

SOUTH FLORIDA WATER MANAGEMENT DISTRICT VENDOR SUSPENSION RULE
FLORIDA ADMINISTRATIVE CODE

40E-7.214 Policy.

(1) This rule establishes policies and procedures for suspending a contractor from working with the District, either temporarily or permanently, whenever a contractor materially breaches its contract with the District.

(2) The District's objective in enacting this rule is to encourage good business practices by requiring contractors to materially perform in accordance with the terms and conditions of the District contract.

(3) The District Governing Board, upon recommendation by the Director of Procurement, shall be authorized to temporarily or permanently suspend a contractor from doing business with the District. Suspension must be based on adequate evidence indicating that the contractor has materially breached its contract with the District.

(4) Temporarily or permanently suspending a contractor from doing business with the District does not preclude the District from seeking any other legal or equitable remedies for breach of contract.

Specific Authority 373.610 FS. Law Implemented 373.610 FS. History—New 4-1-03.

40E-7.215 Definitions.

(1) “Contractor”: any individual or contracting entity with whom the District has entered into a legally binding agreement for performance of work at a mutually agreed upon price in accordance with agreed upon terms and conditions.

(2) “Contracting Entity”: an individual, partnership, corporation, joint venture, professional association, an obligor to a third party beneficiary contract, or any other legal entity doing business in the State of Florida which has entered into a contract with the District.

(3) “Cure Notice”: a letter citing the specific nature of the material breach, the corrective action required by the District and a thirty (30) day time frame for curing the breach, starting from receipt of the Cure Notice. The letter also shall state that if the contracting entity fails to cure the breach within the thirty (30) day period, the contracting entity will be found in default and may be placed on the District’s Temporary or Permanent Suspension List.

(4) “Excusable Non-performance”: a contracting entity’s failure to perform an act that is an important part of the transaction or performing an act inconsistent with the terms and conditions of the contract, due to some action or inaction by the District, making performance by the contracting entity impossible or beyond the contracting entity’s control.

(5) “Material Breach”: any substantial, unexcused non-performance. The breach is either failing to perform an act that is an important part of the transaction or performing an act inconsistent with the terms and conditions of the contract.

(6) “Statement of No Suspension”: a document that all contracting entities shall sign at the time of bid or proposal submission to the District, affirming that the contracting entities and proposed subcontractors or subconsultants are not presently on the District’s Temporary or Permanent Suspension List and that the District shall be notified of any changed circumstances prior to contract award. The “Statement of No Suspension” is Form No. 1112, “Statement of No Suspension”, 4-1-03, which is hereby incorporated by reference. This form will be attached to all District solicitations. This form can also be accessed on the District’s website at www.SFWMD.gov, Procurement and Contracts, overview.

(7) “Obligor”: an entity that has promised or is otherwise legally obligated to perform an act or deed for the benefit of a third party beneficiary. Obligor to the District include but are not limited to insurance companies and surety companies.

(8) “Principal(s)”: for purposes of this rule, a sole proprietor, partner, owner, officer or director of the contracting entity that breached a District contract.

(9) “Re-Procurement Costs”: the total amount of additional expense, over and above the contract price, which may include attorney's fees, that the District will incur in order to obtain substitute goods or services from another contracting entity to complete a requirement that can no longer be performed by the contracting entity that materially breached a District contract.

(10) “Suspension Notice”: a letter from the District to the contracting entity stating that the District will temporarily or permanently bar a contracting entity from doing business with the District because the contracting entity has materially breached its contract with the District. The letter also shall inform the contracting entity that its principals shall not attempt to do business with the District under a different name or form a new legal entity in order to do business with the District while the principals of the contracting entity remain on the Suspension List.

(11) “Suspension List”: a list of contracting entities maintained by the District that are temporarily or permanently barred from doing business with the District.

(12) “Termination for Default Notice”: a letter from the District to the contracting entity stating that the contracting entity is in default for failing to cure the material breach within the thirty (30) day timeframe referenced in the Cure Notice. The letter also shall state that the District’s Governing Board shall determine whether the contracting entity should be placed on the District’s Temporary or Permanent Suspension List.

(13) “Third Party Beneficiary”: for purposes of this rule, whenever the District is the intended beneficiary of a contract but is not a party to the contract.

Specific Authority 373.610 FS. Law Implemented 373.610 FS. History—New 4-1-03.

40E-7.216 Cure Notice.

(1) The Director of Procurement shall establish whether a material breach as defined in subsection 40E-7.215(4), F.A.C., has occurred. If the Director of Procurement determines that a contracting entity materially breached its contract with the District, the Director of Procurement shall initiate termination for default and suspension procedures.

(2) The Director of Procurement shall notify the contracting entity of the material breach of its contract with the District by forwarding a Cure Notice sent Certified U.S. Mail, return receipt requested.

Specific Authority 373.610 FS. Law Implemented 373.610 FS. History—New 4-1-03.

40E-7.217 Termination for Default Notice.

In the event that the contracting entity fails to cure the material breach within the time specified in the Cure Notice, the District shall issue a Termination for Default Notice by Certified U.S. Mail, return receipt requested.

Specific Authority 373.610 FS. Law Implemented 373.610 FS. History—New 4-1-03.

40E-7.218 Factors to Determine Whether a Contracting Entity Should be Placed on the Temporary or Permanent Suspension List.

(1) Once the District has notified a contracting entity that it has materially breached its contract with the District by sending a Termination for Default Notice, the District’s Governing Board shall determine whether the contracting entity should be suspended, and if so, whether it should be temporarily suspended and for what period of time, or permanently suspended from doing business with the District.

(2) In making such a determination, the District’s Governing Board shall consider the following factors:

(a) The economic impact of the material breach to the District;

(b) Whether the breach caused or will cause delay in the completion of a District project;

(c) If the breach caused a delay in performance, whether it was a substantial delay;

(d) If the breach caused a delay in performance, whether the District will be impacted in attempting to meet legislative deadlines;

(e) Whether the breach involved willful or gross misconduct;

(f) Whether the breach involved the commission of fraud or a criminal offense in connection with the obtainment or performance of the District contract;

(g) Whether the breach was a violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors and bid rigging;

(h) Whether the breach involved the falsification or destruction of records;

(i) Whether the contracting entity was on the District’s suspension list at the time it breached its current contract with the District;

(j) Whether the contracting entity has materially breached a contract with the District in the past, and if so, how many times since the effective date of this rule;

(k) Whether the contracting entity was on another Federal or State suspension or debarment list at the time it breached its current contract with the District;

- (l) Whether the breach involved discrimination on the basis of race, color, creed, national origin, sex, age or handicap;
 - (m) Whether the breach involved the commission of embezzlement, theft, forgery or bribery; falsification of statements or claims; receipt of stolen property; or obstruction of justice;
 - (n) Whether the breach involved the commission of any other offense indicating a lack of business integrity or business honesty;
 - (o) Whether the breach involved knowingly doing business with a suspended contracting entity;
 - (p) Whether the breach involved a violation of the District's MBE Contracting Rule;
 - (q) Whether the contracting entity can pay re-procurement costs in a timely manner.
- (3) All contracting entities placed on the Temporary Suspension List shall pay the District re-procurement costs prior to being removed from the Suspension List.
- (4) Contracting entities that are placed on the Permanent Suspension List will be permanently barred from doing business with the District.

Specific Authority 373.610 FS. Law Implemented 373.610 FS. History--New 4-1-03.

40E-7.219 Administrative Hearings.

Any contracting entity that believes it has been wrongly suspended either temporarily or permanently from doing business with the District may file a request for an administrative hearing pursuant to Sections 120.569 and 120.57, F.S., in the form of a petition in accordance with Chapter 28-106, F.A.C., within 21 days of receipt of the Temporary or Permanent Suspension Notice. If no request for a hearing is filed by the entity within the timeframes prescribed by Chapter 120, F.S., the suspension shall become final agency action.

Specific Authority 373.610 FS. Law Implemented 373.610 FS. History--New 4-1-03.