

DIVISION 10. DEBARMENT

Sec. 17-5-351. Purpose.

- (a) The City shall solicit offers from, award contracts to, consent to subcontracts with, or otherwise do business with, responsible contractors only. To effectuate this policy, the debarment of contractors from current or future City work may be undertaken.
- (b) The serious nature of debarment requires that this sanction be imposed only when in the public interest. Debarment shall be imposed in accordance with the procedures contained in this division.

(Code 1984, § 18-11-1; Ord. No. 23-18, § 1(18-11-1), eff. 8-10-2018)

Sec. 17-5-352. Scope.

- (a) This division provides for debarment of contractors as a remedy available to the City separate and apart from sanctions that may be imposed under any other article of this Code, or any legal remedy or prosecution that may be available to the City under applicable law.
- (b) All City contracts and contractors, and any persons or entities doing business with the City, are subject to this division.
- (c) Any contractor, or persons seeking a contract with the City, shall report to the Office of the Inspector General any improper, unethical, or illegal activity or requests made by elected officers of the City, including those acting on their behalf, or any public servant in connection with any contract.

(Code 1984, § 18-11-2; Ord. No. 23-18, § 1(18-11-2), eff. 8-10-2018)

Sec. 17-5-353. Definitions.

For purposes of this division, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Chief Procurement Officer means the Director of the Office of Contracting and Procurement.

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

Contractor means a party, including a vendor or consultant, who, or which, seeks to enter, or enters, into a contract with the City for the delivery of goods or services.

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

Day means a calendar day.

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

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

Inspector General means office established by Article 7.5, Chapter 3, of the Charter.

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

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

Wrongful conduct means any conduct listed in Section 17-5-355 of this Code.

(Code 1984, § 18-11-3; Ord. No. 23-18, § 1(18-11-3), eff. 8-10-2018)

Sec. 17-5-354. Effect of debarment order.

- (a) Debarment of a contractor constitutes a finding under this Code that it is not in the public interest for the City to do business with the contractor, and operates as the City's rejection of any bid or contract submitted by the contractor during the debarment period. Any bid or contract submitted by a debarred person shall immediately be returned after the bids are opened without requirement of any further action.
- (b) No debarred contractor is eligible to serve as a subcontractor or as a goods, services, or materials supplier for any contract.
- (c) Debarment constitutes cause for immediate termination of a contractor under any existing contract.
- (d) When making a debarment decision, the Office of the Inspector General, in consultation with the Chief Procurement Officer, may take into consideration whether the debarment affects any contract or subcontract existing at the time of the debarment decision.

(Code 1984, § 18-11-4; Ord. No. 23-18, § 1(18-11-4), eff. 8-10-2018)

Sec. 17-5-355. Grounds for debarment.

- (a) A contractor may be debarred, based upon a preponderance of the evidence, for:
 - (1) Violation of the terms of a City contract or subcontract, or a contract or subcontract funded in whole or in part by City funds, such as failure to perform in accordance with the terms of one or more contracts, or the failure to perform, or unsatisfactory performance of one or more contracts;
 - (2) Failing to comply with state or federal law or regulations, or this Code, applicable to the performance of a contract;
 - (3) Violation of this Code, City procurement, or other policies or administrative orders that have the gravity or sufficiency to justify debarment. The Inspector General shall make a determination on whether the violation has reached a level justifying debarment based upon the totality of the circumstances creating the violation;
 - (4) Knowingly or negligently using a debarred contractor as a subcontractor;
 - (5) Evidence of (i) the contractor or the contractor's officers or owners, or (ii) any person or entity having a direct or indirect financial or beneficial interest in the contractor or its operations; engaging in a criminal offense or civil misconduct that evidences a lack of business integrity or business honesty, including, but not limited to, embezzlement, theft, theft of services, forgery, bribery, fraud, tax evasion, falsification or destruction of records, making false statements, or receiving stolen property, or violations of law relating to the obtaining or performance of public contracts;

-
- (6) Submission of false or misleading documentation, or making false or misleading statements;
 - (7) Submission of false or misleading information provided to the City in an attempt to secure certification as a Detroit-based, Detroit-headquartered, or Detroit-resident business, as defined in Section 17-5-1 of this Code.
 - (8) Failure to report unethical conduct by a public servant who has a duty to the City of Detroit; or
 - (9) Any other conduct that evidences the inability of the contractor to act responsibly in its conduct on behalf of the City.
- (b) The conduct giving rise to the debarment may be based upon actions taken in connection with work undertaken for the City, or with other public or private entities.
 - (c) There is no statute of limitations on investigations, findings of violation of the debarment policy, or the initiation of debarment proceedings.

(Code 1984, § 18-11-5; Ord. No. 23-18, § 1(18-11-5), eff. 8-10-2018; Ord. No. 07-19, § 1(18-11-5), eff. 6-17-2019)

Sec. 17-5-356. Investigation and request for documents and information.

- (a) In addition to reporting under Section 17-5-352(c) of this Code, the Mayor, City Council, Corporation Counsel, Chief Procurement Officer, department director, agency head, public servant, or member of the public may refer a matter to the Office of Inspector General to investigate grounds for debarment related to City contracts and contractors.
- (b) Following receipt of the referral, the Office of the Inspector General shall investigate whether there is reasonable cause to believe wrongful conduct has occurred as follows:
 - (1) The Inspector General shall act as chief investigative agent, and may request the assistance of the Chief Procurement Officer and Corporation Counsel as necessary in the debarment investigation; and
 - (2) The Inspector General may request documents and information, including, but not limited to, corporate records, contracts, business records, ledgers, and tax returns, in the course of the investigation. The contractor's failure to provide documents and information reasonable requested by the Inspector General may constitute grounds for debarment. If the Contractor submits documents that are exempt from disclosure under the Michigan Freedom of Information Act, being MCL 15.231 *et seq.*, such as federal, state, or local City income tax returns, such materials will be held in confidence for use solely in connection with the debarment proceeding. If it becomes necessary to use the confidential materials in a public forum, the City and contractor shall endeavor to agree on procedures to preserve the confidentiality of the materials to the extent reasonably possible, including redaction of the materials. If the parties cannot reach agreement, the City may petition the Wayne County Circuit Court for an appropriate order to allow the debarment proceeding to continue while reserving the confidentiality of the documents to the extent reasonable possible.
- (c) In a referral, the Chief Procurement Officer may include the results of any investigation conducted by the Chief Procurement Officer together with recommendation for debarment. The Inspector General shall give due consideration to such investigation and recommendation and may immediately issue a finding of grounds for debarment, and or suspension, based on such report and recommendation.

(Code 1984, § 18-11-6; Ord. No. 23-18, § 1(18-11-6), eff. 8-10-2018)

Sec. 17-5-357. Initiation of proceedings.

- (a) If, upon investigation, it is determined that an act or omission which can give rise to debarment may have occurred, the Inspector General shall provide written notice to the Chief Procurement Officer and the Corporation Counsel of the intention to initiate debarment proceedings. In that event:
 - (1) The Inspector General shall set forth, in writing, the basis for the proposed debarment, which may incorporate any report and recommendation provided by the Chief Procurement Officer.
 - (2) The Inspector General shall provide written notice of the proposed debarment by both certified mail with return receipt requested and by first class mail to the contractor and any known interested party.
- (b) At a minimum, the notice of proposed debarment shall contain the following information:
 - (1) Notice that debarment is being considered after a finding by the Office of Inspector General;
 - (2) The basis for the proposed debarment in terms sufficient to put the contractor on notice of the nature of the conduct at issue;
 - (3) The potential consequences of the debarment; and
 - (4) The City's procedures governing debarment proceedings, which may include a copy of this division.
- (c) Within 28 days of mailing the notice of proposed debarment, the contractor may submit, in writing, information and argument in opposition to the proposed debarment.
- (d) The Inspector General may request additional information of the contractor, if necessary, to evaluate the information provided by the contractor.

(Code 1984, § 18-11-7; Ord. No. 23-18, § 1(18-11-7), eff. 8-10-2018)

Sec. 17-5-358. Final decision.

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

(Code 1984, § 18-11-8; Ord. No. 23-18, § 1(18-11-8), eff. 8-10-2018)

Sec. 17-5-359. Notice of final decision.

- (a) A copy of the final decision shall be sent by certified mail with return receipt requested and by first class mail to the contractor, and any known interested party.
- (b) A copy of the final decision shall be filed with the City Clerk for transmission to City Council.
- (c) If debarment is imposed, the decision shall specify the grounds for the debarment and the period of debarment, including effective dates.

(Code 1984, § 18-11-9; Ord. No. 23-18, § 1(18-11-9), eff. 8-10-2018)

Sec. 17-5-360. Interim suspension.

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

-
- (1) Suspend a contractor from eligibility for award of a City contract;
 - (2) Terminate the services of the contract under any existing contract, and
 - (3) Prior to any such suspension, notify the Chief Procurement Officer and allow seven days for comment, which time period may be waived by the Chief Procurement Officer.
- (b) The contractor will be suspended for the lesser of an initial period of 90 days or until the Inspector General makes a final determination with respect to the debarment. The initial suspension may be extended for up to three additional 30-day periods.
 - (c) The Chief Procurement Officer will not solicit bids or proposals from, or approve the award for a contract to, the suspended contractor, and will not open or consider for a contract any bid or proposal received from same.
 - (d) The Inspector General shall send a written notice of the initial suspension and any extension specifying the basis for same, to the suspended contractor by certified mail with return receipt requested.
 - (e) A copy of the interim suspension shall be filed with the City Clerk for transmission to City Council.
- (Code 1984, § 18-11-10; Ord. No. 23-18, § 1(18-11-10), eff. 8-10-2018)

Sec. 17-5-361. Appeal.

- (a) The contractor may appeal a debarment decision, the length of a debarment, or an interim suspension to City Council within 28 days after the issuance of the Inspector General's debarment decision or interim suspension.
- (b) The contractor shall send the appeal letter together with any supporting materials to the City Clerk for transmission to City Council.
- (c) The contractor may request an in-person meeting with City Council, where the contractor may be represented by legal counsel.
- (d) The Inspector General shall have the right to appeal in person or to submit written comments to City Council.
- (e) City Council shall hold the appeal hearing within 45 days of receipt of the appeal letter.
- (f) City Council must have a vote of two-thirds majority of members present to overturn the Inspector General's debarment decision, length of debarment, or interim suspension. The decision shall be supported by competent, material, and substantial evidence on the whole record.
- (g) City Council shall notify the contractor, in writing, of the result of the appeal within ten days after the determination.

(Code 1984, § 18-11-11; Ord. No. 23-18, § 1(18-11-11), eff. 8-10-2018)

Sec. 17-5-362. Period of debarment.

- (a) The period for debarment shall be commensurate with the seriousness of the cause or causes therefor, but in no case shall the period exceed 20 years. Generally, debarment should not exceed five years, except:
 - (1) Debarment for convictions of criminal offenses that are incident to the application to, or performance of, a contract or subcontract with the City, including, but not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, negligent misrepresentation, price fixing, and bid-rigging, may receive the maximum period.

-
- (2) Debarment for convictions of criminal offenses that do not involve the City, but negatively reflect on the contractor's business integrity, including, but not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, negligent misrepresentation, price fixing, bid-rigging, or a violation of state or federal anti-trust statutes, may receive a debarment period not to exceed ten years.
 - (3) Debarment involving purposeful deceit, including, but not limited to, making a deceptive, false, or fraudulent statement which evidences a desire to circumvent or otherwise compromise the investigative process.
- (b) If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.
 - (c) After the debarment period expires, the vendor may reapply for inclusion on bidder lists through the regular application process.
- (Code 1984, § 18-11-12; Ord. No. 23-18, § 1(18-11-12), eff. 8-10-2018)

Sec. 17-5-363. Application of remedies.

- (a) The provisions of this division are in addition to any other rights or remedies available to the City in connection with the award of any contracts to disqualify bidders who are not responsible, regardless of whether they have been debarred under this division. This right extends, but is not limited to, declining to award contracts to bidders having officers, owners, managers, or persons or entities directly or indirectly holding a financial or beneficial interest in previously associated with debarred contractors.
 - (b) The provisions of this division are in addition to any contractual or legal rights or remedies available to the City to redress contractual performance issues.
- (Code 1984, § 18-11-13; Ord. No. 23-18, § 1(18-11-13), eff. 8-10-2018)

Sec. 17-5-364. Effect on this chapter.

A debarred contractor is not eligible for certification under this chapter. Debarment shall have the effect of determining any certification under this chapter.

(Code 1984, § 18-11-14; Ord. No. 23-18, § 1(18-11-14), eff. 8-10-2018)

Sec. 17-5-365. Duty to report illegal acts.

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

(Code 1984, § 18-11-15; Ord. No. 23-18, § 1(18-11-15), eff. 8-10-2018)

Sec. 17-5-366. List of debarred contractors.

The Office of the Inspector General shall compile and maintain a current list of all contractors debarred by the City. Such list shall be updated as appropriate, including updates after appeals and final decisions are made,

and transmitted to the Office of Contracting and Procurement, to the City Council, and to the City Clerk, and posted on the City's website.

(Code 1984, § 18-11-16; Ord. No. 23-18, § 1(18-11-16), eff. 8-10-2018)

Secs. 17-5-367—17-5-400. Reserved.