

REQUEST FOR PUBLIC COMMENT

The Cuyahoga County Administrative Rules Board is soliciting public comment on the following rule, which has been amended in response to a first reading, as indicated in Sections 18 and 19. Please submit written commentary to the following individual no later than 10:30 a.m., January 12, 2016.

Lindy Burt, Clerk
Cuyahoga County Administrative Rules Board
Department of Law
2079 E. Ninth Street, 7th Floor
Cleveland, Ohio 44115
mburt@cuyahogacounty.us

Written commentary may be submitted in hard copy, or via email. In addition to providing written comment on a proposed rule, any interested person may also appear at a meeting of the Administrative Rules Board and provide verbal commentary on the proposed action during the public comment period at the beginning of the meeting. This item is tentatively scheduled to be reviewed for 2nd reading and approval by the Board at its regular meeting scheduled for Thursday, January 14, 2016, 10:30 a.m. Please refer to the 1/14/16 meeting agenda – posted 2 business days prior to the meeting - for confirmation of the rule presentation date. Meeting agendas are posted on the Administrative Rules Board Website:

<http://arb.cuyahogacounty.us/en-US/events-calendar.aspx>

Questions? Please contact Lindy Burt, Clerk of the Administrative Rules Board, at 216-698-2064; mburt@cuyahogacounty.us.

**RULES OF PROCEDURE FOR THE
CUYAHOGA COUNTY DEBARMENT REVIEW BOARD**

Preamble. The purpose of these Rules of Procedure for the Cuyahoga County Debarment Review Board (the “Rules”) is to provide the Cuyahoga County Agency of Inspector General (“Inspector General”) and any Contractor debarred by the Inspector General with notice of the procedures that must be followed when a Contractor files an appeal from the Inspector General’s decision to debar a Contractor. These Rules have been promulgated consistent with the public policy of risk management that underscores the Inspector General’s duty and authority with respect to contractor debarment.

1. **Definitions.** As used in these Rules-

- (a) “Board” shall mean the Cuyahoga County Debarment Review Board.
- (b) “Contractor” shall mean a debarred contractor that has filed an appeal with the Board of the Inspector General’s debarment decision.
- (c) “Inspector General” shall mean the Cuyahoga County Agency of Inspector General.
- (d) “Notice of Potential Debarment” shall mean a Notice of Potential Debarment received by a Contractor from the Inspector General.
- (e) “Notice of Debarment” shall mean a Notice of Debarment received by a Contractor from the Inspector General.
- (f) “Clerk” shall mean the individual(s) identified in a Notice of Debarment as serving as the Clerk of the Board.
- (g) “Notice of Appeal” shall mean a Notice of Appeal from a Notice of Debarment filed by a Contractor.

2. **Time: computation.** In computing any period of time prescribed or allowed by these rules, by order of the Board, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day that is not a Saturday, a Sunday, or a legal holiday.

3. **Representation.** Contractors have the right to be represented by an attorney before the Board. Contractors may also represent themselves before the Board in an individual capacity, but may not act in a representative capacity on behalf of another person, corporation, or business entity unless authorized to practice law in the State of Ohio. Contractors shall provide the name, telephone number, address, and email address of their representative in their Notice of Appeal and

shall notify the Clerk of the Board in the event of any changes. The Inspector General shall be represented by the County Department of Law.

4. **Commencement of Appeal.** A Contractor may file an appeal from a Notice of Debarment by filing a Notice of Appeal in accordance with the requirements set forth in the Notice of Debarment. A Notice of Appeal that is untimely filed may be *sua sponte* dismissed by the Board.

5. **Record on Appeal.** Upon receipt of a Notice of Appeal, the Clerk of the Board shall distribute the following materials, electronically or in hard copy, to the members of the Board and the County Department of Law within fourteen (14) days after the Notice of Appeal was filed:

- (a) A copy of the Notice of Appeal, including all exhibits and attachments submitted therewith by the Contractor.
- (b) A copy of the Notice of Debarment.
- (c) A copy of the Notice of Potential Debarment.
- (d) A complete copy of the Inspector General's file, including, but not limited to, the following: (i) all documents, information, and other evidence acquired during the course of the Inspector General's investigation; (ii) all documents, information, and other evidence provided to the Inspector General by the Contractor; and (iii) any additional documents, information, and other evidence that the Inspector General relied upon in making the decision to debar the subject Contractor.
- (e) This Rule does not, however, require the Inspector General or the County Department of Law to disclose any documents that are protected from disclosure by the attorney-client privilege, attorney work-product privilege, or other applicable law that prohibits such disclosure. Along with its disclosure of the documents enumerated in this Rule, the County Department of Law shall submit a privilege log to the Contractor and the Clerk that identifies the documents, if any, that have been withheld from disclosure and states the basis for such non-disclosure.

6. **Scheduling of Hearing.** The Board members meet on the last Wednesday of each month to hear appeals and conduct other business of the Board. Each appeal will be set for hearing on the first available Board meeting that occurs at least thirty (30) days following the date of the filing of the Notice of Appeal.

7. **Continuances.** The Board may postpone or continue any hearing upon the request of a party for good cause shown, or upon the Board's own initiative. A motion for a continuance must be filed with the Clerk and served upon the parties no later than one week prior to the scheduled hearing date, unless the circumstances do not allow a party to do so. Decisions on whether to grant a motion for continuance shall rest within the sole discretion of the Board.

8. **Pre-Hearing Motions.** Any pre-hearing motion other than a motion for continuance must be filed with the Clerk and served upon the parties no later than two weeks prior to the scheduled hearing date, unless the circumstances do not allow a party to do so. Responses to any pre-hearing motions shall be due one week after the filing of the pre-hearing motion unless the Board orders a different response deadline. Decisions on whether to grant a pre-hearing motion shall rest within the sole discretion of the Board.

9. **Hearings Open to Public.** All hearings shall be open to the public. The Board may, however, regulate decorum to prevent disruptive conduct. Quasi-judicial functions of the Board, including deliberation amongst members of the Board on the merits of an appeal, may be held outside the purview of the public.

10. **Transcript of Hearing.** An audio recording shall be taken of each hearing, which shall serve as the official transcript of the proceeding. In addition, any party desiring a stenographic transcript of the hearing shall make arrangements directly with a stenographer and shall notify the other party and the Clerk of the Board of such arrangements in advance of the hearing. The requesting party shall pay all costs associated with transcription. If the transcript is agreed by the parties and the Board to be the official record of the proceeding, it must be made available to the Board and to the other party for inspection at a time and place determined by the Board.

11. **Hearing Proceedings.** Hearings will be conducted similar to judicial trials. Each party shall have the opportunity to make an opening statement, present evidence (through documents, witness testimony, or other appropriate means), cross-examine the opposing party's witnesses, offer rebuttal evidence and testimony, and deliver a closing argument. The Board, at its discretion, may also ask questions of the parties, their representatives, or any witness called to testify during the hearing. The Board shall determine the admissibility, relevance, and materiality of the evidence offered and may exclude evidence deemed by the Board to be cumulative, irrelevant, or legally privileged. The Board has the discretion to vary this procedure or impose reasonable time limits to the presentation of evidence, provided, however, that the parties are treated fairly and that each party has the right to be heard and is given a fair opportunity to present its case.

12. **Evidence Permitted on Appeal.** The Contractor shall be entitled to submit any evidence he/she/it deems relevant to the appeal. All evidence the Contractor intends to introduce in support of an appeal must be submitted in accordance with Section 505.06 of the Cuyahoga County Code. The parties shall mark their exhibits and provide a complete copy of the same to the opposing party prior to the start of the hearing.

13. **Witnesses.** The expenses for witnesses shall be paid for by the party producing such witnesses. All testimony shall be given under oath.

14. **Standard of Review and Burden of Proof.** The Board shall employ a *de novo* standard of review in its review and consideration of all evidence and testimony submitted on appeal. The Contractor bears the burden on appeal to demonstrate by a preponderance of the evidence why the Inspector General's decision set forth in the Notice of Debarment should be

reversed and/or modified. In its consideration of what relief, if any, to award, the Board may also consider whether the Inspector General exercised good faith in commencing its investigation as required by Section 505.10 of the Cuyahoga County Code. The Board shall have the discretion to affirm, reverse, modify, and/or remand the Inspector General's decision set forth in the Notice of Debarment.

15. **Post-Hearing Briefs.** The parties may, but need not, file post-hearing briefs. All post-hearing briefs must be filed no later than two weeks after the date of the hearing.

16. **Proposed Findings of Fact and Conclusions of Law.** The parties shall submit proposed findings of fact and conclusions of law to the Board no later than two weeks after the date of the hearing.

17. **Waiver of Hearing.** A Contractor may waive his/her/its right to a hearing. In the event a Contractor elects to waive such right, the Contractor must (a) file with the Clerk and serve upon the parties a Notice of Waiver prior to the date scheduled for the hearing, and (b) file with the Clerk and serve upon the parties proposed findings of fact and conclusions of law on or before the date scheduled for the hearing. In the event a hearing is waived, a contractor may also, but need not, file with the Clerk and serve upon the parties a brief in support of his/her/its appeal. The Inspector General or the County Department of Law may also, but need not, file a brief in support of its position on the appeal. Such briefs must be filed on or before the date scheduled for the hearing. In appeals where the Contractor waives his/her/its right to a hearing, the Board will issue its decision based on the evidence submitted with the Record on Appeal and any briefs filed by the parties.

18. **Rulings by the Board.** All rulings by the Board shall contain written findings of fact and conclusions of law, and shall be signed by a concurring majority of the Board. A quorum of the Board members must be present in order for a ruling of the Board to be valid. A dissenting opinion may be issued at the discretion of the dissenting member(s). The Clerk of the Board shall deliver a copy of the ruling to each party, or their representative, via electronic mail transmission, unless a party requests delivery by alternative means. Unless a Motion for Reconsideration is filed ~~by the Contractor~~ in accordance with Rule 19, a ruling by the Board shall become final and appealable on the day following the expiration of the ~~Contractor's~~ time period within which to file a Motion for Reconsideration. Any ruling by the Board on a Motion for Reconsideration is deemed final and appealable upon issuance.

19. **Motion for Reconsideration of Ruling by the Board.** A Contractor and/or the Inspector General may file a Motion for Reconsideration requesting the Board's review of all or any part of a previous ruling by the Board on the merits of the Contractor's appeal. A Motion for Reconsideration must be in writing and filed with the Clerk of the Board within ten (10) days after the Board issues its ruling. Within ten (10) days of the ~~Contractor~~ filing of a Motion for Reconsideration, the ~~Inspector General~~ opposing party may file a written response with the Board. The Board shall issue a decision on the Motion for Reconsideration within thirty (30) days after the closing of briefing on the Motion for Reconsideration. ~~The Inspector General is not permitted to file Motions for Reconsideration.~~

20. **Appeal to Common Pleas Court.** A Contractor may appeal a decision of the Board to the Cuyahoga County Court of Common Pleas in accordance with the requirements set forth in Section 505.06 of the Cuyahoga County Code and under Chapters 2505 and 2506 of the Ohio Revised Code. The Inspector General may not, however, appeal a decision of the Board to the Cuyahoga County Court of Common Pleas.

21. **Transmission of Record upon Appeal to Common Pleas Court.** The Clerk of the Board shall, upon the written request of a party, furnish copies of the record and such other documents in the Board's possession that may be required in judicial proceedings related to a ruling by the Board. The cost of the written transcription and the cost of transmission to the Court of Common Pleas shall be borne by the appellant, unless otherwise determined to be indigent by the Board. Upon determination of indigency, the cost of transcription is to be borne by the Board, but such cost shall be subject to any and all necessary budget appropriation.