

ORDINANCE NUMBER O- 18283 (NEW SERIES)

ADOPTED ON APR 15 1996

AN ORDINANCE AMENDING CHAPTER II, ARTICLE 2, DIVISION 8 OF THE SAN DIEGO MUNICIPAL CODE BY REPEALING TITLE, REENTITLING DIVISION 8, RENUMBERING SECTION 22.0801, ADDING NEW SECTIONS 22.0801, 22.0802, 22.0803, 22.0804, 22.0805, 22.0806, 22.0807, 22.0808 AND 22.0809; BY AMENDING CHAPTER II, ARTICLE 2, DIVISION 5, BY RENUMBERING SECTION 22.0514, RELATING TO DEBARMENT.

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter II, Article 2, Division 8, entitled "Budget Estimate" is hereby amended by repealing the title.

Section 2. That Chapter II, Article 2, Division 8, is hereby amended by reentitling Division 8 as follows:

DIVISION 8

Debarment

Section 3. That Chapter II, Article 2, Division 8, is hereby amended by renumbering Section 22.0801 to Section 22.0227.

Section 4. That Chapter II, Article 2, Division 8, is hereby amended by adding new Sections 22.0801 and 22.0802 to read as follows:

SEC. 22.0801 Statement of Purpose

Debarment is a sanction to be imposed only in the public interest for the City's

protection and not for purposes of punishment. Debarment is designed to protect the City by ensuring full and open competition by granting awards only to responsible contractors.

SEC. 22.0802 Definitions

For purposes of this Division,

"Affiliate" means business entities, organizations, or individuals who either directly or indirectly (a) control one another or have the power to control one another, or (b) are controlled by a third party or are subject to control by a third party. "Affiliates" include chief executive officers and members of boards of directors or their equivalents.

"Contractor" means any individual or other legal entity that:

(a) directly or indirectly, for example, through an affiliate, submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a City contract; or

(b) conducts business or reasonably may be expected to conduct business with the City as an agent or representative of another contractor.

"Debarment" means action taken by the City Council to exclude a contractor from contracting with the City for a reasonable, specified period.

Section 5. That Chapter II, Article 2, Division 5, of the San Diego Municipal Code is hereby amended by renumbering and amending Section 22.0514 to Section 22.0803 to read as follows:

SEC. 22.0803 Debarment Procedures for Procurement and Public Works Contracts

(a) In addition to all other remedies permitted by law, upon advice of the City Manager and the City Attorney, the City Council may declare by resolution that a bidder or contractor is ineligible to bid on City procurement and public works contracts for a period not to exceed three years for any of the following reasons:

(1) two or more claims of computational or other error in bid submission within a two year period;

(2) unjustified failure or refusal to timely provide or properly execute contract documents;

(3) unsatisfactory performance of contract;

(4) two (2) or more occasions within a two-year period of failure to submit

bond or insurance documents acceptable to the City in the time periods required;

(5) unjustified refusal to properly perform or complete contract work or warranty performance;

(6) unjustified failure to honor or observe contractual obligations or legal requirements pertaining to the contract;

(7) conviction under a state or federal statute or municipal ordinance for fraud, bribery, theft, falsification or destruction of records, receiving stolen property or of any other similar crime;

(8) conviction in a court of law for violations of California Government Code sections 84300(c) and 84301 (sections of the California Political Reform Act requiring disclosure of true campaign donor), as they exist on MAY 15, 1996, or as amended thereafter, which violations occurred on or after MAY 15, 1996, and which violations occurred with respect to a City election;

(9) a Fair Political Practices Commission enforcement order, either following a hearing or by stipulation, that makes a finding of a violation of California Government Code sections 84300(c) and 84301,

as those sections exist on MAY 15, 1996,
or as amended thereafter, which violations
occurred on or after MAY 15, 1996, and
which violations occurred with respect to a
City election;

(10) any offense or action which
indicates a lack of business integrity and
which could directly affect the reliability
and credibility of performance of the
contractor on future contracts with the City;
or

(11) any debarment of the
contractor by another governmental agency.

(b) The City Council shall permanently
debar any bidder or contractor for a
violation of City Charter section 97, and may
permanently debar such bidder or contractor
for a conviction under federal or state
antitrust statutes involving public contracts
or the submission of bid proposals, for any
corrupt practices involving the
administration or award of a contract with
the City, or permanent debarment of the
bidder or contractor by another governmental
agency.

(c) The bidder or contractor shall be
provided notice and an opportunity to present

evidence and show cause before the City Council why such ineligibility shall not be declared after the City Manager has established a factual basis for debarment.

Section 6. That Chapter II, Article 2, Division 8, of the San Diego Municipal Code is hereby amended by adding Sections 22.0804, 22.0805, 22.0806, 22.0807, 22.0808 and 22.0809 to read as follows:

SEC. 22.0804 Debarment Procedures for Materials, Supplies, Equipment, Insurance or Personal Service Contracts

(a) In addition to all other remedies permitted by law, upon advice of the City Manager and City Attorney, the City Council may declare by resolution that a bidder for a contract or contractor is ineligible to bid on City contracts listed in Section 22.0804(b) for a period not to exceed three years for either of the following reasons:

(1) conviction in a court of law for violations of California Government Code sections 84300(c) and 84301 (sections of the California Political Reform Act requiring disclosure of true campaign donor), as they exist on MAY 15, 1996, or as amended thereafter, which violations occurred on or after MAY 15, 1996, and which violations occurred with respect to a City election.

(2) a Fair Political Practices Commission enforcement order, either following a hearing or by stipulation, that makes a finding of a violation of California Government Code sections 84300(c) and 84301, as those sections exist on MAY 15, 1996, or as amended thereafter, which violations occurred on or after MAY 15, 1996, and which violations occurred with respect to a City election.

(b) City contracts covered by Section 22.0804(a) include materials, supplies, equipment, insurance, and personal services contracts entered into pursuant to San Diego Municipal Code Section 22.0505. They also include agreements with experts and consultants entered into pursuant to Charter section 28 and San Diego Municipal Code section 22.0206. Debarment procedures for public works and procurement contracts are covered by Section 22.0803.

SEC. 22.0805 General

(a) A contractor's debarment shall be effective throughout the City. Debarment prohibits City officers and employees of all City departments from executing contracts with a debarred contractor. Debarred

contractors shall be placed on a list compiled and maintained by the City Manager in accordance with Section 22.0806.

(b) Debarment constitutes debarment of all divisions or other organizational elements of the contractor, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or commodities. The City may extend the debarment decision to include any affiliate of the contractor if the affiliate is (1) specifically named and (2) given written notice of the proposed debarment and an opportunity to respond.

SEC. 22.0806 List of Debarred Contractors

- (a) The City Manager shall:
- (1) compile and maintain a current, consolidated list of all debarred contractors;
 - (2) periodically revise and distribute the list and issue supplements; and,
 - (3) establish procedures to provide for effective use of the debarred contractors' list, to ensure that the City does not solicit offers from or award contracts to anyone on the list.

(b) The debarred contractors' list shall indicate:

(1) The names and addresses of all debarred contractors with cross references when more than one name is involved in a single action;

(2) the cause for the action; and,

(3) the termination date for each listing.

SEC. 22.0807 Effect of Listing

(a) Debarred contractors are excluded from receiving contracts, and City departments shall not solicit offers from or award contracts to debarred contractors. Debarred contractors are also excluded from conducting business with the City as agents or representatives of other contractors.

(b) After the opening of bids or receipt of proposals, the contracting officer shall review the list of debarred contractors.

(c) Bids received from any listed contractor in response to an invitation for bids shall be recorded as received, and then rejected by reason of debarment.

(d) Proposals, quotations, or offers received from any listed contractor shall not

be evaluated for award or included in the competitive process during the period the contractor is on the list.

(e) Immediately prior to award of a contract, the City Manager shall again review the debarred contractors' list to ensure that no award is made to a listed contractor.

SEC. 22.0808 Continuation of existing contracts

Notwithstanding the debarment of a contractor, the City may continue contracts in existence at the time the contractor is debarred, unless the City Council directs otherwise, after receiving advice from the City Manager and City Attorney as to the effects of termination of an existing agreement.

SEC. 22.0809 Scope of debarment

(a) The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individuals associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for, or on behalf of, the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of

the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(b) The fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct.

(c) The fraudulent, criminal, or other seriously improper conduct of one contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors if the conduct occurred for, on approval of, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

Section 6. The City Clerk is hereby directed to insert the effective date of this ordinance, once known, in the blank spaces provided in Sections 22.0803 and 22.0804.

Section 7. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By *Cristie C. McGuire*
Cristie C. McGuire
Deputy City Attorney

CCM:jrl
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