



POLICY/INSTRUCTION: 8.12/2

Debarment and Suspension Program Policy

SUPERSEDES: P/I 8.12/1

Applicable To: All Metro Personnel, Contractors & Subcontractors**1.00 PURPOSE**

- 1.01 This Policy/Instruction (P/I) establishes the Procurement Debarment and Suspension Program which is intended to ensure the integrity of the Washington Metropolitan Area Transit Authority (Metro) procurement actions and the contractors with whom Metro conducts business.
- 1.02 Debarment and suspension are discretionary actions that should be imposed only in the public interest for Metro's protection, and not for purposes of punishment. The existence of a cause for debarment or suspension does not necessarily require that a contractor be debarred or suspended, but such sanctions should be imposed upon consideration of relevant factors, such as the seriousness of the contractor's acts or omissions and any remedial measures or mitigating factors that affect the public and Metro's best interests. This Policy outlines the process that Metro will use to implement the Procurement Debarment and Suspension Program.

2.00 SCOPE

This P/I applies to all Metro personnel, contractors and subcontractors doing business with Metro.

3.00 DEFINITIONS

- 3.01 **Affiliates** - business concerns, organizations or individuals are affiliates of each other if, directly, or indirectly: a) either one controls or has the power to control the other: or b) a third-party control of has the power to control both. Indicators of control include, but are not limited to: interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees or a business entity established following the debarment, suspension or proposed debarment of a contractor which has the same or similar management, ownership or principal employees as the contractor that was debarred, suspended or proposed for debarment.
- 3.02 **Bidder** - a party submitting a bid resulting from an invitation for bid solicitation.
- 3.03 **Vice President & Chief Procurement Officer (VP-CPRO), Procurement and Materials** - serves as the General Manager's principal official to exercise the proper controls over the Authority procurement process. The VP-CPRO also serves as the Authority's Head of Contracting Activity (HCA).
- 3.04 **Civil judgment** - a judgment or finding of a civil offense by any court of competent jurisdiction.
- 3.05 **Contractor** - any individual or other legal entity that directly or indirectly (e.g., through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a Washington Metropolitan Area Transit Authority (WMATA) contract, including a contract for carriage or commercial bills of lading, or a subcontract under a contract.
- 3.06 **Contract Administrator (CA)** - an individual assigned by the contracting officer to support him/her in the general administration of the terms and conditions of each particular contract.

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- 3.07 **Contracting Officer (CO)** - is the Authority's Vice President & Chief Procurement Officer (VP-CPRO) or such persons(s) or positions as shall be designated in writing by the VP-CPRO to act in his/her behalf. Wherever the term "Contracting Officer" shall appear in this document, the term also includes her designee(s).
- 3.08 **Contracting Officer's Representative (COR)** - a representative of the contracting officer appointed by the Vice President & Chief Procurement Officer (VP-CPRO). The COR performs those contract administration functions specifically delegated in writing by the VP-CPRO. CORs are delegated limited contracting officer authority and may enter into contractual agreements consistent with the extent of the authority delegated.
- 3.09 **Contracting Officer's Technical Representative (COTR)** - a representative of the contracting officer responsible to and appointed by the Vice President & Chief Procurement Officer. The COTR performs those contract administration functions specifically delegated in writing by the contracting officer. COTRs have no contractual authority and cannot enter into contractual agreements.
- 3.10 **Conviction** – a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of *nolo contendere*.
- 3.11 **Debarment** - an action taken by the Metro Debarment Panel to exclude a contractor from contracting or subcontracting for Metro for a reasonable period of time.
- 3.12 **Indictment** - a formal charge for a criminal offense. Any information or other filing by an authorized authority charging a criminal offense will be given the same effect as an indictment.
- 3.13 **Legal proceeding** - any civil judicial proceeding to which Washington Metropolitan Area Transit Authority (WMATA) is a party, or any criminal proceeding, including appeals from such proceedings.
- 3.14 **Metro Debarment Panel (Panel)** - the panel that is empowered to make debarment decisions.
- 3.15 **Offeror** - a party submitting a proposal in response to a request for proposal solicitation.
- 3.16 **Person** - any natural person or legal entity such as a corporation, firm, association, organization, partnership, business or trust.
- 3.17 **Preponderance of the evidence** - a standard of proof that leads to the conclusion that the fact at issue is more likely than not.
- 3.18 **Suspension** - an action taken by the Vice President and Chief Procurement Officer to temporarily exclude a contractor from Metro contracting and subcontracting, pending a decision by the Panel.

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Metro personnel and contractors have a duty to refer serious contractor business integrity violations, fraud, waste, abuse, or other misconduct that could provide the basis for a debarment or suspension proceeding to the VP-CPRO or cognizant CO. The following Metro personnel have responsibilities to implement the procedures outlined in this Policy.

- 4.01 The CA, COR or COTR shall support any debarment and suspension fact finding and proceedings as instructed by the CO.
- 4.02 The CO shall conduct preliminary fact finding in any matter referred for potential debarment or suspension and, in consultation with the Office of General Counsel (COUN), make a preliminary decision to propose further debarment proceedings to the VP-CPRO. The CO shall support all aspects of a debarment or suspension proceeding. The CO shall receive and coordinate any requests from a contractor for reinstatement following a debarment or suspension, and coordinate with the VP -CPRO to maintain a current listing of contractors that have been suspended, debarred, or proposed for suspension/debarment.
- 4.03 COUN is responsible for providing legal support throughout the suspension/debarment process. This includes advising the CO in conducting preliminary fact finding in a debarment or suspension proceeding, consulting with the CO on a preliminary decision to decline further proceeding or refer the preliminary findings to the VP-CPRO, advising the VP-CPRO and the Panel, and representing Metro at any debarment hearing before the Panel.
- 4.04 The VP -CPRO is responsible for appointing and overseeing the Panel and shall serve as a voting member of that Panel. The VP-CPRO, in consultation with COUN, shall review all proposals for debarment or suspension referred by the CO and determine whether to suspend a contractor, pending further debarment proceedings by the Panel. The VP-CPRO shall issue all required notices to a contractor who is the subject of any debarment/suspension proceeding.
- 4.05 Metro Debarment Panel:
- (a) The Panel is responsible for deciding whether to debar a contractor or to lift a debarment in response to a contractor's request for reinstatement, and to prepare a written decision supporting the action.
- (b) Appointment. The General Manager/Chief Executive Officer (GM/CEO) appoints the VP - CPRO to be the Chair of the Panel. The GM/CEO delegates his authority to the Chair to appoint the remainder of the voting members of the Panel, which shall include one (1) representative from each of the following offices:

- (1) The Office of Management and Budgeting Services (OMBS) under the Executive Vice President & Chief Financial Officer (EVP-CFO);

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- (2) Management, Audits, Risk and Compliance Office under the Office of Internal Compliance (INCP);
 - (3) The Office of Government Relations (GOVR) under the Office of External Relations (EXRL); and
 - (4) Sponsoring Agency - a representative from either the Federal Transit Administration (FTA) or United States Department of Transportation (DOT).
- (c) Voting Rights. The Chair and each voting member of the Panel have one (1) vote in making the decision whether to debar a firm or individual and whether to reinstate a firm after debarment. Three (3) members of the Panel, including the VP-CPRO make a quorum. At least three (3) members of the Panel, including the VP-CPRO, must be present for a hearing to be conducted. A decision by the Panel shall be by majority vote.
- (d) The Panel members can be amended by the VP-CPRO only, as needed. The VP-CPRO shall have the authority to designate additional non-voting Technical Members to the Panel to appear at any hearing and provide subject matter insight.

5.00 POLICIES AND PROCEDURES**5.01 Debarment:**

- (a) The Panel may, in the public interest, debar a contractor for any of the causes in section 5.02 below.
- (b) Debarment constitutes debarment of all divisions or other organizational elements of the contractor, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or commodities.
- (c) The Panel may extend a debarment decision to include any affiliates of the contractor if they are:
 - (1) Specifically named; and
 - (2) given written notice of the proposed debarment and an opportunity to respond.
- (d) The existence or nonexistence of any mitigating factors or remedial measures is not necessarily determinative of the public interest. If a cause for debarment outlined in section 5.02 exists, the contractor has the burden of demonstrating, to the satisfaction of the Panel, that debarment is not necessary. Examples of mitigating factors or remedial measures that may be relevant include:
 - (1) whether the contractor had effective standards of conduct, business

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ethics, and internal control systems in place at the time of the activity, or has implemented such measures subsequently;

- (2) brought the activity cited as a cause for debarment to the attention of Metro in a timely manner, fully investigated the circumstances surrounding the cause for debarment, and cooperated fully with Metro's investigation;
- (3) has paid or agreed to pay all criminal, civil and administrative liability for the improper activity, including any investigative or administrative costs incurred by Metro or restitution due to Metro;
- (4) has taken appropriate disciplinary action against individuals responsible for the activity;
- (5) has taken other remedial actions; and
- (6) recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent recurrence.

5.02 The Panel may debar a contractor or subcontractor for any of the causes listed below:

Criminal conviction or civil judgment for:

- (1) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public contract or subcontract;
 - (2) violation of federal or state antitrust statutes relating to the submission of offers;
 - (3) commission of embezzlement, theft, forgery, bribery, falsification/destruction of records, making false statements, tax evasion or receiving stolen property; or
 - (4) commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Metro contractor or subcontractor.
- (b) Based on a preponderance of the evidence, any other cause of so serious or compelling a nature that it affects the present responsibility of the contractor or subcontractor. This may include, but is not limited to, willful failure to perform or a history of failure to perform on one or more Metro contracts
- (c) Debarment by an agency of the U.S. Federal Government and listing as an excluded party in the System for Award Management (www.sam.gov).

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- (a) Referrals. All reports regarding serious contractor business integrity violations, fraud, waste, abuse, or other misconduct that could provide the basis for a debarment or suspension proceeding shall be referred to the VP-CPRO or cognizant CO.
- (b) Preliminary Fact Finding. The CO shall conduct preliminary fact finding to compile information and documents available to Metro that may be relevant to a suspension/debarment referral. The CO shall prepare a memorandum to the VP-CPRO with all supporting documents that summarizes the nature of the referral or allegation, relevant documents and facts, and the CO's assessment of any potential basis for debarment or suspension. This information will remain confidential. The memorandum should include the following information:
- (1) What is the contractor or subcontractor name and contact information? Name of the perpetrator(s) of the wrongdoing or who was involved with the wrongdoing?
 - (2) Nature of incident - What happened? What are the facts about the conduct or incident?
 - (3) What contract or purchase order is this incident associated with?
 - (4) What is the product or service of the contract or PO?
 - (5) When did the conduct or incident occur?
 - (6) Is the conduct or incident ongoing?
 - (7) Where did the conduct or incident occur?
 - (8) What policy, rule, law or regulation was violated (if you know)? If a policy from the Procurement Procedures Manual (PPM) you must provide the title and clause.
 - (9) Is there any documentation of the matter and, if so, please provide a copy of each document along with a table of contents listing each document copied. If you cannot provide a copy, who is the custodian of these documents, identify the document(s) and where can we find them?
 - (10) Who reported the incident to Metro, and do we have contact information and permission to contact that individual?
 - (11) How did the person who reported the incident become aware of the conduct or incident?
 - (12) Who else has or may have relevant knowledge of the matter?

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- (13) Has anyone reported the matter within the company or to anyone else at Metro, and if so, to whom and what happened?
- (c) Preliminary CO Determination. Based on the preliminary fact finding, the CO shall consult with COUN and make one of the following preliminary determinations:
- (1) If the referral does not substantiate a basis for debarment or suspension, the CO may close the request and document the action with a written report to COUN and the VP-CPRO.
 - (2) If the referral substantiates a basis to recommend that the contractor be debarred or suspended, the CO shall propose the contractor to the VP-CPRO for debarment or suspension and forward the CO's memorandum and supporting documentation to the VP-CPRO for further proceedings.
- (d) Notice of Proposal to Debar. Upon receipt of a proposal from the CO to debar a contractor, the VP-CPRO must provide a written notice (by certified mail, return receipt requested) to the contractor (and its known affiliates) that is proposed for debarment. The written notice of proposal to debar must include the following information:
- (1) that debarment is being considered;
 - (2) the reasons for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction(s) upon which it is based;
 - (3) the cause(s) relied upon in section 5.02 for proposing debarment; and
 - (4) that the contractor may submit (in person, in writing, or through a representative) information and arguments (including any additional specific information that raises a genuine dispute of material facts) in opposition to the proposed debarment within 30 days after receipt of the notice.
- (e) Opportunity to Appear. In debarment actions not based upon a criminal conviction or civil judgment, or where the Panel determines that additional proceedings are necessary to address genuine disputes over material facts, Metro will provide the contractor an opportunity to appear with counsel before the Panel, submit documentary evidence, present witnesses and confront any person the agency presents. The Panel will make a transcribed record of the proceedings that will be made available to the contractor (at cost) unless the contractor and Metro waive the requirement for a transcript.

5.04 Metro Debarment Panel's Decision:

- (a) The Panel will make a debarment decision based on its consideration of the entire record developed during the debarment proceeding. The Panel shall use its best efforts to issue a

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decision within 45 days of the close of any hearing or submissions by the contractor.

(b) The Panel shall issue a written decision to debar a contractor. The decision will:

- (5) state the relevant facts and the reasons for the action being taken;
- (6) describe the present responsibility of the contractor;
- (7) describe whether the debarment is in Metro's best interests; and
- (8) state the period of the debarment.

5.05 Notice of Panel's Decision:

- (a) If the Panel decides to impose debarment, the VP-CPRO shall promptly notify the contractor and any affected affiliates by certified mail (return receipt requested). The notice will:
- (1) refer to the notice of proposed debarment;
 - (2) specify the reason(s) for the debarment and provide a copy of the Panel's written decision;
 - (3) state the period of debarment; and
 - (4) inform the debarred contractor of the right to judicial review as provided in this P/I.
- (b) If debarment is not imposed, the VP-CPRO will promptly notify the contractor and any affiliates involved, by certified mail (return receipt requested).

5.06 Suspension:

- (a) The VP-CPRO may suspend a contractor upon receipt of a proposal by the CO to debar the contractor, or a referral for debarment from any source, if there is adequate evidence that immediate action is necessary to protect Metro's interest.
- (b) In assessing the adequacy of the evidence, the VP-CPRO shall consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.
- (c) The existence of a cause for suspension does not necessarily require that the contractor be suspended. Where a contractor knows a cause for suspension outlined in this section exists, the contractor has the burden of promptly demonstrating, to the satisfaction of the VP-CPRO, that suspension is not necessary. Examples of mitigating factors or remedial measures that may be relevant are described in section 5.01.

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- (d) The VP-CPRO may suspend a contractor, upon adequate evidence, of:
- (1) a pending debarment. A contractor doing business with Metro will be suspended pending a ruling for debarment by the Panel, unless the VP-CPRO determines that the proposed debarment is not supported by adequate evidence or that a suspension is not in the best interests of Metro;
 - (2) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public contract or subcontract;
 - (3) violation of federal or state antitrust statutes relating to the submission of offers;
 - (4) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
 - (5) commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Metro contractor or subcontractor;
 - (6) Indictment for any of the causes in sections 5.06(d)(2), 5.06(d)(3) or 5.06(d)(4) above;
 - (7) suspension or debarment by an agency of the U.S. Federal Government and listing as an excluded party in the System for Award Management (www.sam.gov); or
 - (8) upon appropriate evidence found, the VP-CPRO may also suspend a contractor for any other cause so serious or compelling in nature that it affects the present responsibility of a Metro contractor or subcontractor.
- (e) Suspension constitutes suspension of all divisions or other organizational elements of the contractor, unless the suspension decision is limited by its terms to specific divisions, organizational elements, or commodities. The VP-CPRO may extend the suspension decision to include any affiliates of the contractor if they are specifically named and given written notice of the suspension, and an opportunity to respond.
- (f) When a contractor is suspended, it will be immediately notified of the suspension by certified mail (return receipt requested). The notice of suspension will include the following information:
- (1) that they have been suspended and that the suspension is based on an indictment or other evidence that the contractor has committed irregularities: of a serious nature in business dealings with Metro, or seriously reflecting on the propriety of further Metro business with the contractor. Any such irregularities must be described in terms sufficient to

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place the contractor on notice without disclosing Metro's evidence;

- (2) that the suspension is for a temporary period pending the completion of an investigation and any other proceedings that may ensue, unless sooner terminated by the suspending official or as provided in this subsection;
 - (3) the cause(s) relied upon for imposing suspension;
 - (4) the effect of the suspension;
 - (5) that the contractor may submit information in opposition to the suspension to the VP-CPRO in writing within 30 calendar days after receipt of the suspension notice; and
 - (6) a contractor or subcontractor has the burden of promptly submitting a request to the CO for reinstatement after its term of suspension has expired or to present mitigating factors for consideration by the VP-CPRO for reinstatement from suspension if the time has not expired.
- (g) In the case of suspensions for any reason other than those outlined in paragraphs 5.06 (d)(1), 5.06(d)(6), and 5.06 (d)(7) of this section, the VP-CPRO may conduct additional proceedings if there are disputed material facts. The VP-CPRO shall consult COUN and prepare a written decision and may modify or terminate the suspension or leave it in force. Prompt written notice of the VP-CPRO's decision shall be sent to the contractor and any affiliates involved, by certified mail, return receipt requested.

5.07 Scope:

- (a) The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.
- (b) The fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct.
- (c) The fraudulent, criminal, or other seriously improper conduct of one contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

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- (a) A decision by the Panel to debar a contractor shall be final and binding.
- (b) A contractor whose period of debarment or suspension has expired may submit a request to the VP-CPRO to be removed from the listing of suspended/debarred contractors.
- (c) Upon the contractor's request and supported by documentation, the Panel may reduce the period or extent of debarment. The Panel shall utilize procedures outlined in section 5.04 to review such requests, and the Panel's resulting decision shall be final and not subject to further appeal under this section. Requests may be based on:
 - (1) newly discovered material evidence. This includes new facts that were not available to the contractor or Metro at the time the initial debarment decision was made and, if available, would have changed the outcome of the proceeding. Facts that were known or should have been known to the contractor at the time of the initial decision shall not be considered newly discovered.
 - (2) reversal of the criminal conviction or civil judgment upon which the debarment was based;
 - (3) bona fide change in ownership or management;
 - (4) elimination of other causes for which the debarment was imposed; or
 - (5) other reasons the Panel deems appropriate.

6.00 ENFORCEMENT**6.01 Effect of Listing:**

- (a) The VP-CPRO shall publicize a list of all suspended and debarred contractors and subcontractors on the Metro website listing of debarred and suspended contractors at www.wmata.com. The VP-CPRO will maintain the listing to ensure the timely removal of all contractors who have completed their term of debarment or suspension.
- (b) Contractors debarred, suspended or proposed for debarment or suspension are excluded from receiving contracts, and Metro will not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the GM/CEO determines that there is a compelling reason for such action. Contractors debarred, suspended or proposed for debarment or suspension are also excluded from conducting business with Metro as agents or representatives of other contractors.
- (c) Contractors debarred, suspended or proposed for debarment or suspension are excluded from acting as individual sureties.

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- (a) Debarment shall be for a period commensurate with the seriousness of the cause(s). The period of debarment shall be determined by the Panel in each case but shall generally not exceed three (3) years. The Panel shall consider any period of suspension that may precede a debarment in determining the period of debarment. The Panel may extend the debarment for an additional period, if such an extension is necessary to protect Metro's interest and is warranted by facts and circumstances other than what the Panel considered in its initial determination. Any extension shall be determined using the procedures outlined in sections 5.03(d) through 5.05, including required notices to the contractor.
- (b) Suspension shall be for a temporary period pending the completion of investigation and any ensuing proceedings, unless sooner terminated by the VP-CPRO. If proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated.

7.00 EXCEPTIONS

None.

8.00 RELATED POLICIES, REGULATIONS & RESOLUTIONS

- 8.01 Department of Transportation Article on Debarment and Suspension - 49 CFR Part 29.
- 8.02 FTA Best Practices Procurement Manual, 4.3.3.2.1 - Certification regarding Debarment and Suspensions.
- 8.03 WMATA Procurement Procedures Manual - Section 15 - 11.

9.00 LIST OF APPENDICES, ATTACHMENTS OR FORMS

Appendix A - Contractor/Supplier Evaluation Form.

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Contractor/Supplier		Evaluation performance period:	Vendor #:
Contract Number:		Assigned CA:	
COTR Name:		Contracting Officer:	
Contract Value:		Option #	
DBE Participation (circle)	Yes / No	Small business/Local (circle)	Yes / No

EVALUATION CATEGORIES/WEIGHTS

Evaluation Category	Weights	Evaluation Criteria	Exceeds Expectations/ Exceptional (4 pts)	Meets Expectations/ Satisfactory (3 pts)	Needs Improvement/ Marginal (2 pts)	Does not Meet Requirements/ Unsatisfactory (1 pts)	Not Applicable (0 points)
Contractor Requirements-Compliance/ Deliverables/Timeliness	35%	Deliverables are met timely and within performance expectations of WMATA					
Contractor Responsiveness Problems/Issues Impact to Contract	20%	Responsive to WMATA requests and questions/Issue resolution and Impact					
Cost/Accuracy	20%	Accuracy of invoicing for services performed by Prime and Subcontractors					
Dependability/Management and Quality Control	15%	Consistency, credibility of Staff assigned to contract					
DBE Goal Attainment	10%	All % goals are being met (where applicable)					
Total Score/Rating	100%	Missing Evaluation for at least one Criteria					

Comments	Comments required to support each of the ratings above
Deliverables/Timeliness	
Responsiveness	
Cost/Accuracy	
Dependability	
DBE Goal Attainment	

All ratings less than meeting expectations shall be provided to contractor for comment or rebuttal.

Program/COTR	Name:		Signature:		Program:	Date:
Project Manager	Name:		Signature:		Program:	Date:

APPROVED BY**DATE APPROVED****CLASS****LEAD****DATE OF LAST REVIEW****PAGE****A P P R O V E D**

06/18/2021

PRMT

IBOP

06/17/2021

1 of 1

By General Manager & Chief Executive Officer Paul J. Wiedefeld