

(b) In addition to any other criteria that may be established for renewal of PDBE certification, applications for renewal shall be evaluated under the same criteria and subject to the same manner of review as authorized by section 15-93 of this Code for original applications.

(c) This section shall not be construed to prohibit any person or business certified as an MBE or WBE from also being certified as a PDBE; provided, however, that any such person or business with dual certification shall not be permitted to participate in both a M/WBE goal and a PDBE goal in the same contract.

(Ord. No. 98-1213, § 4, 12-16-98)

Note—See editor's note to § 15-82.

Sec. 15-95. Confidentiality of records.

Information submitted by PDBE applicants in connection with an application for certification or re-certification as a PDBE under this article shall be confidential and may be disclosed by the affirmative action division only pursuant to the requirements of a statute or the order of a court of competent jurisdiction.

(Ord. No. 98-1213, § 4, 12-16-98)

Note—See editor's note to § 15-82.

Secs. 15-96—15-100. Reserved.

ARTICLE VII. PUBLIC WORKS CONTRACTOR DEBARMENT

Sec. 15-101. Definitions.

(a) As used in this article, the following terms shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning:

Administrative official means the official designated by the director of building services to oversee the administrative process of debarment.

Contractor means any person who contracts with or otherwise provides goods or services to the city for public works contracts, and includes subcontractors who by agreement provide any goods, materials, or services used in the performance of city public works contracts.

Day means a calendar day.

Debarment means action taken by the city council to exclude a person from acting as a city public works contractor for a specified period.

Hearing official means the person designated by the director of the department of building services to conduct a debarment or reinstatement hearing and to make findings and recommendations to city council. The hearing official must not be a person who participated in the administration of the contract giving rise to the debarment proceeding and shall not be the same person as the administrative official who investigated the referral. The hearing official may be a city employee, unless the contractor requests and makes security for the services of a private hearing official as provided in this article. The mayor shall, based upon recommendations from the administrative official and contractor organizations, develop and maintain a list of private hearing officials who will be designated by the director to conduct hearings under this article. Subject to their timely availability, the director shall assign private hearing officials in rotation from the list of persons appointed by the mayor.

Public works contract means any city contract or subcontract for the construction of public works, whether issued under the administrative oversight of the public works and engineering department, the aviation department, or the building services department. The term includes contracts on competitive bids pursuant to chapter 252 of the Texas Local Government Code, but not contracts for professional services that are exempt from bidding under the Texas Professional Services Procurement Act.

Wrongful conduct means any of the types of conduct or offenses listed in section 15-103(1)—(4) of this Code.

(Ord. No. 00-859, § 2, 9-27-00)

Sec. 15-102. Debarred person ineligible.

(a) No person subject to a debarment order shall be eligible for award of any public works contract. No person subject to a debarment order is a responsible bidder for any public works contract.

(b) No person subject to a debarment order shall be eligible to serve as a subcontractor or as a goods or materials supplier for any public works contract. This provision shall not be construed to preclude completion of existing subcontracts as provided in section 15-110(b) of this Code. (Ord. No. 00-859, § 2, 9-27-00)

Sec. 15-103. Grounds for debarment.

A person found to have committed any of the following acts in the two-year period preceding referral to the administrative official may be debarred:

- (1) Any significant and material breach of any public works contract, including without limitation, wrongfully and without good cause:
 - a. Failing to complete a contract;
 - b. Failing to perform work in accordance with the terms of a public works contract and accepted industry practices as they exist within the city;
 - c. Failing to comply with state, federal or local laws or regulations that are applicable to the performance of a contract or to public works in general; or
 - d. Failing to complete the work on a public works contract within the time allowed.
- (2) Knowingly using a debarred contractor as a subcontractor.
- (3) Conviction or civil adjudication of the contractor or the contractor's officers or owners of a criminal offense or civil misconduct in connection with the contractor's business that evidences a lack of business integrity or business honesty, including without limitation, embezzlement, theft, forgery, bribery, fraud, falsification or destruction of records, making false statements, or receiving stolen property, or violations of laws relating to the obtaining of or performing of public contracts.

- (4) Any other conduct that evidences the inability of the contractor to responsibly complete public works contracts on behalf of the city.

The conduct giving rise to the debarment may be based upon actions taken in connection with work undertaken for the city, other public entities, or private entities.

(Ord. No. 00-859, § 2, 9-27-00)

Sec. 15-104. Debarment recommendation.

(a) Any city department director or elected official may refer a contractor to the administrative official for purposes of determining whether a debarment of the person should be made. The referral shall be signed and in writing and shall set forth the basis of the complaint asserted.

(b) Following receipt of the referral, the administrative official shall make inquiry to determine whether probable cause exists to believe that wrongful conduct may, in fact, have been committed. If so, the matter shall proceed to a hearing as provided below. If not, the administrative official shall so advise the referring department director or official and the person against whom the complaint was made and shall take no further action.

(c) Upon a determination by the administrative official that probable cause exists to believe that wrongful conduct may in fact have been committed, the administrative official shall notify the contractor in writing, setting forth:

- (1) The wrongful conduct alleged, including the contract number or numbers, date or dates, and/or other facts, as applicable.
- (2) That a hearing will be conducted no sooner than 15 days after the date the notice is issued, including the date, time, and place of the hearing.
- (3) That the contractor may be represented by legal counsel, may present evidence, and may cross examine witnesses at the hearing.
- (4) That the hearing will be reported by a court reporter at city expense and that, in the event debarment is recommended, the

city council may take that action on the basis of the record and without conducting a further evidentiary hearing.

- (5) That the contractor may, in writing, request that the director designate a private hearing official to conduct the hearing in lieu of a city employee, provided that the contractor shall in that instance be responsible for the private hearing official's costs in the event that city council debar the contractor. A contractor who requests a private hearing official shall be required to provide security for reasonably anticipated costs of the private hearing official's services in an amount specified by the director by posting a cash bond or surety bond at least five days prior to the commencement of the hearing.

(d) The hearing shall be conducted by the hearing official. The burden of establishing that grounds exist for debarment shall rest with the city by a preponderance of the credible evidence. A complete record of the hearing shall be maintained for referral to city council.

(e) If the hearing official finds that wrongful conduct has occurred and determines that debarment would be in the best interests of the city, he shall reduce the findings to writing and forward them, along with a recommendation of debarment for a period of time that is commensurate with the nature of the wrongful conduct, to the mayor for presentation to city council. If the hearing official finds that no debarment should be recommended, he shall so advise the contractor. Any decision to debar a contractor must be made on the same standard of evidence set out in section 15-104(d) of this Code.

(f) Notice of the hearing official's determination and of the contractor's rights under subsection (g) below shall be mailed to the contractor within ten days following the completion of the hearing.

(g) If debarment is recommended, the contractor may file written exceptions with the city secretary within ten days following the date of issuance of the hearing official's notice. (Ord. No. 00-859, § 2, 9-27-00; Ord. No. 05-91, § 1, 1-25-05)

Sec. 15-105. Debarment by city council.

Following presentation of a debarment recommendation from the hearing official and expiration of the ten day period allowed for response by the contractor, city council shall consider the matter, based exclusively upon the hearing official's recommendation, the record created at the hearing, and any written exceptions filed under section 15-104(g) of this Code. The city council may:

- (1) Adopt the recommendation and debar the contractor for the recommended period of time;
- (2) Adopt the recommendation with modifications as to the period of debarment, or otherwise;
- (3) Return the recommendation to the hearing official for development of further factual evidence if the city council finds the record to be incomplete; or
- (4) Reject the recommendation and take no action against the contractor.

The decision of the city council shall be final. (Ord. No. 00-859, § 2, 9-27-00)

Sec. 15-106. Period of debarment.

The period for debarment shall be commensurate with the seriousness of the cause or causes therefor, but in no case shall the period exceed two years.

(Ord. No. 00-859, § 2, 9-27-00)

Sec. 15-107. Notice and record of debarment.

The city secretary shall notify the contractor in writing of the city council's decision. The city secretary shall maintain the record of all debarred persons. In cooperation with the administrative official, the city secretary shall cause the record to be published on the city's internet website or otherwise made available to contractors.

(Ord. No. 00-859, § 2, 9-27-00)

Sec. 15-108. Effective dates.

(a) A decision to debar a contractor becomes final on the day that city council makes a debarment determination.

(b) A debarment shall remain effective for the period of time specified unless the city council sooner issues an order of reinstatement. (Ord. No. 00-859, § 2, 9-27-00)

Sec. 15-109. Reinstatement.

(a) A debarred contractor may petition for reinstatement by written request to the administrative official, at any time after he has served at least one-half of the original period of debarment specified in the debarment order. A hearing shall be conducted in accordance with the procedures set forth in section 15-104 of this Code, except that the burden shall be upon the debarred person, who shall be responsible for all court reporting fees and for hearing official fees, if a private hearing official is requested.

(b) At the reinstatement hearing, the hearing official shall consider any evidence presented by the contractor to demonstrate that the contractor may responsibly perform public works contracts. If the hearing official determines that there is good cause to end the debarment, he shall reduce the findings and recommendation to writing and submit them to the mayor for consideration by city council as set out in section 15-105 of this Code.

(c) The city council shall either terminate or continue the debarment. If city council terminates the debarment, the city secretary shall immediately remove the contractor's name from the list of debarred contractors, and the contractor shall become eligible for award of city contracts. (Ord. No. 00-859, § 2, 9-27-00)

Sec. 15-110. Effect of debarment order.

(a) An order of debarment issued by city council against a person constitutes a finding under section 252.043(a) of the Texas Local Government Code that the person is not responsible and operates as city council's rejection of any bid submitted by the person during the debarment period. The city secretary shall return a debarred person's bid and bid bond immediately after bids are opened without requirement of any further action by city council.

(b) A debarment order against a person shall not affect any contracts or subcontracts existing at the time of the issuance of the debarment order if the person is not in default of such contract. (Ord. No. 00-859, § 2, 9-27-00)

Sec. 15-111. Remedies cumulative.

The provisions of this article are cumulative of any other rights or remedies available to the city in connection with the award of any public works contracts to bypass bidders who are not responsible, regardless of whether they have been so declared hereunder. This right extends but is not limited to declining to award public works contracts to bidders that have the same or substantially the same officers, owners, or managers as debarred contractors. (Ord. No. 00-859, § 2, 9-27-00)

Sec. 15-112. Effect on other ordinances.

A debarred contractor is not eligible for certification under articles IV, V, or VI of this chapter. Debarment shall have the effect of terminating any certification thereunder. (Ord. No. 00-859, § 2, 9-27-00)

ARTICLE VIII. CITY CONTRACTS; INDEBTEDNESS TO CITY*

Sec. 15-121. Policy.

(a) Except as provided in section 15-126 of this Code or subsection (b) of this section, no contract shall be let, nor any other business transaction entered into, by the city with any contracting entity that is indebted to the city or a qualifying entity or whose owner is indebted to the city or a qualifying entity, if the contract or transaction comes within the provisions of section 15-1(c) of this Code. No city contract shall be amended or extended if the contracting entity or any owner thereof has become indebted to the city or a qualifying entity since the inception of the con-

*Editor's note—Ord. No. 05-370, § 2, adopted April 13, 2005, amended Ch. 15, Art. VIII, §§ 15-121—15-126, in their entirety to read as herein set out. Formerly said article pertained to similar subject matter and derived from Ord. No. 03-318, § 4, 4-2-03.