

1 **JOINT RULES AND PROCEDURES OF THE OFFICE OF THE CHIEF**
2 **PROCUREMENT OFFICER AND DEPARTMENT OF ADMINISTRATIVE HEARINGS**
3 **CONCERNING DISQUALIFICATION OF CONTRACTORS**

4
5 **Introduction and Definitions**

6 The purpose of these Joint Rules is to implement Sec. 34-178 of the Cook County Code which
7 provides in part:

8 “The determination as to whether a Person is disqualified under any provision of this
9 Division 4 or has made a false statement, shall be subject to said Person's petition for review
10 in a proceeding pursuant to Part I, Chapter 2, Article IX, Administrative Hearings, and the
11 Administrative Rules promulgated thereunder.”

12 Unless defined in this Section or in the Cook County Code of Ordinances, including but not
13 limited to, the Cook County Procurement Code, Chapter 34, Article IV and the Administrative
14 Hearings Code, Chapter 2, Article IX and their successor ordinances, which are codified at
15 municode.com, any ambiguous term in these Rules shall have its common meaning as its context
16 may imply.

17 *Administrative Hearing or Hearing* means the administrative hearing conducted in accordance
18 with Chapter 2, Article IX following the CPO’s issuance of a Notice of a Proposed
19 Disqualification.

20 *Administrative Law Officer* means an impartial hearing officer appointed by the Department of
21 Administrative Hearings pursuant to § 2-901 *et seq.* of the Cook County Code of Ordinances.

22 *ALO* means Administrative Law Officer

23 *Contractor* means any person, including any individual, or entity that has entered into a contract
24 with the County or is seeking to or may enter into a contract with the County, or serves as a

1 subcontractor or supplier on a County contract. “*Contractor,*” for the purposes of these rules,
2 also means any affiliate, officer, director, or employee who has received a Notice of Proposed
3 Disqualification under these rules and units, divisions, or other organizational elements of such
4 person or entity that has received a Notice of Proposed Disqualification.

5 *CPO* means the Chief Procurement Officer of the Office of the Chief Procurement Officer of
6 Cook County.

7 *Disqualification* or *Disqualifies* means the prohibition of a Contractor from participating in all
8 County Contracts, based upon a final decision by the Administrative Law Officer that Contractor
9 has violated provision(s) of Division 4 of the Cook County Procurement Code, for a period of
10 twenty-four (24) months, except in the following instances: (i) a period up to two years as set
11 forth in Section 34-174; and (ii) a period up to five (5) years for Disqualification based upon
12 Sections 34-175 and 34-176. Disqualification may include the termination of any or all existing
13 contracts between the Contractor and the County.

14 *DOAH* means the Cook County Department of Administrative Hearings

15 *Notice* means the Notice of Proposed Disqualification

16 *Notice of Proposed Disqualification* means a notice issued by the CPO informing a Contractor
17 that: (a) the CPO has made a preliminary decision or received a recommendation that the
18 Contractor should be disqualified, (b) the Contractor may contest that preliminary decision
19 before that decision becomes final, and (c) pursuant to Sec. 34-178 of the Cook County Code the
20 Contractor may request an administrative hearing to review the CPO’s preliminary decision to
21 disqualify the Contractor.

22 *OCPO* means the Office of the Chief Procurement Officer of Cook County.

23

1 **SECTION II - Notice of Proposed Disqualification**

2 A Notice of Proposed Disqualification (hereinafter “the Notice”) shall be issued by the CPO
3 advising the Contractor and any specifically named affiliates or other individuals that the CPO
4 has proposed a Disqualification. The notice shall include the following information:

5 (a) The basic facts and reasons for the proposed Disqualification in terms sufficient to state a
6 prima facie case putting the Contractor on notice of the conduct and/or transaction(s) upon which
7 it is based;

8 (b) The provision in the Cook County Code of Ordinances relied upon for proposing
9 Disqualification, and the proposed duration of the Disqualification;

10 (c) The process by which the Contractor may request an administrative hearing to contest the
11 proposed disqualification by filing with the Department of Administrative Hearings a Petition for
12 Administrative Hearing within 30 days after receipt of the Notice of Proposed Disqualification

13 (d) Should the Contractor fail to file a Petition for Administrative Hearing which complies with
14 these Joint Rules within 30 days of receipt of the CPO’s proposed disqualification, the proposed
15 disqualification will constitute the County’s final decision and the disqualification and will be
16 implemented by the County without further review.

17 (e) That a copy of the County Disqualification Rules can be obtained at the website of the
18 OCPO.

19 **Section III - Service of the Notice**

20 Service of Notice shall be by any means reasonably calculated to provide actual notice to the
21 person who is subject to the Notice and provide proof of service in the record. Notice shall be
22 sent by certified or registered mail, return receipt requested with postage paid or by personal

1 delivery or third party commercial carrier to the Contractor's registered agent and to any
2 designated individual, department or legal representative as set forth in the notice section or
3 other sections of a Contract. The CPO may, in his or her sole discretion, provide additional
4 Notice by email or any other suitable means, to any other individual serving as key personnel,
5 account manager or project manager for the Contractor.

6 **Section IV - Consequences of OCPO Issuing Notice**

7 (a) Except as set forth in subsection (b) below, from the date of a Notice until the proposed
8 disqualification becomes final, either because the Contractor fails to file a Petition for
9 Administrative Hearing within the time required or after a final decision by an Administrative
10 Law Officer, the following conditions shall apply to the Contractor:

11 (1) The Contractor may submit bids or proposals on contracts and new contract(s) may be
12 awarded. However, if an Administrative Law Officer subsequently disqualifies the
13 Contractor, the Contract(s) may be terminated unless an exception is granted as provided
14 in Section 34-170 (b) –(c) of the Cook County Procurement Code. The facts underlying a
15 Contractor's pending proposed Disqualification and other factors may be considered
16 when evaluating such bids or proposals. When appropriate, contract awards may be
17 delayed for a reasonable period of time allow the Department of Administrative Hearings
18 to reach a decision on the pending proposed Disqualification.

19 (2) The Contractor may continue as a subcontractor or supplier on existing contracts.
20 However, if an Administrative Law Officer subsequently disqualifies the Contractor, the
21 OCPO may terminate or suspend the Contractor's participation in those contracts unless
22 an exception is granted as provided in Section 34-170 (b) –(c) of the Cook County
23 Procurement Code.

1 (3) The Contractor may continue as a prime contractor on other existing County
2 Contracts, which are not the basis of the proposed Disqualification set forth in the Notice.
3 However, if an Administrative Law Officer subsequently disqualifies the Contractor, the
4 Contracts may be terminated, unless an exception is granted as provided in Sections 34-
5 170(b) –(c) of the Cook County Procurement Code.

6 (4) A Contractor cannot petition the Department of Administrative Hearings for review of
7 a disqualification based upon Section 34-173 or Section 34-179.

8 (b) When the Notice is based upon Section 34-174, or when in the sole discretion of the CPO, the
9 cause(s) for Disqualification are sufficiently serious and the evidence supporting Disqualification
10 is compelling or highly reliable, he or she may impose interim constraints restricting the
11 Contractor in dealing with the County after the Notice is issued but before a decision is made by
12 the Administrative Law Officer. In determining whether interim constraints are appropriate, the
13 factors set out in Section V shall be considered. The CPO shall provide notice of such constraints
14 in a separate document in the manner set forth above in Section III. The CPO shall consider
15 some or all of the factors set out in Section V in determining whether to apply interim
16 constraints. Such interim constraints may include but are not limited to any of the following:

17 (1) Termination of all existing contracts between the Contractor and the County.

18 (2) Termination of the Contractor’s participation as supplier or subcontractor on existing
19 contracts.

20 (3) Ineligibility for the award of new contracts.

21 (c) The Contractor shall have ten days after receiving the notice that the CPO is seeking to
22 impose interim constraints on contracting pursuant to Section IV (b) to submit a written response
23 stating its reasons why the constraint should not be applied. No restriction shall go into effect

1 until after the time for response has passed, or in the case of a response, until the OCPO issues a
2 decision on the application of the interim constraints.

3 (d) If the Contractor can prove that it did not receive notice pursuant to Section III, the
4 Contractor may seek reconsideration of the interim constraints by providing written notice to the
5 OCPO.

6 (e) Any such interim constraints put in place under this Section shall remain in effect no longer
7 than the date that a final Disqualification decision occurs either through the failure of the
8 Contractor to timely file its Petition for Administrative Hearings or is rendered by the
9 Administrative Law Officer.

10 **Section V - Considerations in Determining Imposition of Constraints and Duration of**
11 **Disqualification under Sections 34-174, 34-175 and 34-176**

12 (a) The factors set out in this Section may be considered in determining whether the interim
13 constraints authorized by Section IV should be applied and the proposed period of
14 Disqualification based upon Sections 34-174, 34-175 and 34-176 of the Cook County
15 Procurement Code.

16 (1) Whether the Contractor had effective standards of conduct and internal control
17 systems in place at the time of the activity which constitutes cause for Disqualification;

18 (2) Whether the Contractor has adopted effective standards of conduct and internal
19 control systems after the CPO issued the Notice or prior to any County investigation of
20 the activity cited as a cause for Disqualification;

21 (3) Whether the Contractor brought the activity cited as a cause for Disqualification to the
22 attention of the CPO, the Using Agency which received goods or services from the
23 Contractor or other County investigative personnel in a timely manner;

- 1 (4) Whether the Contractor has fully investigated the circumstances surrounding the
2 cause for Disqualification and, if so, made the result of the investigation available to the
3 CPO and Using Agency receiving the goods or services from the Contractor, or other
4 County investigative personnel;
- 5 (5) Whether the Contractor cooperated fully with County agencies during any and all
6 investigations, inquiries, discovery, fact finding and in any court or administrative action;
- 7 (6) Whether the CPO has previously issued a notice to cure, a notice of default under
8 other County Contracts to the Contractor;
- 9 (7) Whether the Contractor has paid or agreed to pay all criminal, civil and administrative
10 liability for the improper activity;
- 11 (8) Whether the Contractor has paid or offered to pay any investigative or administrative
12 costs incurred by the County, and/or has offered to make full restitution;
- 13 (9) Whether the Contractor has complied with the terms and conditions of other County
14 Contracts which are not the basis for the proposed Disqualification;
- 15 (10) Whether the Contractor has taken appropriate disciplinary action against the
16 individuals responsible for the activity which constitutes cause for Disqualification;
- 17 (11) Whether the Contractor has implemented or agreed to implement remedial measures,
18 including any identified by the County;
- 19 (12) Whether the Contractor has instituted or agreed to institute new or revised review
20 and control procedures and ethics training programs;
- 21 (13) Whether the Contractor has had adequate time to eliminate the circumstances within
22 the Contractor's organization that led to the cause for Disqualification;

1 (14) Whether the Contractor's management recognizes and understands the seriousness
2 of the misconduct giving rise to the cause for Disqualification and has implemented
3 programs to prevent recurrence;

4 (15) Whether the Contractor has made a bona fide change in ownership or control; and

5 (16) Any other factor, as determined by the CPO, relevant in considering the imposition
6 of interim constraints or the proposed duration of Disqualification under Sections 34-174,
7 34-175 and 34-176 of the Cook County Procurement Code.

8 (b) The OCPO shall disclose on its website:

9 (1) The names of any Contractors which have interim constraints imposed against them
10 by the CPO; and

11 (2) The final determination of any decision of the Administrative Law Officer concerning
12 the proposed Disqualification of a Contractor.

13 **Section VI - Procedures Following Notice of Proposed Disqualification**

14 (a) Within 21 days after receipt of the Notice, the Contractor may request, in writing from the
15 CPO or the CPO's designee, access to the documentation the County relies upon in seeking
16 Disqualification, including but not limited to any contract where the contract or its terms are at
17 issue, any witness summaries or affidavits, or relevant prior Disqualification decisions relating to
18 the Contractor or an affiliate, if such documentation was not already provided to the Contractor
19 with the Notice or otherwise. In the case of voluminous documentation, the Contractor may
20 instead be permitted to examine any and all such materials and thereafter request copies of any or
21 all such materials. In such case, the Contractor must pay a reasonable copying fee to the Office
22 of the Chief Procurement Officer. If copies cannot be made available within two days of
23 receiving the request, the Contractor shall be given additional time to submit the Petition for

1 Administrative Hearing described under Section I (d). The CPO or the CPO's designee will
2 notify the Contractor and any County representative of such extensions.

3 (b) The Contractor shall file its Petition for Administrative Hearing by delivery via U.S. mail or
4 personal delivery to the Department of Administrative Hearings within thirty days after receipt
5 of the Notice. Date of filing will be the date of receipt by delivery. No submittal by any
6 Contractor will be acknowledged until that submittal of the Petition for Administrative Hearing
7 is actually received by DOAH. Deliveries will be accepted only during the regular office hours
8 at 118 N. Clark Room 1140 Chicago IL 60602. The Contractor's Petition for Administrative
9 Hearing must be in writing and shall include an admission, denial, or other response to each of
10 the allegations in the Notice. The omission of such a response to any allegation in the Notice
11 shall be deemed an admission of that allegation. The Petition for Administrative Hearing also
12 must include all the facts, arguments, or other basis upon which the Contractor contests the
13 Disqualification. All supporting documentation, if any, shall be included. Should the Contractor
14 fail to file a timely and adequate Petition for Administrative Hearing to the Notice of Proposed
15 Disqualification, all of the allegations of the notice shall be deemed to be admitted. The
16 Contractor may also address the application of the factors set out in Section V to rebut the
17 proposed duration of the disqualification. A copy of the Notice of Proposed Disqualification
18 must be attached to the Petition for Administrative Hearing.

19 (c) The Contractor must also serve a copy of the Petition for Administrative Hearing on the CPO
20 through U.S. mail or by personal service. An officer or other representative for the County may
21 be designated to present the causes for Disqualification to the Department of Administrative
22 Hearings. If a County Representative has been designated prior the date of the Contractor's
23 Petition for Administrative Hearing and the Contractor has been notified of the appointment, the

1 Contractor shall provide a copy of the Petition for Administrative Hearing to the County
2 Representative.

3 (d) The Chief Procurement Officer may withdraw the Notice of Proposed Disqualification
4 without prejudice for good cause prior to the final decision.

5 **Section VII - Pre-Hearing Case Management Conference**

6 (a) Within thirty (30) calendar days of the filing of the contractor's Petition for Administrative
7 Hearing, the Administrative Law Officer shall schedule a pre-hearing case management
8 conference to be conducted at a location determined by the Administrative Law Officer.

9 (b) An attorney or representative of each party who has knowledge of the case shall appear at
10 this conference, unless the Administrative Law Officer allows for such participation by
11 telephone or other audio-visual conferencing tool. The parties should be prepared to discuss the
12 nature of the case and the issues that are the subject of the Hearing. At the Pre-Hearing
13 Conference, the Administrative Law Officer shall set a schedule and a date for the Hearing.

14 (c) The Administrative Law Officer may hold additional case management conferences as the
15 Administrative Law Officer may determine necessary.

16 (d) At the Pre-Hearing Conference, the parties shall advise the Administrative Law Officer of
17 the status of the case, and a final Hearing date and location shall be set. The
18 attorneys/representatives who will present the case at the Hearing shall appear at the Pre-Hearing
19 Conference unless the Administrative Law Officer allows an appearance by telephone.

20 (e) At the Pre-Hearing Conference, the parties will identify in writing the issues, witnesses, and
21 document(s)/exhibit(s) each side intends to use at the Hearing.

22 **Section VIII - Discovery**

1 (a) Not less than five (7) business days prior to the Hearing, the parties shall disclose to each
2 other and to the Administrative Law Officer the names of attendees under their control who will
3 attend the Hearing, identify witnesses, and update any changes of the intended
4 document(s)/exhibit(s) to be used at the Hearing.

5 (b) There shall be no discovery allowed in connection with the Hearing, except Requests to
6 Produce. A party may make a written request to produce for inspection and copying any
7 specified documents under the other party's control which are directly relevant to the issue of
8 whether disqualification is warranted. The request to produce must be made no later than seven
9 days from the date of the initial case management conference; and shall specify a reasonable
10 time, which shall not be less than 14 days, except by agreement or by order of Administrative
11 Law Officer, and the place and manner of making the inspection. A party served with the
12 written request shall (1) produce the requested documents as they are kept in the usual course of
13 business or organized and labeled to correspond with the categories in the request, and all
14 retrievable information in computer storage in printed form, or (2) serve upon the requesting
15 party written objections on the ground that the request is improper in whole or in part. Any
16 objection to the request or the refusal to respond shall be heard by the Administrative Law
17 Officer upon prompt notice and motion of the party submitting the request.

18 **Section VIX - Pre-Hearing Motions**

19 (a) Except for motions for continuances or with the approval of the Administrative Law Officer,
20 all motions shall be filed with DOAH not less than seven (7) business days before the scheduled
21 hearing date. All motions shall be in writing and proof of service on the opposing party shall
22 accompany each motion.

23

1 (b) The briefing schedule, if any, and ruling on the motion shall be scheduled at the discretion of
2 the Administrative Law Officer.

3 (c) Motions for continuance may be granted at the discretion of the Administrative Law Officer
4 upon good cause shown of extraordinary circumstances.

5 (d) Except for motions for continuance or similar motions unrelated to the conduct, content, or
6 issues of the Hearing, the Administrative Law Officer shall rule on any prehearing motions at
7 least seven (7) business days prior to the hearing date.

8 **Section X – Administrative Hearing**

9 (a) The proceedings before the Administrative Law Officer shall be governed by applicable law,
10 these Rules, and applicable provisions in Subsections (a) through (h) of Section 2-911, and
11 Section 2-912 of the Cook County Code.

12 (b) The parties' evidence may be limited to those issues and witnesses that were identified in the
13 notice of proposed disqualification, the contractor's Petition for Administrative Hearing and
14 documents/exhibit(s) previously made a part of the administrative record.

15 (c) The Administrative Law Officer, upon a showing of good cause, may consider issues or
16 witnesses not identified either in the request for oral hearing or the Chief Procurement Officer's
17 Hearing designation.

18 (d) For good cause shown, the Administrative Law Officer may allow the use of
19 documents/exhibits at the Hearing that were not previously made part of the administrative
20 record and may allow the opposing party to comment upon the proposed new
21 document(s)/exhibit(s).

22 (e) Hearings shall be conducted in a manner consistent with principles of fundamental fairness.
23 The administrative law officer conducting the hearing may use flexible procedures, and is not

1 required to follow formal rules of evidence. Hearsay evidence may be admitted if it is of a type
2 commonly relied upon by reasonably prudent persons in the conduct of their affairs, and, if
3 admitted, will be given appropriate weight by the official conducting the hearing.

4 (f) The Contractor may appear with or be represented by counsel, and, as limited by these Joint
5 Rules, shall have the right to present witnesses and to confront any witnesses presented in
6 support of the proposed Disqualification. Any County representative responsible for presenting
7 the case for Disqualification also shall have the right to present witnesses, and confront those
8 presented in support of the Contractor. The Administrative Law Officer conducting the hearing
9 may also question the witnesses.

10 (g) Where the statement of a witness is relied upon by the Contractor, if the witness is under the
11 control of the Contractor and Contractor fails to present that witness at the hearing, any proffer
12 by the Contractor of the witness' statement, whether in the form of a written summary, affidavit,
13 or other form shall be stricken from the record unless the Contractor shows good cause why the
14 witness cannot appear. Witnesses under the control of the Contractor include, but are not limited
15 to, affiliates, employees, employees of subcontractors or suppliers of any tier, and the relatives
16 and business associates of the Contractor or of any person who has a beneficial interest in the
17 Contractor or who exercises management or control over the Contractor. Similarly, any County
18 representative presenting the case for Disqualification may not present the statement of a witness
19 who is under the control of the County unless the officer shows good cause why the witness
20 cannot appear. Witnesses under the control of the County are its employees and officials, except
21 for those under the control of a Contractor. "Good cause" for non-appearance of a witness shall
22 be limited to military or other official service or duties preventing attendance, death, serious
23 illness, or other similar impediment and shall be determined within the sole discretion of the

1 Administrative Law Officer conducting the hearing. Such statements and demonstrations of
2 “good cause” must be provided at least seven (7) days prior to the hearing unless otherwise
3 allowed by the Administrative Law Officer. Reasonable accommodation will be made to
4 facilitate presentation of witnesses. The Contractor may request the appearance of witnesses
5 under the control of the County, but such requests must be made no less than seven days prior to
6 the hearing if not made in the request for a hearing. Similarly, no less seven (7) days prior to the
7 hearing, the officer presenting the Disqualification of behalf of the County may request the
8 appearance of witnesses under the control of the Contractor.

9 (h) Any such hearings conducted pursuant to these rules shall be recorded on audiotape or other
10 audio recording medium and will become part of the record. A copy of the audiotape or other
11 audio recording medium shall be made available to the Contractor upon written request to the
12 Department of Administrative Hearings and at the Contractor’s expense. The Contractor or the
13 County, at their own expense, may request a certified or licensed court reporter to record the
14 proceedings but may not record the proceedings by any other means without the express
15 permission of the Administrative Law Officer.

16 **Section XI - Extension of Deadlines and Settlement Agreement**

17 Any deadline may be extended at the sole discretion of the Administrative Law Officer.
18 Requests for an extension of a deadline shall be in writing to the Administrative Law Officer,
19 except as otherwise provided. The Contractor subject to the Disqualification proceeding and the
20 Chief Procurement Officer may enter into a settlement agreement relating to the Disqualification.

21 **Section XII - Failure of the Contractor to Comply with Procedures Set out in These Rules**

22 Failure of the Contractor to comply with the rules set out or to participate in the scheduled
23 hearing shall be deemed an abandonment of the Contractor's request for hearing. Where the

1 Contractor abandons its request for hearing, the Administrative Law Officer shall enter an order
2 finding that the request for hearing has been abandoned and enter an order that the finding that
3 the proposed disqualification is final and may be implemented, based on the Contractor's
4 abandonment of the request for a hearing.

5 **Section XIII – Decision by the Administrative Law Officer**

6 (a). The Administrative Law Officer shall issue written decision within twenty-one (21)
7 business days after the hearing has concluded or after any post-hearing submissions. Post-
8 hearing submissions must be filed within five (5) business days after the hearing has concluded.
9 The CPO, Contractor and County representative shall be given prompt notice of the decision by
10 certified mail, return receipt requested or by personal service with attestation in the record.

11 Where the Administrative Law Officer finds that no disqualification is warranted the decision
12 must specify that finding with reference to record. If the Administrative Law Officer finds that
13 some form of disqualification is warranted the decision shall:

- 14 1) Specify the reasons for Disqualification with reference to record facts,
- 15 2) State the period and type of Disqualification, including effective dates;
- 16 3) State the effect of the Disqualification on the Contractor's existing contracts with the
17 County;
- 18 4) State the effect of the Disqualification on the Contractor's eligibility to act as a
19 subcontractor or supplier of any tier on any existing and/or future contracts with other
20 County Contractors; and
- 21 5) State the effect of the Disqualification on affiliates or any other individuals.

22 **Section XIV – Imposition of Penalty under Section 34-175**

1 A Contractor shall have thirty-five (35) days from receiving Notice, in a manner as specified in
2 Section III, to pay any penalty imposed by the CPO against the Contractor under Section 34-175
3 for false statements of material fact in connection with a procurement. Contractors can seek
4 review with the DOAH of the imposition of a penalty in accordance with the procedures of these
5 Joint Rules.

6 **Section XV – Effective Date**

7 These Joint Rules shall be in effect on June 1, 2018.