

SUMMARY

This proposed ordinance amends Chapter 18 of the 1984 Detroit City Code, *Finance and Taxation*, Article V, *Purchases and Supplies*, by adding Division 11, *Debarment* to include Sections 18-11-1, *Purpose*, 18-11-2, *Scope*, 18-11-3, *Definitions*, 18-11-4, *Effect of debarment order*, 18-11-5, *Grounds for debarment*, 18-11-6, *Investigation and request for documents and information*, 18-11-7, *Initiation of proceedings*, 18-11-8, *Final decision*, 18-11-9, *Notice of decision*, 18-11-10, *Interim suspension*, 18-11-11, *Appeal*, 18-11-12, *Period of debarment*, 18-11-13, *Application of remedies*, 18-11-14, *Effect on other ordinances*, 18-11-15, *Duty to report illegal acts*, and 18-11-16, *List of debarred contractors*, to provide a debarment ordinance for City vendors and contractors doing business with the City of Detroit.

1 BY COUNCILMEMBER _____:

AN ORDINANCE to amend Chapter 18 of the 1984 Detroit City Code, *Finance and Taxation*, Article V, *Purchases and Supplies*, by adding Division 11, *Debarment* to include Sections 18-11-1, *Purpose*, 18-11-2, *Scope*, 18-11-3, *Definitions*, 18-11-4, *Effect of debarment order*, 18-11-5, *Grounds for debarment*, 18-11-6, *Investigation and request for documents and information*, 18-11-7, *Initiation of proceedings*, 18-11-8, *Final decision*, 18-11-9, *Notice of decision*, 18-11-10, *Interim suspension*, 18-11-11, *Appeal*, 18-11-12, *Period of debarment*, 18-11-13, *Application of remedies*, 18-11-14, *Effect on other ordinances*, 18-11-15, *Duty to report illegal acts*, and 18-11-16, *List of debarred contractors*, to provide a debarment ordinance for City vendors and contractors doing business with the City of Detroit.

2 IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CITY OF DETROIT THAT:

3 Section 1. Chapter 18 of the 1984 Detroit City Code, *Finance and Taxation*, Article V,
4 *Purchases and Supplies*, be amended by adding Division 11, *Debarment*, consisting of sections
5 18-5-1 through 18-5-16, to read as follows:

6 CHAPTER 18. FINANCE AND TAXATION
7 ARTICLE V. PURCHASES AND SUPPLIES

8 Division 11. Debarment

9 Sec. 18-11-1. Purpose.

10 (a) The City shall solicit offers from, award contracts to, consent to subcontracts with,
11 or otherwise do business with, responsible contractors only. To effectuate this policy, the
12 debarment of contractors from current and/or future City work may be undertaken.

1 (b) The serious nature of debarment requires that this sanction be imposed only when
2 it is in the public interest. Debarment shall be imposed in accordance with the procedures
3 contained in this division.

4 **Sec. 18-11-2. Scope.**

5 (a) This division provides for debarment of contractors as a remedy available to the
6 City separate and apart from sanctions that may be imposed under any other Article of this Code,
7 or any legal remedies or prosecution that may be available to the City under applicable law.

8 (b) All City contracts and contractors, and any persons or entities doing business with
9 the City, are subject to this ordinance.

10 (c) Any contractor, or persons seeking a contract with the City, shall report to the
11 Office of the Inspector General any improper, unethical or illegal activity or requests made by
12 elected officers of the City, including those acting on their behalf, or any public servant in
13 connection with any contract.

14 **Sec. 18-11-3. Definitions.**

15 *Chief Procurement Officer* means the Director of the Office of Contracting and
16 Procurement.

17 *Contract* means any business relationship whereby goods or services are provided to or for
18 the benefit of the City, including but not limited to business relationships evidenced by a contract,
19 subcontract or other writing.

20 *Contractor* means a party who, or which, seeks to enter, or enters, into a contract with the
21 City for the delivery of goods or services. For the purposes of this division, the terms "vendor"
22 and "consultant" have the same meaning as contractor.

1 Conviction means a final conviction, the payment of a fine, a plea of nolo contendere if
2 accepted by the court, a finding of guilt, or a probate court disposition on a violation regardless of
3 whether the penalty is rebated or suspended.

4 Day means a calendar day.

5 Debarment means action taken by the City to exclude a person from acting as a contractor
6 for a specified period of time.

7 Elective officers means the Mayor, each member of the City Council, elected Board of
8 Police Commissioners and the City Clerk.

9 Inspector General means office established by Section 7.5 of the Charter, Independent
10 Departments and Offices, Chapter 3, Inspector General.

11 Person means a natural person, partnership, fiduciary, association, corporation or other
12 entity.

13 Preponderance of the evidence means proof by information that as a whole shows that the
14 fact sought to be proven is more probable than not.

15 Wrongful conduct means any conduct listed in Section 18-11-5 of this Code.

16 **Sec. 18-11-4. Effect of debarment order.**

17 (a) Debarment of a contractor constitutes a finding under this Code that the City does
18 not believe it to be in the public interest for the City to do business with the contractor, and operates
19 as the City's rejection of any bid or contract submitted by the contractor during the debarment
20 period. Any bid or contract submitted by a debarred person shall immediately be returned after
21 the bids are opened without requirement of any further action.

22 (b) No debarred contractor is eligible to serve as a subcontractor or as a goods, services
23 or materials supplier for any contract.

1 (c) Debarment constitutes cause for immediate termination of the contractor under any
2 existing contract.

3 (d) When making a debarment decision, the Office of the Inspector General, in
4 consultation with the Chief Procurement Officer, may take into consideration whether the
5 debarment affects any contract or subcontract existing at the time of the debarment decision.

6 Sec. 18-11-5. Grounds for debarment.

7 (a) A contractor may be debarred, based upon a preponderance of the evidence, for:

8 (1) Violation of the terms of a City contract or subcontract, or a contract or subcontract
9 funded in whole or in part by City funds, such as failure to perform in accordance
10 with the terms of one or more contracts; or the failure to perform, or unsatisfactory
11 performance of one or more contracts;

12 (2) Failing to comply with state, federal or local laws or regulations applicable to the
13 performance of a contract;

14 (3) Violation of a City ordinance, City procurement or other policies or administrative
15 order that has the gravity or sufficiency to justify debarment. The Inspector General
16 shall make a determination on whether the violation has reached a level justifying
17 debarment based upon the totality of the circumstances creating the violation;

18 (4) Knowingly, or negligently using a debarred contractor as a subcontractor;

19 (5) Evidence of (i) the contractor or the contractor's officers or owners, or (ii) any
20 person or entity having a direct or indirect financial or beneficial interest in the
21 contractor or its operations; engaging in a criminal offense or civil misconduct
22 that evidences a lack of business integrity or business honesty, including but not
23 limited to, embezzlement, theft, theft of services, forgery, bribery, fraud, tax

1 evasion, falsification or destruction of records, making false statements, or
2 receiving stolen property, or violations of laws relating to the obtaining or
3 performance of public contracts;

4 (6) Submission of false or misleading documentation, or making false or misleading
5 statements;

6 (7) Failure to report unethical conduct by a public servant that has a duty to the City of
7 Detroit; or

8 (8) Any other conduct that evidences the inability of the contractor to act responsibly
9 in its conduct on behalf of the City.

10 (b) The conduct giving rise to the debarment may be based upon actions taken in
11 connection with work undertaken for the City, or other public entities, or private entities.

12 (c) There is no statute of limitations on investigations, findings of violation of the
13 debarment policy or the initiation of debarment proceedings.

14 **Sec. 18-11-6. Investigation and request for documents and information.**

15 (a) In addition to reporting under Section 18-11-2(c) of this Code, the Mayor, City
16 Council, Corporation Counsel, Chief Procurement Officer, Department Director, public servant,
17 or member of the public may refer a matter to the Office of Inspector General to investigate
18 grounds for debarment related to City contracts and contractors.

19 (b) Following receipt of the referral, the Office of the Inspector General shall
20 investigate whether there is reasonable cause to believe wrongful conduct has occurred.

21 (1) The Inspector General shall act as chief investigative agent; and may request the
22 assistance of the Chief Procurement Officer and Corporation Counsel as necessary
23 in the debarment investigation.

1 (2) The Inspector General may request documents and information, including but not
2 limited to corporate records, contracts, business records, and ledgers, and tax
3 returns, in the course of the investigation. The contractor's failure to provide
4 documents and information reasonably requested by the Inspector General may
5 constitute grounds for debarment. If the Contractor submits documents that are
6 exempt from disclosure under the Michigan Freedom of Information Act, such as
7 state, federal or local income tax returns, then such materials will be held in
8 confidence for use solely in connection with the debarment proceeding. If it
9 becomes necessary to use the confidential materials in a public forum, the City and
10 Contractor shall endeavor to agree on procedures to preserve the confidentiality of
11 the materials to the extent reasonably possible, including redaction of the materials.
12 If the parties cannot reach agreement, the City may petition the Wayne County
13 Circuit Court for an appropriate order to allow the debarment proceedings to
14 continue while preserving the confidentiality of the documents to the extent
15 reasonably possible.

16 (c) The Chief Procurement Officer, in a referral, may include the results of any
17 investigation conducted by the Chief Procurement Officer together with recommendation for
18 debarment. The Inspector General shall give due consideration to such investigation and
19 recommendation and may immediately issue a finding of grounds for debarment, and or
20 suspension, based on such report and recommendation.

21 **Sec. 18-11-7. Initiation of proceedings.**

22 (a) If, upon investigation, it is determined that an act or omission which can give rise
23 to debarment may have occurred, the Inspector General shall provide written notice to the Chief

1 Procurement Officer and the Corporation Counsel of the intention to initiate debarment
2 proceedings. In that event:

3 (1) The Inspector General shall set forth the basis in writing for the proposed
4 debarment, which may incorporate any report and recommendation provided by the
5 Chief Procurement Officer.

6 (2) The Inspector General shall provide written notice of the proposed debarment by
7 both certified mail, return receipt requested, and regular mail to the contractor and
8 any known interested party.

9 (b) The notice of proposed debarment shall, at a minimum, contain the following
10 information:

11 (1) Notice that debarment is being considered after a finding by the Office of Inspector
12 General;

13 (2) The basis for the proposed debarment, in terms sufficient to put the contractor on
14 notice of the nature of the conduct at issue;

15 (3) The potential consequences of the debarment; and

16 (4) The City's procedures governing debarment proceedings. For that purpose, the
17 contractor may be provided with a copy of this ordinance.

18 (c) Within 28 days of mailing the notice of proposed debarment, the contractor may
19 submit, in writing, information and argument in opposition to the proposed debarment.

20 (d) The Inspector General may request additional information of the contractor if
21 necessary to evaluate the information provided by the contractor.

22

1 **Sec. 18-11-8. Final decision.**

2 The Inspector General shall prepare written findings to support any final decision regarding
3 debarment. The decision shall be based on the facts as found and supported by the entire record
4 of information and a preponderance of the evidence presented.

5 **Sec. 18-11-9. Notice of final decision.**

6 (a) A copy of the final decision shall be sent by certified mail, return receipt requested,
7 and regular mail to the contractor, and any interested party.

8 (b) A copy of the final decision shall be filed with the City Clerk for transmission to
9 City Council.

10 (c) If debarment is imposed, the decision shall specify the grounds for the debarment
11 and the period of debarment, including effective dates.

12 **Sec. 18-11-10. Interim suspension.**

13 (a) Prior to a final debarment determination, the Inspector General, upon determination
14 of a need for immediate action may:

15 (1) Suspend a contractor from eligibility for award of a City contract,

16 (2) Terminate the services of the contract under any existing contract, and

17 (3) Prior to any such suspension notify the Chief Procurement Officer and allow seven
18 days for comment. The seven days may be waived by the Chief Procurement
19 Officer.

20 (b) The contractor will be suspended for the lesser of an initial period of 90 calendar
21 days or until the Inspector General makes a final determination with respect to the debarment. The
22 initial suspension may be extended for up to three additional 30 calendar day periods.

1 (c) The Chief Procurement Officer will not solicit bids or proposals from, or approve
2 the award of a contract to, the suspended contractor, and will not open or consider for a contract
3 any bid or proposal received from same.

4 (d) The Inspector General shall send a written notice of the initial suspension and any
5 extension specifying the basis for same, to the suspended contractor by certified mail, return
6 receipt requested.

7 (e) A copy of the interim suspension shall be filed with the City Clerk for transmission
8 to City Council.

9 **Sec. 18-11-11. Appeal.**

10 (a) The contractor may appeal a debarment decision, the length of a debarment, or an
11 interim suspension to City Council within 28 days after the issuance of the Inspector General's
12 debarment decision or interim suspension.

13 (b) The contractor shall send the appeal letter together with any supporting materials to
14 the City Clerk for transmission to City Council.

15 (c) The contractor may request an in person meeting with City Council, at which the
16 contractor may be represented by legal counsel.

17 (d) The Inspector General shall have the right to appear in person or to submit written
18 comments to City Council.

19 (e) City Council shall hold the Appeal Hearing within 45 days of receipt of the appeal
20 letter.

21 (f) City Council must have a vote of 2/3 majority of members present to overturn the
22 Inspector General's debarment decision, length of debarment or interim suspension. The decision
23 shall be supported by competent, material and substantial evidence on the whole record.

1 (g) City Council shall notify the contractor in writing of the result of the appeal within
2 ten days after the determination.

3 **Sec. 18-11-12. Period of debarment.**

4 (a) The period for debarment shall be commensurate with the seriousness of the cause
5 or causes therefor, but in no case shall the period exceed 20 years. Generally, debarment should
6 not exceed five years, except:

7 (1) Debarment for convictions of criminal offenses that are incident to the application
8 to, or performance of, a contract or subcontract with the City, including but not
9 limited to, embezzlement, theft, forgery, bribery, falsification or destruction of
10 records, receiving stolen property, negligent misrepresentation, price fixing, bid-
11 rigging, may receive the maximum period.

12 (2) Debarment for convictions of criminal offenses that do not involve the City, but
13 negatively reflect on the contractor's business integrity, including but not limited
14 to, embezzlement, theft, forgery, bribery, falsification or destruction of records,
15 receiving stolen property, negligent misrepresentation, price-fixing, bid-rigging, or
16 a violation of state or federal anti-trust statutes, may receive a debarment period not
17 to exceed 10 years.

18 (3) Debarment involving purposeful deceit including but not limited to making a
19 deceptive, false, or fraudulent statement which evidences a desire to circumvent or
20 otherwise compromise the investigative process.

21 (b) If suspension precedes a debarment, the suspension period shall be considered in
22 determining the debarment period.

23 (c) After the debarment period expires, the vendor may reapply for inclusion on bidder
24 lists through the regular application process.

1 **Sec. 18-11-13. Application of remedies.**

2 _____ (a) The provisions of this division are in addition to any other rights or remedies
3 available to the City in connection with the award of any contracts to disqualify bidders who are
4 not responsible, regardless of whether they have been so declared hereunder. This right extends
5 but is not limited to declining to award contracts to bidders having officers, owners, managers, or
6 persons or entities directly or indirectly holding a financial or beneficial interest in, previously
7 associated with debarred contractors.

8 _____ (b) The provisions of this division are in addition to any contractual or legal rights or
9 remedies available to the City to redress contractual performance issues.

10 **Sec. 18-11-14. Effect on other ordinances.**

11 _____ A debarred contractor is not eligible for certification under Chapter 18 of this Code.
12 Debarment shall have the effect of terminating any certification thereunder.

13 **Sec. 18-11-15. Duty to report illegal acts.**

14 _____ If, during the course of the investigation, the Inspector General has probable cause to
15 believe that any contractor, subcontractor, or person doing or seeking to do business with the City
16 has committed or is committing an illegal act in addition to any other action taken by the Inspector
17 General, the matter shall be promptly referred to the appropriate authorities.

18 **Sec. 18-11-16. List of debarred contractors.**

19 _____ The Office of the Inspector General shall compile and maintain a current list of all
20 contractors debarred by the City. Such list shall be updated as appropriate, including updates after
21 appeals and final decisions are made, and transmitted to the Office of Contracting and Procurement
22 ,to City Council, to the City Clerk, and posted on the City's website.

23 **Secs. 18-11-17—18-11-30. Reserved.**

1 **Section 2.** All ordinances, or parts of ordinances, that conflict with this ordinance are
2 repealed.

3 **Section 3.** This ordinance is declared necessary for the preservation of the public peace,
4 health, safety, and welfare of the People of the City of Detroit.

5 **Section 4.** Where this ordinance is passed by a two thirds (2/3) majority of City Council
6 Members serving, it shall be given immediate effect and shall become effective upon publication
7 in accordance with Section 4-118(1) of the 2012 Detroit City Charter. Where this ordinance is
8 passed by less than two thirds (2/3) majority of City Council Members serving, it shall become
9 effective thirty (30) days after publication in accordance with Section 4-118(2) of the 2012 Detroit
10 City Charter.

11 Approved as to form:

12
13 
14 _____
15 Charles N. Raimi
Deputy Corporation Counsel