

Executive Order No. 192: Executive Order Imposing Continuing Vendor Integrity Requirements in State Contracts.

WHEREAS, New York State, through its agencies and authorities, contracts with a wide variety of vendors, suppliers, service firms, and other contractors to construct public works and obtain goods, services, and technology in various capacities;

WHEREAS, it is imperative that the State conduct business only with responsible entities to ensure that taxpayer dollars are not paid to entities or individuals that lack integrity, are incapable of providing satisfactory performance, or fail to comply with existing laws;

WHEREAS, New York law and public policy have long required that entities wishing to bid for State contracts be found to be responsible at the time of contract award by demonstrating that they have the requisite financial and organizational capacity, legal authority, and integrity (of both the entity and its principals), and, where appropriate, have shown satisfactory performance on prior government contracts;

WHEREAS, State agencies and authorities currently have the ability to debar or deem ineligible for future bidding any contractors, vendors, or grantees that have violated certain statutory provisions, which include, but are not limited to, violations of Labor Law Article 8 and 9 for the willful and intentional failure to pay the prevailing rate of wages; violations of Labor Law Article 25-B (Construction Industry Fair Play Act) and Labor Law Article 25-C (Commercial Goods Transportation Industry Fair Play Act); being listed by the federal government as excluded from receiving federal contracts and certain subcontracts, assistance or benefits, pursuant to 48 C.F.R. Subpart 9-4; being convicted of a crime defined in Penal Law Article 200 (Bribery Involving Public Servants and Related Offenses), Article 496 (Corrupting the Government), or § 195.20 (Defrauding the Government); being subject to a final assessment of civil fines or penalties or a stop-work order, or being convicted of a misdemeanor for violation of Workers Compensation Law §§ 26, 52, or 131; being the subject of a finding of fraudulent or intentional misrepresentation or willful and intentional disregard of the minority- and women-owned participation requirements on a project; and more; and

WHEREAS, the State's attention to vendor responsibility should not end with the contract award process, and State agencies and authorities should ensure that contractors, vendors, and grantees remain responsible throughout the term of the contracts and that such contractors, vendors, and grantees who are the subject of debarment or are found to be non-responsible are not able to bid on public procurements.

NOW, THEREFORE, I, ANDREW M. CUOMO, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and laws of the State of New York, do hereby order and direct as follows:

1. "State Entities" shall mean (i) all agencies and departments over which the Governor has executive authority and as defined in subdivision 3, section 2-a of the State Finance Law; and (ii) all public benefit corporations, public authorities, boards, and commissions for which the Governor appoints the Chair, the Chief Executive, or at least 50% of the Board Members.

2. "Contract" shall mean any contract, lease, grant or equivalent legal instrument.

3. State Entities are directed to evaluate - utilizing the existing vendor responsibility determination process - whether bidders are responsible, based in pertinent part upon the following factors: (i) financial and organization capacity; (ii) legal authority; (iii) integrity; and (iv) past performance. Moreover, State Entities are required to determine whether a contractor, vendor, or grantee has failed to comply with any statutory provisions relating to debarment.

4. If a State Entity discovers information that indicates a contractor, vendor, or grantee may not be responsible, may no longer be respon-

sible during the term of the contract, or be subject to debarment for violation of a statutory provision or provisions, the State Entity is directed, as applicable (i) to conduct an analysis, review, hearing, or investigation, which may include, but is not limited to, conducting a document review supplemented by interviews involving the question- ing of the contractor, vendor, or grantee and their representatives; and (ii) to make a determination following such review, hearing or investigation.

5. All State Entities are required to maintain information on contrac- tors, vendors, or grantees that have been deemed non-responsible or ineligible to bid on future contracts or grants and are directed to submit a list of such contractors, vendors, or grantees to the Office of General Services ("OGS") for posting on the OGS website within 5 days. This list should include the name of such contractor, vendor, or grantee, the date, and the basis of the determination, and shall be provided in a manner to be determined by OGS.

6. OGS is directed to post a list of the non-responsibility and debar- ment determinations on the OGS public website. Such names of debarred contractors, vendors, or grantees shall remain posted on the OGS website for the period designated in the relevant statutory provi- sion allowing for such debarment. In all other cases, determinations shall remain on the list until OGS receives notice of a finding by a court of competent jurisdiction that the non-responsibility or debar- ment determination was in error or until such time as a waiver has been approved by the Counsel to the Governor, in a manner to be determined by OGS.

7. All State Entities and their state-approved directors must rely on the determination made by other State Entities in ascertaining the responsibility, ineligibility, or debarment of a contractor, vendor, or grantee in current and future procurements.

8. Any commissioner, agency or department head, or member of a board of directors of a State Entity who selects, absent an approved wavier, a contractor, vendor, or grantee, who has been deemed non- responsible, debarred, or otherwise ineligible shall be breaching their duty as a public officer and/or fiduciary duty as a board member.

(L.S.) GIVEN under my hand and the Privy Seal of the State in the City of Albany this fifteenth day of January in the year two thousand

nineteen.

BY THE GOVERNOR

/S/ Andrew
/s/ Melissa DeRosa *Secretary to the Governor*

M.

Cuomo