pursue an administrative Debarment proceeding on the Agency's behalf. Each of the following officials may serve as a Debarring Official:

(1) The Director of Contracts and Procurement Department;
(2) The General Manager/CEO, the Executive Director or designee;
(3) Any other official designated by the Board of Directors of the Agency to serve as a Debarring Official.

G. **"Hearing Officer"** means the individual appointed by the General Manager/CEO or the Executive Director to oversee the debarment hearing, receive evidence and presentations of arguments, and decide on whether to debar a contractor and for how long. The hearing officer must meet the following requirements: 1) the individual was not involved in the procurement or management of the contract; and 2) the individual was not involved in the investigation or decision leading to the recommended debarment. The individuals selected as hearing officers may be Agency employees or individuals who are external to the organization.

H. **"Preponderance of the Evidence"** means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

I. **"Suspend or Suspension"** means the action taken by the Agency's Director of Contracts and Procurement to temporarily exclude a Contractor or Affiliate from submitting or proposing on an Agency contract, from being awarded an Agency contract, or performing work on an Agency contract pending the completion of the Debarment Procedures set forth in this Policy.

IV. POLICY

A. Debarment

The Agency may, in the public interest, debar a Contractor for any of the grounds set forth in subsection B (Grounds for Debarment), using the procedures set forth in subsection C (Debarment Procedure). Debarment is the most severe limitation the Agency may impose upon a Contractor. The existence of grounds for debarment, however, will not necessarily require that the Agency debars a Contractor. The Agency will consider the totality of the circumstances, including the seriousness of the Contractor's acts or omissions and any mitigating factors. Staff shall establish internal guidelines to determine whether debarment is warranted and how long a period of debarment should last, and shall have the authority to amend them from time to time, subject to approval of the General Manager/CEO or the Executive Director. Debarment of a Contractor constitutes debarment of all divisions, or other organizational elements of the debarred contractor, unless otherwise specified in the debarment decision. Each individual Agency must make its own debarment decision regarding a Contractor, including a debarment on the basis of another Agency's debarment decision. (See Section IV.B(4) and Section IV.C(2).)

B. Grounds for Debarment

The Agencies may debar a Contractor for one or more of the following:

(1) Criminal conviction, civil judgement, or admission of:

(i) Fraud, collusion, or any criminal offense in connection with obtaining or attempting to obtain or performing a public contract or subcontract.

(ii) Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property or obstruction of justice.

(iii) Any other offense indicating a lack of business integrity or of business honesty which offense seriously and directly affects the responsibility of the Contractor, or the Contractor's ability or capacity to honestly perform under or comply with the terms and conditions of any contract issued by one or more of the Agencies.

(2) Violation of the terms of any government contract or subcontract when the violation is so serious as to justify debarment, including:

(i) History of failure to perform or of unsatisfactory performance of one or more contracts.

(ii) A pattern or practice of repudiating or disregarding the terms or conditions of Agency contract(s) including, without limitation, repeated unexcused delays or poor performance.

(iii) Willful failure to perform in accordance with a contract.

(3) Any other cause that is so serious or compelling that it affects the responsibility of a Contractor, including any conduct relevant to the Contractor's ability or capacity to honestly perform under or comply with the terms and conditions of any contract issued by one or more of the Agencies. (See also Section I.)

(4) Debarment by a federal, state or local government entity, on grounds consistent with the grounds for debarment set forth in this subsection.

C. Debarment Procedure

(1) Notice

The Debarring Official will initiate debarment proceedings by informing the Contractor, and any known Affiliates, of the debarment recommendation by certified mail, return receipt requested. The mailed notice will include the following information: (1) the Agency is considering debarment of the Contractor and any known Affiliates; (2) the grounds for debarment pursuant to Section IV.B above; (3) the reasons for the proposed debarment in terms sufficient to notify the Contractor of the conduct or transaction upon which debarment is proposed; (4) that the Contractor may submit, within 15 calendar days of the date of the Agency's mailed notice, a written response providing information or argument in opposition to the proposed debarment; (5) a copy of the Agency's Debarment Policy; (6) if applicable, notice of opportunity for a hearing (see subsection (2), Hearing, below); (7) notification that the failure to submit a response or request a hearing will be deemed an admission of the grounds for debarment; (8) effect of debarment; and (9) notice of suspension pending debarment, if applicable.

(2) Hearing

The Agency is not required to hold a hearing in debarment actions based upon a conviction, judgment or admission as set forth in subsection B(1) above; upon debarment by a federal, state or local government entity; or upon admission of the grounds for debarment by the Contractor, such as by failing to timely submit a written response or request a hearing. In such event, the General Manager/CEO or Executive Director may proceed to issue a debarment decision. The General Manager/CEO or the Executive Director will issue the debarment decision within 45 calendar days after the date of the Agency's mailed notice. Such decision is final.

Whenever a proposed debarment action is not based upon a conviction, judgment, admission or debarment by a federal, state or local government entity, and if the Agency finds that the Contractor's response raises a genuine dispute over facts relevant to the proposed debarment, the Agency shall conduct a fact-finding hearing. The General Manager/CEO or the Executive Director shall appoint a hearing officer.

The hearing officer will notify the Contractor and Debarring Official of the scheduled hearing date, time, and place. The hearing officer has sole discretion over setting the hearing date, provided that the date must be within one hundred twenty (120) calendar days from the date the Debarring Official served the notice of proposed debarment. Discovery pursuant to the California Code of Civil Procedure and the formal rules of evidence are not applicable to this administrative procedure. Hearings may occur in person, on an electronic meeting platform if deemed necessary by the hearing officer, or in writing, as set forth below.

At the hearing, the Contractor may submit documents for consideration by the hearing officer and may present arguments. If the hearing officer determines, with the written agreement of each named Contractor and the Debarring Official, that the hearing shall be by written presentation, all final writings shall be due no later than one hundred twenty (120) days of the date the Debarring Official served the notice.

The hearing officer shall have the sole discretion to allow offers of proof, set time limitations, and limit the scope of evidence presented based on relevancy. The hearing officer may ask questions of any party. A transcript of the hearing will be prepared and made available to the Contractor at a reasonable cost, unless the Contractor and the Agency mutually waive the transcript requirement.

(3) Determination

The hearing officer will determine, by a preponderance of the evidence, whether a contractor is to be debarred and for what length of time or whether the debarment will be permanent. The hearing officer’s decision will be issued, in writing, within thirty (30) calendar days of the date of the hearing.

(4) Appeal

A Contractor may appeal an adverse decision by the hearing officer to the Agency's General Manager/CEO or the Executive Director based on one or more of the following: (1) abuse of discretion; (2) a change in facts that is material to

the grounds for debarment; or (3) failure to follow the Agency's Debarment Policy. The Contractor must submit its appeal, in writing, within five (5) calendar days after the date of issuance of the debarment decision. The appeal must state the grounds for disputing the decision and must include a copy of the hearing officer's final determination.

The appeal must be sent to:

Board Secretary
San Mateo County Transit District/Peninsula Corridor Joint Powers Board/San Mateo County Transportation Authority
1250 San Carlos Avenue
San Carlos, CA 94070
Ref: Debarment Decision Appeal

If a notice of appeal is timely filed, a hearing shall be set before the General Manager/CEO or the Executive Director, and a written notice of the hearing specifying the location, time and date of the hearing, which shall be held no sooner than ten (10) business days from the date of such notice of hearing, shall be served on the Contractor.

The hearing before the General Manager/CEO or the Executive Director shall be a *de novo* hearing. On appeal, the General Manager/CEO or the Executive Director may consider any issue or evidence relevant to the debarment decision, in addition to the specific grounds for the appeal. However, no new evidence may be presented at the hearing before the General Manager/CEO or the Executive Director.

If the Contractor wishes to submit any written argument supporting the appeal, then Contractor shall submit the written argument to the District/Board Secretary seven (7) calendar days before the scheduled hearing. Failure to submit a written argument does not preclude a person from presenting an oral argument at the appeal hearing.

If Contractor or Contractor's representative fail to submit a valid and timely notice of appeal from a decision of the hearing officer, the decision of the hearing officer shall be final and not subject to appeal.

If the Contractor or Contractor's representative fails to appear at a hearing before the General Manager/CEO or the Executive Director, for which notice has

been served, the decision of the hearing officer shall become final, and the period of debarment or suspension shall begin immediately.

D. Suspension Pending Debarment

While debarment proceedings are pending, and/or while legal proceedings of the type described in Section IV.B (Grounds for Debarment) above are pending, the Agency's Director of Contracts and Procurement, with the approval of the General Manager/CEO or the Executive Director, may suspend a Contractor based upon a determination that it is in the public interest and adequate evidence exists to support one or more of the grounds for debarment. The Director of Contracts and Procurement may also order suspension where a Contractor is engaged in pending litigation with any of the Agencies that could impact the ability of the parties to work cooperatively with each other. Upon notice of the suspension, a Contractor may request an informal meeting with the Director of Contracts and Procurement to appeal the suspension. The decision of the Director of Contracts and Procurement regarding any suspension will be final. While debarment proceedings are pending, and/or while legal proceedings of the type described in Section IV.B (Grounds for Debarment) above are pending, the Agency shall have the right, based on a compelling public interest, to enter into an agreement with a vendor in good standing for similar work, until such time that the proceedings have ended.

E. Effect of Debarment or Suspension

Debarred or suspended Contractors and Affiliates are excluded from submitting bids, submitting responses to requests for proposal or qualifications, receiving contract awards, executing contracts, or participating as a subcontractor, employee, agent or representative of another person contracting with the Agency. Any bids, proposals, or quotations submitted in violation of this subsection will not be accepted or evaluated by the Agency and may be considered a false claim as provided in the California Government Code. Except as set forth below, the Agency will not knowingly award, approve the award of a contract, or execute a contract with a debarred or suspended Contractor or under which a debarred or suspended Contractor will participate as a subcontractor.

A Contractor will not employ, subcontract with, or purchase materials or services from a debarred or suspended Contractor. The Agency will maintain a list of all debarred and suspended Contractors. The District/Board Secretary shall submit a semi-annual report to the Director of Contracts & Procurement that includes (1) the Contractors then subject to an Order of Debarment or Suspension and the expiration dates for the respective debarment terms; (2) the status of any pending debarment or suspension matters; and (3) any Order of Debarment or Suspension received by the District/Board Secretary since the date of the last report.

The Agency may continue or terminate contracts or subcontracts it has with a debarred Contractor that are in existence at the time the Contractor is debarred and/or suspended. In the event of such cancellation, the Suspended or Debarred Contractor's recovery under the contract or grant shall be limited to compensation for work satisfactorily completed as of the date of cancellation. The Agency shall not renew or otherwise extend the duration of current contracts, or consent to subcontracts, with debarred and/or suspended Contractors, unless the General Manger/CEO or the Executive Director certifies in writing the compelling public interest for such renewal or extension.

Any Contractor who enters into a contract with the Agency during a period of suspension or debarment, shall be liable to the Agency for increased costs incurred as a result of replacing the debarred or suspended Contractor.

A Contractor may submit a written Request for Reconsideration for Changed Circumstances to the General Manager/CEO or the Executive Director once following a debarment. The Request must be accompanied by supporting documentation and provide the reason that eliminates the need for the debarment or demonstrates that a shorter debarment period will adequately protect the public interest. The General Manger/CEO's or the Executive Director's decision regarding such a request is final. Reasons to modify or lift a debarment 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.

A person seeking a Contract or entering a Contract is prohibited from knowingly using a debarred Contractor. Violation of this provision may, as determined in the sole discretion of the Director of Contracts & Procurement, result in rejection of the bid or proposal, nonpayment by the Agency 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.

F. Agreement Not to Bid or Submit Proposals in Lieu of Debarment

The Agency may offer a Contractor the opportunity to execute a written agreement not to bid or submit proposals or perform any work on contracts in lieu of the Agency pursuing debarment. Such an agreement does not constitute a debarment.

G. Effect on Executed Contracts

Nothing in this Policy shall be interpreted to limit or preclude the Agency from taking any other administrative or legal action against the Contractor, including enforcing

its rights and remedies under the terms and conditions of any specific contract, including contract terms regarding the Agency's right to suspend or terminate a contract for convenience, default, or breach.

Adopted: SMCTD Resolution No. 2025-10 (March 5, 2025), PCJPB Resolution No. 2025-12 (March 6, 2025), SMCTA Resolution No. 2025-05 (March 6, 2025)