

LADWP

Contractor Performance Evaluation Program



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Contractor Performance Evaluation Program

A post-award contractor evaluation program is required to ensure contractual terms on contracts and purchase orders are adhered to by the contractors. Under Division 10, Chapter 1, Article 13, Section 10.39 of the Los Angeles Administrative Code, the Department of Water and Power (LADWP) has established a Contractor Performance Evaluation Program for LADWP's contracts and purchase orders, which is consonant with this Section. The program encompasses contractor performance evaluations, performance monitoring and reporting that are relied upon in future award determinations and the debarment of "non-responsible" contractors.

Section 1 - Purpose

The Department will evaluate and record contractor performance in order to determine a contractor's ability to complete the term of an existing contract/purchase order, as well as the contractor's suitability to perform future work for the Department. Contractors are obligated to meet reasonable performance standards such as, but not limited to, timely shipment and delivery of goods, completeness of delivered goods, quality of delivered goods, performance of services, quality of performed services, safety compliance, responsiveness to correct deficiencies, accuracy of billing, and conformance to the terms and conditions of the contract. If these performance standards are not met, the awarding authority may, consistent with the terms of the contract, terminate the contract and may also recommend debarring a contractor for a period of five years.

To effectuate this policy, the debarment of contractors from Department work may be recommended and undertaken following a "Responsibility Hearing." Such debarment shall be imposed in accordance with the procedures contained in this program document. Due to the complexity of various types of procurement, this document details separate processes for evaluation of contractors for **Construction, Commodities, and Services**.

Section 2 - The Process for Construction Contracts

Contractor Performance Evaluation forms will be completed for contractors and major subcontractors on all construction projects to properly document unsatisfactory performance. Performance evaluations combined with other contractor data will be utilized to determine the suitability of the contractor(s) to perform work on future City contracts and to improve performance. Performance is evaluated and significant items are noted with appropriate actions taken. Formal evaluations will be prepared as described in this procedure.

Notifying Prospective Contractors of the Contractor Performance Evaluation Program

1. When preparing Requests for Proposals (RFP), Request for Qualifications (RFQ), or Invitation for Bids (IFB), the awarding authority shall notify prospective bidders that the selected contractor's performance on the contract will be subject to a performance evaluation by including the below clause in all RFPs/RFQs/IFBs.

CONTRACTOR PERFORMANCE EVALUATION CLAUSE

Under Division 10, Chapter 1, Article 13, Section 10.39 of the Los Angeles Administrative Code, LADWP has established a post-award contractor evaluation program that requires performance monitoring and reporting. LADWP's Contractor Performance Evaluation Program (CPEP) document can be found at <https://www.ladwp.com/ladwp/faces/ladwp/partners/p-vendorsandbidders> under Contractor Performance Evaluation Program.

LADWP will evaluate and record the contractor's overall performance to determine whether the contractor is fulfilling its obligations on the current contract and to assess the contractor's suitability to perform work for LADWP in the future. Contractors are required to meet critical contract provisions including, but not limited to, timely shipment and delivery of goods, completeness of delivered goods, quality of delivered goods, accuracy of billing, and conformance to the terms and conditions of the contract. If such conditions are breached, consistent with the terms of the contract, the Director of Supply Chain Services may terminate the contract for poor performance and may also debar the Contractor from doing business with LADWP for a period of five years in accordance with the Department's Contractor Performance Evaluation Program.

2. If the construction contract is not procured through an RFP/RFQ/IFB process, LADWP shall notify the selected contractor that its performance will be subject to an evaluation during or at the end of the contract.

Departmental Evaluations

1. Required Performance Evaluations – Contractor performance evaluations are to be prepared on each construction contract performed for LADWP. Evaluations are to be prepared utilizing the Contractor Performance Evaluation form. Evaluations are to be prepared for each prime contractor, and major subcontractor performing 20% or more of the original contract amount, and any subcontractor whose performance is deemed to be unsatisfactory. Subcontractor evaluations are to be prepared utilizing the Contractor Performance Evaluation form, using only relevant sections.
2. Evaluation Schedule - Performance evaluations are to be prepared upon completion of final corrections. Contracts with an original completion schedule longer than one (1) year may have a Contractor Performance Evaluation form completed every six (6) months and upon completion of final corrections.
3. Person Completing Evaluation - LADWP Project Manager and/or Contract Administrator managing the project.
4. Person Reviewing Evaluation - Supply Chain Services' (SCS) Contractor Performance Evaluation Group.
5. Evaluation Elements - The Contractor Performance Evaluation form lists all elements of the project to be evaluated. The elements are explained in detail in the procedure for completing the form. It is imperative that all evaluations be accurate and based on facts.

6. Unsatisfactory Evaluations - Any unsatisfactory performance evaluation shall be based on factual data and written documentation of such shall be available in the project records. Each unsatisfactory element shall be explained in detail using documentation as necessary.
7. Routing and Filing Evaluations - All completed draft evaluations shall be forwarded to SCS for review prior to finalizing the evaluations.
8. Implementation - These procedures shall be implemented on all construction contracts currently in progress as well as all future construction contracts.

Supply Chain Services Review

1. SCS, upon receipt of the draft evaluation from the contract administrator, will conduct a review to ensure that it is complete, factual, objective, and supported with documentation if applicable. If these criteria are not met, the evaluation will be returned to the contract administrator for clarification.
2. When an evaluation indicates that the work performed by the contractor was “Marginal” or “Unsatisfactory” in one of the performance indicators, SCS will send a copy of the final performance evaluation form to the contractor. The contractor may submit a written response to the Director of SCS. The contractor’s response must be received by SCS within 14 calendar days from the date that the final evaluation is sent to the contractor, unless SCS, at its discretion, agrees to extend the time.
3. The final performance evaluation and any contractor response received by SCS within the appropriate time frame shall become part of the Contractor Performance Evaluation database and part of the public record.
4. If the final determination of the evaluation results in the need for a responsibility hearing, SCS will coordinate and conduct the responsibility hearing along with the Department Legal Division. SCS will also include a neutral third-party in the hearing to ensure fairness to the contractor.

Overall Evaluation

Evaluate how the contractor performed on the project. Was the project successful and on time? Were there problems that required LADWP’s intervention to get the project completed? Was the contractor cooperative and professional? Any unsatisfactory or marginal rating requires a detailed explanation of the reasons for the rating.

Explanation of Unsatisfactory Evaluation

For each “Unsatisfactory” or “Marginal” element, provide facts concerning specific events or actions to be considered for this evaluation. All information should be factual and documented in the project records.

Section 3 - Process for Commodities Contracts

Evaluations on commodity contracts are exception-based with a focus on documenting and tracking suppliers that have exhibited performance problems. Employees that have responsibilities for ordering supplies, receiving, or approving payments are responsible for completing the “Contractor Performance Evaluation” form for Materials (Attachment 1). Depending on the nature of the poor performance, any Contractor Performance Evaluation form that indicates a “Marginal” or “Unsatisfactory” rating may result in scheduling a responsibility hearing for debarment for that supplier.

Notifying Prospective Contractors of the Contractor Performance Evaluation Program

1. When preparing Requests for Proposals (RFP), Request for Qualifications (RFQ), or Invitation for Bids (IFB), the awarding authority shall notify prospective bidders that the selected contractor’s performance on the contract will be subject to a performance evaluation by including the below clause in the Terms and Conditions in all RFPs/RFQs/IFBs.

CONTRACTOR PERFORMANCE EVALUATION CLAUSE

Under Division 10, Chapter 1, Article 13, Section 10.39 of the Los Angeles Administrative Code, LADWP has established a post-award contractor evaluation program that requires performance monitoring and reporting. LADWP’s Contractor Performance Evaluation Program (CPEP) document can be found at <https://www.ladwp.com/ladwp/faces/ladwp/partners/p-vendorsandbidders> under Contractor Performance Evaluation Program.

LADWP will evaluate and record the contractor’s overall performance to determine whether the contractor is fulfilling its obligations on the current contract and to assess the contractor’s suitability to perform work for LADWP in the future. Contractors are required to meet critical contract provisions including, but not limited to, timely shipment and delivery of goods, completeness of delivered goods, quality of delivered goods, accuracy of billing, and conformance to the terms and conditions of the contract. If such conditions are breached, consistent with the terms of the contract, the Director of Supply Chain Services may terminate the contract for poor performance and may also debar the Contractor from doing business with LADWP for a period of five years in accordance with the Department’s Contractor Performance Evaluation Program.

2. If the commodities contract is not procured through an RFP/RFQ/IFB process, LADWP shall notify the selected contractor that its performance will be subject to evaluation during or at the end of the contract.

Departmental Evaluations

1. The LADWP contract administrator will complete the “Contractor Performance Evaluation for Materials” form if there are indications of performance problems. When an evaluation results in a “Marginal” or “Unsatisfactory” rating, supporting documentation must be included and must form the basis for the contractor’s performance evaluation.

2. The contract administrator forwards the draft evaluation form with any supporting documentation to SCS for review prior to finalizing the evaluation form. If the performance problems result in a breach of contract, the contract administrator must work with the buyer to identify how to best proceed with procuring the affected material.

Supply Chain Services Review

1. SCS, upon receipt of the draft evaluation from the contract administrator, will conduct a review to ensure that it is complete, factual, objective, and supported with documentation if applicable. If these criteria are not met, the evaluation will be returned to the contract administrator for clarification.
2. When an evaluation indicates that the work performed by the contractor was “Marginal” or “Unsatisfactory” in one of the performance indicators, SCS will send a copy of the final performance evaluation form to the contractor. The contractor may submit a written response to the Director of SCS. The contractor’s response must be received by SCS within 14 calendar days from the date that the final evaluation is sent to the contractor, unless SCS, at its discretion, agrees to extend the time.
3. The final performance evaluation and any contractor’s response received by SCS within the appropriate time frame shall become part of the Contractor Performance Evaluation database and part of public record.
4. If the final determination of the evaluation results in the need for a responsibility hearing, SCS will coordinate and conduct the responsibility hearing along with the Department Legal Division. SCS will also include a neutral third-party in the hearing to ensure fairness to the contractor.

Section 4 - Process for Service Contracts

Evaluations on service contracts are exception-based with a focus on documenting and tracking contractors that have exhibited performance problems. These rules are applicable to service contracts over \$25,000 and at least three (3) months in duration. A service contract that does not meet both the above thresholds does not require a performance evaluation until an amendment, renewal, or modification makes the total term of the contract exceed \$25,000 and three (3) months in duration.

Notifying Prospective Contractors of the Contractor Performance Evaluation Program

1. When preparing Requests for Proposals (RFP), Request for Qualifications (RFQ), or Invitation for Bids (IFB), LADWP shall notify prospective proposers that the selected contractor’s performance on the contract will be subject to a performance evaluation by including the below clause in all RFPs/RFQs/IFBs.

CONTRACTOR PERFORMANCE EVALUATION CLAUSE

Under Division 10, Chapter 1, Article 13, Section 10.39 of the Los Angeles Administrative Code, LADWP has established a post-award contractor evaluation program that requires performance monitoring and reporting. LADWP’s Contractor Performance Evaluation Program

(CPEP) document can be found at <https://www.ladwp.com/ladwp/faces/ladwp/partners/p-vendorsandbidders> under Contractor Performance Evaluation Program.

LADWP will evaluate and record the contractor's overall performance to determine whether the contractor is fulfilling its obligations on the current contract and to assess the contractor's suitability to perform work for LADWP in the future. Contractors are required to meet critical contract provisions including, but not limited to, timely shipment and delivery of goods, completeness of delivered goods, quality of delivered goods, accuracy of billing, and conformance to the terms and conditions of the contract. If such conditions are breached, consistent with the terms of the contract, the Director of Supply Chain Services may terminate the contract for poor performance and may also debar the Contractor from doing business with LADWP for a period of five years in accordance with the Department's Contractor Performance Evaluation Program.

2. If the service contract is not procured through an RFP/RFQ/IFB process, LADWP shall notify the selected contractor that its performance will be subject to an evaluation during or at the end of the contract.

Selecting a Contractor for Award of a Service Contract - Before awarding a contract, LADWP must consider information contained in the Contractor Performance Evaluation database regarding the prior performance of the potential contractor(s). Information contained in the database may be considered by LADWP in several ways; for example:

1. LADWP uses a scoring system to evaluate proposers, and one factor taken into consideration in scoring the proposers is prior work experience. In scoring each proposer in the area of prior experience, LADWP's evaluation committee shall consult the Contractor Performance Evaluation database to determine whether there is information that would negatively affect the proposer's score in that area. If there is information that negatively affects a proposer's score in the area of prior work experience, the proposer's score must be adjusted accordingly. The Contractor Performance Evaluation database must be consulted prior to arriving at a final score for each proposer. **The Contractor Performance Evaluation database shall not be used as a basis for increasing a proposer's score in any way.**
2. The Contractor Performance Evaluation database may also be used as a reference check after LADWP has selected a proposer through an evaluation process. If, after the reference check on the selected proposer, LADWP determines that the service contract should be awarded to another proposer rather than to the selected proposer because of (a) poor performance evaluation(s), LADWP must notify the selected proposer in writing of the decision. LADWP will state the reason(s) for the decision, allow the selected proposer an opportunity to rebut adverse evidence and to present evidence that the proposer is qualified to perform the contract before awarding the contract to any other proposer. To provide the proposer with due process in these instances, LADWP must at a minimum include the following:
 - (a) LADWP must provide the proposer with written notice of LADWP's intent to award away from the proposer. The notice must inform the proposer of the following:
 - 1) LADWP intends to award the contract away from the proposer.

- 2) The intent of LADWP to award the contract to a different proposer is based on (a) poor performance evaluation(s) contained in the Contractor Performance Evaluation database.
- 3) An opportunity to rebut adverse evidence and to present evidence that the proposer is qualified to perform the contract will be provided. The proposer must submit a written request for such a proceeding to LADWP within 10 calendar days from the date of the intent to award away notice.
- 4) If LADWP does not receive the written request for an opportunity to rebut adverse evidence within 10 calendar days of the intent to award away notice, the proposer may be deemed to have waived the right to any such proceeding.
- 5) Any evidence that the proposer wishes to present at the proceeding must be received by LADWP within 15 calendar days from the date of the intent to award away notice. Only evidence received within the stated deadline will be considered at the proceeding. Evidence submitted after the deadline or on the day of the proceeding may not be considered in determining the responsibility of the contractor.
- 6) The proceeding shall be held only if LADWP receives the written request within the required time and shall be scheduled at least 20 calendar days from the date of the intent to award away notice.
- 7) The proceeding shall be limited to LADWP's intent to not award the contract to the proposer because of the poor performance evaluations(s) and to the issues raised in those evaluations.

Departmental Evaluations

1. The LADWP contract administrator must document the contractor's performance during the term of the contract. The supporting information and documentation (if applicable), must form the basis for the contractor's performance evaluations.
2. At the end of the contract, the contract administrator must complete a draft evaluation of the contractor's performance. The draft evaluation must be completed using the Contractor Performance Evaluation form. The contract administrator must submit the draft of the performance evaluation to SCS prior to finalizing the evaluation form. Supporting documentation, if any, must be submitted with the performance evaluation.

Supply Chain Services Review

1. SCS, upon receipt of the draft evaluation from the contract administrator, will conduct a review to ensure that it is complete, factual, objective, and supported with documentation if applicable. If these criteria are not met, the evaluation will be returned to the contract administrator for clarification.
2. When an evaluation indicates that the work performed by the contractor was "Marginal" or "Unsatisfactory" in one of the performance indicators, SCS will send a copy of the final performance evaluation form to the contractor. The contractor may submit a written

response to the Director of SCS. The contractor's response must be received by SCS within 14 calendar days from the date that the final evaluation is sent to the contractor, unless SCS, at its discretion, agrees to extend the time.

3. The final performance evaluation and any contractor's response received by SCS within the appropriate time frame shall become part of the Contractor Performance Evaluation database and part of public record.
4. If the final determination of the evaluation results in the need for a responsibility hearing, SCS will coordinate and conduct the responsibility hearing along with the Department Legal Division. SCS will also include a neutral third-party in the hearing to ensure fairness to the contractor.

Section 5 - Responsibility Hearing and Debarment Procedures:

Following a "Responsibility Hearing", upon the recommendation of SCS, the Awarding Authority may debar a contractor for a period of 5 years. During the period of such debarment, the contractor will be included on the Department's debarment list/database and all bids and proposals received from that contractor shall be rejected by the Department. The contractor may request or petition for reinstatement after two (2) years, if the contractor is able to prove that the problem(s) which initially led to the debarment has been corrected and is a responsible contractor.

Debarment – A contractor may be debarred for the following:

1. Failure to fully comply with the conditions, specifications, drawings, or terms of a bid, proposal or contract with the Department. This includes breaching the terms and requirements of a contract/purchase order. Such actions shall include failure without good cause to perform in accordance with the specifications or within the time frame provided in the contract and/or a record of nonperformance or unsatisfactory performance in accordance with the terms of one or more purchase agreements. Failure to perform or non-performance may be based on one or a combination of performance criteria that include but is not limited to: timeliness of delivery, quality of performance or goods/services, accuracy of quantity, accuracy of billing, contractor attitude, safety, honesty, good faith, and fair dealing.
2. Colluding with others to restrain competition or fix prices.
3. Conviction by or judgment obtained in a court of competent jurisdiction for commission of offenses in connection with the contractor's commercial enterprise. If the conviction or judgment is reversed through the appellate process, the contractor may apply for reinstatement no sooner than two (2) years following the date of debarment with the submission of proof of the final court disposition to the City.
4. Conviction for the commission of any fraud or act of collusion in connection with any sale, bid quotation, proposal, or other act incident to doing business with the City.

Effects of Debarment

- (1) Debarred contractors and its owners, partners, officers or principals are excluded from receiving contracts with LADWP and all City departments. During the debarment period, the Department shall not solicit offers from, award contracts or purchase orders to, or consent to subcontracts with these contractors, unless the SCS Director determines that an urgent necessity exists in accordance with Charter Section 371(e)(5) justifying such action.
- (2) Debarred contractors and its owners, partners, officers or principals are also excluded from conducting business with the Department as agents, representatives, subcontractors, or partners of other contractors.
- (3) Debarred contractors will be included on the Department's debarment list /database during such period of debarment.

Continuation of Current Contracts

1. The debarment shall take effect in accordance with the Notice of Debarment provided by the Director of SCS following a Responsibility Hearing. The Director of SCS may determine that it is in the Department's best interest to continue the existing contract for a specified length of time because of special circumstances or to permit the Department to re-bid. The contract may continue until a replacement contract is established. In the interim, the contractor and its owners, partners, officers or principals shall not be awarded any Department contracts.
2. Current contracts, or consent to subcontracts, with debarred contractors, may not be renewed or otherwise extended unless the SCS Director determines that an emergency need exists justifying the renewal or extension of such contracts.

Debarment Process – The following processes shall be used for the debarment of a contractor:

Prior to the Hearing/Proceeding

1. **Complaint filed.** Department end-users shall submit the Contractor Performance Evaluation Form to SCS. The form shall explain the nature of the complaint against the contractor.
2. **Investigation and Fact Gathering.** Upon receipt of the Contractor Performance Evaluation Form, SCS shall promptly investigate the complaint and gather all relevant information supporting the allegation(s) or incident(s) from departments. The investigation will include but is not limited to a review of the terms, conditions, and specifications of the contract, as well as a review of the contract purchase order. During the investigation, both the complainant and the contractor may be contacted for additional information or further clarification of documentation/information already submitted. All parties are expected to cooperate fully in providing the requested information. Upon the conclusion of the investigation, if SCS determines that the complaint(s) are in fact warranted; SCS will proceed with a Responsibility Hearing. The

Responsibility Hearing may result in recommendations to award away or debar the contractor.

3. **Notice of Intent to Debar.** SCS must provide the contractor with written notice of the Department's intent to debar the contractor. The notice must inform the contractor of the following:
 - (a) The Department of Water and Power intends to debar the contractor from contracts with the LADWP.
 - (b) The reason(s) and basis for the debarment.
 - (c) The contractor's ability to request a hearing.
 - (d) Conditions and timelines for granting a Responsibility Hearing.
 - (e) Timeline for submitting evidence for the Responsibility Hearing.
4. **Scheduling of Responsibility Hearing.** A "Responsibility Hearing" will be scheduled and held only upon written request from the contractor. A written request to hold the proceeding must be received within 10 calendar days from the date of the Notice of Intent to Debar. The Responsibility Hearing will be scheduled at least 20 calendar days from the date of the notice.
5. **Contractor's Consent to Debarment.** A contractor may be deemed to have consented to the debarment by one or all of the following: 1) Not requesting or waiving their right to a Responsibility Hearing. 2) Not appearing at the scheduled Responsibility Hearing. 3) Explicitly agreeing with the charges or allegations brought forth, or 4) Explicitly agreeing to debarment, but not admitting to the charges or allegations.

During the Hearing/Proceeding

Responsibility Hearing. The Director of SCS or his /her designee acting as Hearing Officer shall conduct a Responsibility Hearing where the contractor or their designated representative will be given an opportunity to rebut or respond to the issues identified in the notice of intent to debar.

Hearing Process. The Hearing Officer shall ensure that the Responsibility Hearing affords fair treatment to the contractor. In actions based upon a conviction or judgment, or in which there is no genuine dispute over material facts, the Hearing Officer shall make a decision on the basis of all the undisputed, material information in the administrative record, including any undisputed, material submissions made by the contractor. Where actions are based on disputed evidence, the Hearing Officer shall decide what weight to attach to the record of evidence, judge the credibility of witnesses, and base his or her decision on the preponderance of the evidence.

Admissible Evidence. Any evidence that the contractor wants to present at the Responsibility Hearing must be received by LADWP within 15 calendar days from the date of the Intent to Debar notice. Only evidence received within the stated deadline will be considered at the proceeding. Evidence submitted on the day of the proceeding can be accepted and heard, but may not be considered in determining the responsibility of the contractor. Evidence presented during the Hearing may include but is not limited to supporting documentation, verbal testimony, and product demonstrations, which support

or refute the performance issues. Hearsay evidence shall be admissible at the hearing but shall not form the sole basis for initiating debarment of the contractor.

Conclusion. At the conclusion of the Hearing, all participants will be advised that they will receive written notification of the outcome of the proceeding. Please contact LADWP Contractor Performance Evaluation Group for any questions concerning the status of the proceeding.

Following the Hearing/Proceeding

1. **Recommendation.** Following the Responsibility Hearing, the Hearing Officer shall make a recommendation of debarment or non-debarment to the Director of SCS. Upon reviewing all relevant information, the Director of SCS will make a recommendation to the Awarding Authority. The recommendation shall state the specificity of the facts and findings supporting the recommendation and the outcome of the Responsibility Hearing. If debarment is recommended, the memo should specify the timeframe for debarment (5 years).
2. **Notice of Results.** The Awarding Authority will make the final decision of whether the contractor should be debarred. This decision shall be final and constitutes exhaustion of administrative remedies. SCS will immediately advise the contractor and any specifically named affiliates, by certified mail, return receipt requested that:
 - (a) Debarment has/has not been imposed by the LADWP;
 - (b) The reasons and causes for the decision in terms which are sufficient to put the contractor on meaningful notice of the conduct or transaction(s) upon which it is based;
 - (c) If the contractor is debarred, the period of debarment (5 years) from the date of the notice;
 - (d) If the contractor is debarred, the notice shall state that during the period of such debarment, all bids and proposals received from the contractor and its owners, partners, and officers or principals either directly as a prime contractor or indirectly, as an agent, representative, subcontractor, or partner of another contractor, shall be rejected by the Department;
 - (e) If the contractor is debarred, that the contractor has the right to request to be removed from the list of debarred contractors after two (2) years, if the contractor can present proof that the performance issues have been corrected and is a responsible contractor. This request must be made in writing. Removal from the list of debarred contractors shall be at the discretion of the Director of Supply Chain Services.
3. **Debarred Bidders/Proposers and Contractors List.** SCS will suspend the debarred contractor's profile in eRSP so that bids will not be accepted.
 - a. If at the end of the debarment period, the contractor wishes to resume bidding activities with the LADWP, the contractor shall Contractor Performance Evaluation Group via email at LADWPContractorPerformance@ladwp.com, requesting the removal of the suspension. LADWP will not be held liable for the

continued suspension of a contractor's eRSP privileges after the debarment period has ended.