

California Code of Regulations Title 21, Division 2

Chapter 22. Contractor Debarment

§ 2600. Authority for rules

These rules and regulations are issued by the State of California Department of Transportation pursuant to the authority delegated by California Government Code section 14105.

NOTE: AUTHORITY: Government Code section 14105, Government Code.
Reference: Section 14105, Government Code and Section 1101, Public Contract Code.

§ 2601. Scope of rules

These rules and regulations shall be applicable in all formal proceedings before the State of California Department of Transportation pertaining to hearings initiated under California Government Code section 14105(g).

NOTE: AUTHORITY: Government Code section 14105, Government Code.
Reference: Section 14105, Government Code and Section 1101, Public Contract Code.

§ 2602. Definitions

- (a) The Department is the State of California Department of Transportation.
- (b) The term Director refers to the Director for the Department and includes the Director's authorized representative.
- (c) The Hearing Officer shall be the person designated by the Director of the Department to preside over the debarment proceedings and to issue a recommended decision to the Department.
- (d) The term Chief Counsel refers to the Chief Counsel for the Department and includes the Chief Counsel's authorized representative.
- (e) Respondent means any individual, firm or entity which has been served a written notice of proposed debarment pursuant to California Government Code section 14105.
- (f) Debarment means an exclusion from bidding on a public work contract from working on a public work contract and from being awarded a public work contract for a specified period of time commensurate with the seriousness of the offense or failure as described in California Government Code section 14105 (g).

NOTE: AUTHORITY: Government Code section 14105, Government Code.
Reference: Section 14105, Government Code and Section 1101, Public Contract Code.

§ 2603. Initiation of debarment proceedings

- (a) The Department shall initiate a debarment proceeding by serving upon the proposed Respondent a written notice of proposed debarment by certified mail.
- (b) The notice shall state:
 - (1) That debarment is being considered;
 - (2) The reasons for the proposed debarment;
 - (3) The period of debarment and the proposed effective date;
 - (4) That the debarment will not become effective until after a hearing if such hearing is requested within 20 days following receipt of the notice;
 - (5) That the request for a hearing is to be submitted in the manner prescribed by these rules and regulations.
- (c) If no hearing is requested within 20 days following receipt of the notice, the action of the Department set forth in the notice shall become the final decision without further notice to the Respondent.

NOTE: AUTHORITY: Government Code section 14105, Government Code.
Reference: Section 14105, Government Code and Section 1101, Public Contract Code.

§ 2604. The request for a hearing

A respondent may, within 20 days following receipt of a written notice of proposed debarment, file a request for a hearing before a hearing officer in writing. The request shall be addressed to the Director of the Department and shall be accompanied by a concise statement admitting, denying or explaining each of the allegations set forth in the notice of proposed debarment and stating the relief desired. The request shall be delivered by certified mail. A respondent may also include any documentary evidence in support of the position taken in the request for a hearing. A respondent shall submit four copies of all documentary evidence provided.

NOTE: AUTHORITY: Government Code section 14105, Government Code.
Reference: Section 14105, Government Code and Section 1101, Public Contract Code.

§ 2605. Order relative to hearing

- (a) The Hearing Officer shall issue an order granting the Respondent's request for a hearing, establishing the time and place thereof, and advising the Respondent of the consequences of a failure to appear at the hearing.
- (b) The notice of proposed debarment and request for a hearing together with the reply, if any, shall become the pleadings in any proceeding in which the Hearing Officer orders a hearing to be held.

NOTE: AUTHORITY: Government Code section 14105, Government Code.
Reference: Section 14105, Government Code and Section 1101, Public Contract Code.

§ 2606. Reply

Not more than 15 days from the service of the request for a hearing, the Chief Counsel may submit a reply on behalf of the Director who initiated the debarment proceedings.

NOTE: AUTHORITY: Government Code section 14105, Government Code.
Reference: Section 14105, Government Code and Section 1101, Public Contract Code.

§ 2607. Service and filing documents for the record

- (a) The Department shall cause copies of all pleadings, motions, orders and other documents to be served promptly on other parties to the proceeding and on the Hearing Officer.
- (b) The parties shall submit four copies of all documents unless otherwise ordered by the Hearing Officer. One copy shall be signed as the original.
- (c) The parties may be ordered by the Hearing Officer to exchange, at the prehearing conference, or at some other time in advance of the hearing, all exhibits each party intends to offer at the hearing (other than exhibits exclusively used for impeachment or rebuttal); and may be ordered to index, offer and file some or all of the exhibits in advance of the hearing. The party offering an exhibit at the hearing shall provide sufficient copies so that each party, the Hearing Officer and the witness have a copy.

NOTE: AUTHORITY: Government Code section 14105, Government Code.
Reference: Section 14105, Government Code and Section 1101, Public Contract Code.

§ 2608. Respondent's failure to appear at the hearing

If the Respondent shall fail to appear at the hearing, the Hearing Officer shall receive the Director's evidence and render a recommended decision to the Department.

NOTE: AUTHORITY: Government Code section 14105, Government Code.
Reference: Section 14105, Government Code and Section 1101, Public Contract Code.

§ 2609. Amendment of pleadings

- (a) By consent of the parties a pleading may be amended at any time. Also, a party may move to amend a pleading at any time prior to the close of the hearing, provided that the amendment is reasonably within the scope of the proceeding.
- (b) The Hearing Officer may, upon reasonable notice and upon terms as are just, permit service of a supplemental pleading setting forth transactions, occurrences, or events which have transpired since the date of the pleading sought to be supplemented and which are relevant to any of the issues involved.

NOTE: AUTHORITY: Government Code section 14105, Government Code.
Reference: Section 14105, Government Code and Section 1101, Public Contract Code.

§ 2610. Continuances and extensions

Continuances and extensions will not be granted by the Hearing Officer except for good cause shown.

NOTE: AUTHORITY: Government Code section 14105, Government Code.
Reference: Section 14105, Government Code and Section 1101, Public Contract Code.

§ 2611. Hearings

Hearings shall be at a location designated by the Hearing Officer.

NOTE: AUTHORITY: Government Code section 14105, Government Code.
Reference: Section 14105, Government Code and Section 1101, Public Contract Code.

§ 2612. Appearances

- (a) A Respondent may appear and be heard in person or by attorney.
- (b) An attorney may represent the Department.
- (c) When a Respondent is represented by an attorney, all pleadings and other papers subsequent to the notice of proposed debarment shall be mailed to the attorney.
- (d) All counsel shall promptly file notices of appearance. Changes of Respondent's counsel shall be recorded by notices from retiring and succeeding counsel and from the Respondent.

NOTE: AUTHORITY: Government Code section 14105, Government Code.
Reference: Section 14105, Government Code and Section 1101, Public Contract Code.

§ 2613. Conduct of the hearing

The Hearing Officer shall have authority to:

- (a) Administer oaths and affirmations;
- (b) Examine witnesses;
- (c) Rule upon offers of proof, admissibility of evidence, and matters of procedure;
- (d) Order any pleading amended upon motion of a party at any time prior to the close of the hearing;
- (e) Maintain discipline and decorum and exclude from the hearing any person acting in an indecorous manner;
- (f) Require the filing of briefs or memorandum of law on any matter upon which the Hearing Officer is required to rule;

- (g) Order prehearing conferences for the purpose of the settlement or simplification of issues by the parties;
- (h) Order the proceeding reopened at any time prior to his or her recommended decision for the receipt of additional evidence;
- (i) Render a final recommended decision to the Department;
- (j) Take any further action as may be necessary to properly preside over the debarment proceeding and render a recommended decision therein.

NOTE: AUTHORITY: Government Code section 14105, Government Code.
Reference: Section 14105, Government Code and Section 1101, Public Contract Code.

§ 2614. Evidence

- (a) Oral testimony shall be taken only on oath or affirmation.
- (b) All parties shall have these rights: to present evidence relevant to the issues; to cross examine opposing witnesses on any matter relevant to the issues even though the matter was not covered in the direct examination; to impeach any witness regardless of which party first called the witness to testify; and to rebut the evidence against the party. Any party, or person identified with such party, may be called and examined as if under cross-examination by any adverse party.
- (c) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence, including hearsay, shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions, provided however, hearsay evidence even though not objected to shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. However, evidence shall be subject to the exclusions of California Evidence Code Sections 1151, 1152, and 1154. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions and irrelevant and unduly repetitious evidence shall be excluded.
- (d) The following additional exception to the “best evidence” rule (Evidence Code Section 1500) applies: A duplicate is admissible to the same extent as the original unless:
 - (1) A genuine question is raised as to the authenticity of the original, or
 - (2) In the circumstances it would be unfair to admit the duplicate in lieu of the original. “Duplicate” as used here means a counterpart or facsimile copy of the original produced by the same impression or from the same matrix as the original or by some technique of accurate reproduction.

NOTE: AUTHORITY: Government Code section 14105, Government Code.
Reference: Section 14105, Government Code and Section 1101, Public Contract Code.

§ 2615. Witness fees

The Department does not pay fees and expenses for Respondent's witnesses.

NOTE: AUTHORITY: Government Code section 14105, Government Code.
Reference: Section 14105, Government Code and Section 1101, Public Contract Code.

§ 2616. Transcript

Hearing shall be stenographically reported by a reporting officer hired by the Department under the supervision of the Hearing Officer.

NOTE: AUTHORITY: Government Code section 14105, Government Code.
Reference: Section 14105, Government Code and Section 1101, Public Contract Code.

§ 2617. Decision

The Department shall issue a final written decision by certified mail. Such decision shall include a summary of the evidence, findings, conclusions and reasons underlying the decision.

NOTE: AUTHORITY: Government Code section 14105, Government Code.
Reference: Section 14105, Government Code and Section 1101, Public Contract Code.

§ 2618. Computation of time

A designated period of time under the rules in this part excludes the day the period begins, and includes the last day of the period unless the last day is a Saturday, Sunday, or legal holiday, in which event the period runs until the close of business on the next business day.

NOTE: AUTHORITY: Government Code section 14105, Government Code.
Reference: Section 14105, Government Code and Section 1101, Public Contract Code.

§ 2619. Official record

The transcript of testimony together with all pleadings, orders, decision, exhibits, briefs, and other documents filed in the proceedings shall constitute the official record of the proceedings.

NOTE: AUTHORITY: Government Code section 14105, Government Code.
Reference: Section 14105, Government Code and Section 1101, Public Contract Code.