

MEMORANDUM

November 26, 2013

TO: Board of Mayor and Aldermen

FROM: Eric S. Stuckey, City Administrator
Russell Truell, Assistant City Administrator / CFO
Brian Wilcox, Purchasing Manager

SUBJECT: Suspension and debarment of vendors and contractors as needed

Purpose

The purpose of this memorandum is to present background on the idea of establishing policy and procedure for suspension and debarment of vendors and contractors as needed.

Background

In public procurement, the concept of suspension and debarment is well established. Typically, debarment involves excluding a person for cause from consideration for award of contracts, usually for a period of not more than three years, while suspension involves excluding a person from consideration for award of contracts if there is probable cause for debarment, usually for a period significantly shorter than three years. Suspension and debarment normally would only apply to procurement which exceeds the threshold for a competitive process involving public advertisement and sealed submittals, currently \$25,000.

The causes for debarment or suspension may include the following:

- (a) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- (b) conviction under State or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a contractor for the awarding agency;
- (c) conviction under State or federal antitrust statutes arising out of the submission of bids or proposals;
- (d) violation of such contract provisions, as set forth below, of a character which is regarded by the awarding agency to be so serious as to justify debarment action:
 - (i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - (ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
- (e) any other cause the awarding agency determines to be so serious and compelling as to affect responsibility as a contractor for the awarding agency, including debarment by another governmental entity for any cause listed in regulations; and
- (f) for violation of ethical standards to be referenced by the awarding agency.

The following topics would be helpful to discuss in order to provide direction for staff:

1. Does the Budget & Finance Committee wish for staff to develop a recommended policy and procedure for suspension and debarment of vendors and contractors as needed? If so:



2. Does the Budget & Finance Committee wish for the policy and procedure to apply only to the City's procurement which does pertain to the design and/or construction of new infrastructure and facilities, or only to that which does not pertain to the design and/or construction of new infrastructure and facilities, or to both?
3. Is the Budget & Finance Committee comfortable with the policy and procedure applying only to the City's procurement which exceeds \$25,000?
4. Relative to past infractions, would the Budget & Finance Committee prefer the policy and procedure seek to know of any infraction regardless of how long ago, or would the Committee prefer to limit the period of time of interest to the City?
5. Relative to debarments by other governmental entities, would the Budget & Finance Committee prefer the policy and procedure seek to know of debarments by any governmental entity, or would the Committee prefer the policy and procedure seek to know only of debarments say by federal and state agencies or by federal and Tennessee governmental agencies?

Financial Impact

Whenever the pool of eligible competitors is restricted, there is a potential adverse financial impact on the City. However, prohibiting non-responsible potential competitors from competing in the first place has the benefit of preventing funds being spent on an unproductive or unsatisfactory procurement award.

Options

As an option to directing staff to prepare a policy and procedure for suspension and debarment of vendors and contractors as needed, the Board of Mayor and Aldermen could choose to leave the Purchasing Policy as is.

Recommendation

Staff recommends the Budget and Finance Committee consider directing staff to prepare for consideration by the Board of Mayor and Aldermen a policy and procedure for suspension and debarment of vendors and contractors as needed. The means for doing so would be an ordinance which would be prepared in time for the Board meeting at which the proposed policy and procedure would be scheduled to be considered.