
Council Bill Number: 115156

Ordinance Number: 121723

AN ORDINANCE relating to City contracting; establishing procedures for debarment of contractors, and adding a new Chapter to Title 20 of the Seattle Municipal Code in connection therewith.

Status: Passed

Note: Sculpture Park Administrative Jurisdiction

Vote: 8-0 (Excused: Conlin)

Date filed with the City Clerk: 2005/02/02

Date of Mayor's signature: 2005/01/24 ([about the signature date](#))

Date introduced/referred to committee: 2005/01/18

Committee: Finance & Budget

Sponsor: MCIVER

Committee Recommendation: Pass

Index Terms: PURCHASING, PUBLIC-REGULATIONS, PUBLIC-ADMINISTRATION, CONTRACTS

Fiscal Note: [Fiscal Note to Council Bill No. 115156](#)

Electronic Copy: [PDF scan of Ordinance No. 121723](#)

Reference: Related: Res. 28556; Ord. 116270

Text:

ORDINANCE _____

AN ORDINANCE relating to City contracting; establishing procedures for debarment of contractors, and adding a new Chapter to Title 20 of the Seattle Municipal Code in connection therewith.

WHEREAS, responsibility for evaluation of contractors on public works contracts originally resided with the Board of Public Works (BPW) and the City Charter was eventually amended by Seattle voters to eliminate the BPW; and

WHEREAS, the authority of the BPW to debar contractors and subcontractors for poor performance was not legislatively transferred to another agency; and

WHEREAS, debarment provides a necessary tool for the City to manage contractor performance; and

WHEREAS, the City desires to do business only with contractors who are responsible and fulfill their contractual commitments; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Title 20 of the Seattle Municipal Code is amended by adding a new Chapter as follows:

CHAPTER 20.70 DEBARMENT

20.70.010 Purpose

The Director of the Department of Executive Administration has the authority to debar contractors to prevent them from entering into certain contracts with the City of Seattle as described in this Chapter.

20.70.020 Definitions

Terms used in this Chapter shall have the following definitions unless otherwise defined, or unless the context in which the term is used clearly indicates to the contrary.

- A. "Contracting Authority" means the Department of Executive Administration or any City Agency to which the City Council or the Department of Executive Administration has delegated the authority to enter into contracts.
- B. "Contract" means a contract for public work as that term is defined in RCW 39.040.010, a purchasing contract as provide for in SMC 3.04.100 et seq., or a consultant contract as provided for in SMC Ch. 3.114.
- C. "Contractor" means a person, association, partnership, corporation or other legal entity that has performed services for the City under a Contract.
- D. "Date of Service" means the day a Contractor receives actual service, or if served by certified mail, the date noted as the date of receipt by the U.S. Postal service.
- E. "Debarment Authority" means a person to whom the Director of Executive Administration has delegated the authority to perform any of the duties set forth in this Chapter.
- F. "Debar," "Debarred," or "Debarment" means to forbid a Contractor from entering into any Contract with the City or to act as a subcontractor on a Contract with the City.
- G. "Director" means the Director of the Department of Executive Administration.
- H. "Notice Protest" means a written response to or contest of the Notice of Debarment.
- I. "Notice of Debarment" means the document reflecting the preliminary determination by the Director that a Contractor should be Debarred.
- J. "Notice of Investigation" means a document reflecting the initiation of a Debarment investigation.
- K. "Order of Debarment" means the document reflecting the decision by the Director to Debar a Contractor.
- L. "Performance Evaluation" means an evaluation conducted by the City of performance under a Contract or as part of any City Contractor performance evaluation program for Contracts.
- M. "Respondent" means a Contractor against which the City has initiated Debarment proceedings.

20.70.030 Authority to order Debarment and to Grant Exceptions.

A. If the Director determines that sufficient grounds exist as set forth in Section 20.70.040, the Director may issue an Order of Debarment that prevents a Contractor from submitting a contract bid or proposal to the City, or from acting as a subcontractor on any Contract with the City, for a period not to exceed five years from the date of the Order of Debarment or from the date all appeals of that Order of Debarment are exhausted, whichever date is later. Without the prior approval of the Director, a Contracting Authority shall not accept a contract bid or proposal from a Contractor that has been Debarred, and shall not consent to a subcontract between a Contractor and a subcontractor that has been Debarred.

B. The Director may, but is not required to, enter into a voluntary agreement with a Contractor providing that the

Contractor will not submit a bid or proposal for any Contract, and will not act as a subcontractor on any Contract, for a period not to exceed five years.

20.70.040 Grounds for Debarment.

Pursuant to Section 20.70.030, the Director may issue an Order of Debarment that prevents a Contractor from entering into any Contract with the City or from acting as a subcontractor on any Contract with the City after determining that any of the following reasons exist:

- A. The Contractor has received overall performance evaluations of deficient, inadequate, or substandard performance on three or more City Contracts.
- B. The Contractor has failed to comply with City ordinances or Contract terms, including but not limited to, ordinance or Contract terms relating to small business utilization, discrimination, prevailing wage requirements, equal benefits, or apprentice utilization.
- C. The Contractor has abandoned, surrendered, or failed to complete or to perform work on or in connection with a City Contract.
- D. The Contractor has failed to comply with Contract provisions, including but not limited to quality of workmanship, timeliness of performance, and safety standards.
- E. The Contractor has submitted false or intentionally misleading documents, reports, invoices, or other statements to the City in connection with a Contract.
- F. The Contractor has colluded with another contractor to restrain competition.
- G. The Contractor has committed fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Contract for the City or any other government entity.
- H. The Contractor has failed to cooperate in a City debarment investigation.
- I. The Contractor has failed to comply with SMC Ch. 14.04, SMC Ch. 14.10, SMC Ch. 20.42, or SMC Ch. 20.45, or other local, state or federal non-discrimination laws.

20.70.050 Procedures

A. Notice of Investigation.

The Director or any Contracting Authority may initiate an investigation of a Contractor. The Director or Contracting Authority shall notify the Contractor in writing that an investigation has been initiated and the allegations that form the basis for the investigation. The Notice of Investigation shall be either personally served or sent by certified mail. The Contractor shall have 21 days from the Date of Service of the notice of investigation and allegations on the Contractor to file an answer to the allegations.

B. Investigation Results.

The results of the investigation shall be in writing and shall state, at a minimum, the allegation(s), the conclusion(s) reached regarding the allegation(s), the facts upon which the conclusion(s) are based, and the investigator's recommendation, including a recommended length of Debarment, if any. If the investigator is a Contracting Authority, it shall forward the results of the investigation to the Director. The Director shall personally serve or send by certified mail, the results of the investigation to the Contractor.

C. Findings and Notice of Debarment.

The Director shall consider both the results of the investigation and the Contractor's answer, if any, to the allegation(s). The Director shall make a preliminary determination on whether the Contractor should be Debarred within six (6) months of the Date of Service of the Notice of Investigation and provide the Contractor with findings, or the matter will be dismissed, unless the Director provides notice to the Contractor that there is good cause to extend the period of investigation for an additional specific period of time. If, after reviewing the results of the investigation and the Contractor's answer to the allegations, the Director determines that a Contractor should be Debarred, the Director shall notify the Respondent of the City's intent to issue an Order of Debarment. The Notice of Debarment shall be in writing, and shall be either personally served or sent by certified mail. The Notice of Debarment shall include:

1. A statement that the City intends to issue an Order of Debarment prohibiting the Respondent from submitting a bid or proposal on a Contract with the City and from acting as a Contractor or subcontractor on a Contract with the City;
2. A statement of the reasons for Debarment, including the allegation(s), the conclusion(s) reached regarding the allegation(s), and the facts upon which the conclusion(s) are based;
3. The proposed length of Debarment; and
4. Information on how the Respondent can contest the Notice.

If the Director determines that the Contractor should not be debarred, the Director shall issue a written determination to that effect.

D. Notice Protest

1. A Respondent may contest the Notice of Debarment by filing a written Notice Protest with the Director no later than 14 calendar days after the Date of Service of the Notice of Debarment. Unless waived by the Director, filing a Notice Protest is an administrative remedy that the Respondent must exhaust before seeking judicial review.
2. If the Respondent does not timely contest the Notice of Debarment, the Director shall issue an Order of Debarment, which shall set forth:
 - a. The contracting activities from which the Respondent is barred from participating;
 - b. The length of the Debarment;
 - c. A brief statement of the facts upon which the Debarment is based; and,
 - d. A response to any written comments submitted by the Respondent.
3. The Notice Protest must state the reasons why the Respondent alleges the Notice of Debarment is erroneous, provide copies of any documents that support the Respondent's arguments, provide the names and/or sworn written statements of all witnesses that have knowledge of relevant information related to the proposed Debarment, identify any other specific information that supports the Respondent's arguments, and specify a desired remedy.
4. The Contractor may request a hearing to discuss the Notice Protest and, if such request is granted, may discuss only those issues raised in the Notice Protest unless the Director allows otherwise. If a hearing is held, the Department of Executive Administration shall have the burden of establishing by a preponderance of the evidence that the grounds exist for an Order of Debarment.
5. The Director shall consider the Notice of Debarment, the Respondent's Notice Protest, and, if a hearing is held, the evidence presented at the hearing. The Director shall issue a final written decision and Order regarding whether the Contractor should be Debarred. If the Director issues an Order of Debarment, that Order shall state:

- a. The contracting activities from which the Respondent is barred from participating;
- b. The length of the Debarment; and
- c. Findings and conclusions upon which the Debarment is based.

The Director's decision shall be the final administrative decision of the City.

20.70.060 Delegation of authority to the Debarment Authority

The Director shall have the authority to delegate any or all of his/her duties and/or responsibilities under this Chapter.

Section 2. The Director is authorized and directed to promulgate Rules consistent with this Ordinance for the purpose of carrying out the provisions of Chapter 20.70.

Section 3. The Code Reviser is authorized and directed to make any ministerial changes to Title 20 of the Seattle Municipal Code, consistent with direction from the Department of Executive Administration, to implement codification of this ordinance.

Section 4. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2005, and signed by me in open session in authentication of its passage this ____ day of _____, 2005.

President _____ of the City Council

Approved by me this ____ day of _____, 2005.

Gregory J. Nickels, Mayor

Filed by me this ____ day of _____, 2005.

City Clerk

(Seal)

Brenda Bauer/sg/aw

New Contractor Debarment Ordinance

January 12, 2005

version #1